

**BOARD OF EDUCATION**

**Attachment: Discussion 19**

**PALO ALTO UNIFIED SCHOOL DISTRICT**

**Date: 06.03.14**

**TO:** The Board of Education

**FROM:** Barb Mitchell, President, Board of Education  
Melissa Baten Caswell, Vice President, Board of Education  
Kevin Skelly, Superintendent

**SUBJECT:** Office for Civil Rights Case Review/Appeal

**STRATEGIC PLAN INITIATIVE**

Governance and Communication

**RECOMMENDATION**

The attached draft Board Resolution 2014-15.16 is being proposed to advance the District's appeal for the review and remedy of substantial U.S. Department of Education Office for Civil Rights (OCR) errors in case no. 09-11-1337 and to call attention to significant concerns regarding OCR investigation practices. This Resolution is scheduled to return for Board Action on June 17, 2014.

The District respects and values the purpose for OCR's work, and we have strived to work collaboratively with the agency to the betterment of our organization and the students we serve. It is the investigative processes that the OCR employs that appear to be purposefully confrontational and disruptive and without regard for classroom instruction (teacher time) and learning (student time). Our District seeks to address and resolve issues raised by OCR, but we have growing concerns their work is implemented to promote confusion and concern, rather than to build trust and strengthen school-based practices together.

We are not alone in our concerns regarding OCR investigation practices. The National School Boards Association's (NSBA) General Counsel presented in April on OCR overreach at the Council of School Attorneys Seminar and continues to monitor OCR investigation practices while being a resource to attorneys representing school districts. NSBA advocates legislation (H.R. 1386) to support local school board governance and flexibility and states: "The expansion of federal intrusion on public education in recent years has impacted local policy-making in ways that impose unnecessary rules, conditions, and restrictions, as well as significant costs, on local school governance." Tufts University recently voiced concerns regarding OCR's actions and OCR's issuance of unexpected findings after a voluntary resolution agreement. In response, Tufts revoked its signature to that resolution agreement. (see attachment A)

**BACKGROUND**

Our school district community is always striving to build on the ways in which we care for all students and to provide for student safety and respect at all times. The Board of Education recognizes the distinguished student safety outcomes that District staff, parents, and students have achieved together over many decades. This ongoing focus continues to be guided by specific annual focused goals and dedicated staff initiatives that reflect staff, parent, and student input.

The Board of Education recognizes its duty to maintain District policies that reflect current law, to provide staff training and community and student education consistent with those policies, and to equip staff with the resources needed to implement policies and procedures successfully. We believe District staff members have been very attentive, proactive, and successful in their well-documented efforts to uphold anti-discrimination and civil rights laws at all times. Although the District has implemented the voluntary resolution agreement in case no. 09-11-1337 by providing additional staff trainings and policy updates, the Board has appealed for review and remedy of substantial OCR factual errors in the letter of findings that contradict District evidence in the case.

Consistent with federal and state laws, and OCR protocols to protect confidentiality, the District's public discussions of OCR investigations and release of case documents have been very limited. OCR has now completed most of the recent compliance investigations, and the District is releasing the attached letters related to several cases. These documents reveal the substantial nature of OCR factual errors in case no. 09-11-1337, including OCR's conclusion that disciplinary action was not taken; the omission of contradictory witness accounts; the incomplete portrayal of staff actions; and the inaccuracy of quotes attributed to District staff. The letters also reveal numerous instances in which OCR has not followed guidelines in law and in OCR's Case Processing Manual while conducting investigations. These, and other OCR actions, have placed District staff at a substantial deficit during OCR investigations. OCR has opened investigations based solely on allegations made by complainants without giving the District an opportunity to review allegations or to provide factual information showing the District's responsive actions.

Although the District has received positive compliance determinations in all four recent investigations completed by OCR, the investigations have placed excessive and unfair burdens on District staff members and have been very costly to District resources and reputation.

Investigation errors in case no. 09-11-1337 and additional concerns were reported to OCR on May 15, 2013, more than a year ago, after which an OCR supervising attorney expressed willingness to review inconsistencies. The errors were again reported to OCR on January 14, 2014, after which the OCR Regional Director expressed willingness to review District concerns regarding the case. To date, OCR has not responded except to deny District access to the investigation records that would help to resolve the matter.

This is not a minor disagreement. OCR's published errors and investigations have caused significant damage to the District and our dedicated educators, which has been magnified by local media coverage that assumes OCR fidelity, unwittingly misrepresents facts, and portrays actions of District staff members unfairly and without complete information. OCR's current process is open to exploitation by complainants and critics of the District, while District staff must limit public disclosure of evidence in individual cases to protect privacy rights.

Our school district is a unique, dynamic, and diverse community. To be very clear, the District's expression of concerns regarding OCR practices in no way diminishes our commitment to providing schools and classrooms that are safe and respectful for all students at all times. We have consistently welcomed OCR's technical assistance and guidance in our efforts. The District does not tolerate harassment and bullying in our schools, and we will continue to strive to educate our students to be upstanders and respectful and understanding of differences. A sampling of District, school, classroom, and individual student activities promoting social-emotional health and

awareness, and preventing discrimination and harassment at our high schools illustrates some of the many ways our dedicated staff, students, and community undertake these efforts (see attachment B).

The District has two remaining open OCR compliance investigations at Gunn and Palo Alto High Schools (while no actual complaint was filed at Palo Alto High School), OCR opened an investigation based on media attention following last April's *Verde* student publications. During these busy last few weeks of school, the District complied with OCR's request of 40 staff interviews at Paly, Gunn, and the District Office. Over the course of this school year, our staff has spent hundreds of hours preparing extensive documentation to respond to OCR's data requests.

#### **Review and Remedy of OCR Case No. 09-11-1337**

**December 26, 2012:** Two weeks after a good faith voluntary agreement was reached to resolve a 14-month-old complaint, OCR issued an unexpected report concluding the District had violated anti-discrimination laws in failing to respond appropriately and effectively to notice that a student was harassed by peers based on his/her disability. The finding was a startling contradiction of extensive and well-documented staff actions in which civil rights laws were followed.

#### **Document Timeline**

District letters to OCR related to the review and remedy of OCR case no. 09-11-1337 and general concerns regarding OCR investigation procedures are indexed, attached, and summarized here:

**May 20, 2013:** This District letter outlined substantial concerns regarding the fairness of OCR fact-finding procedures, including the low threshold for initiating investigations; the lack of OCR review of expansive data requests before proposing resolution agreements; the inadequacy of protections for student privacy and parental permission; the absence of verifiable information from complaints and interviews; the refusal to present proposed resolutions with school board members present; a process that doesn't follow legal guidelines or OCR's Case Processing Manual; and the opaque nature of findings presented up to two years after alleged incidents occurred (see attachment C).

**August 14, 2013:** This is the District's appeal of its June 14, 2013, request for OCR investigation records on case no. 09-13-1224 that was partially denied by OCR. The letter outlines the District's basis for disagreeing with OCR's decision to deny information and requests complete records or justification for withholding them. In particular, the District requests a copy of the email correspondence shown to District staff members by OCR investigating attorneys on May 23, 2013, that did not match the District's stored copy. OCR was legally required to make a determination on the District's appeal by September 13, 2013, but the District has never received a determination despite follow-up communications (see Attachment D).

**August 14, 2013:** This is the District's appeal of the June 14, 2013, request for OCR investigation records on case no. 09-11-1337 that was denied by OCR. The letter outlines the District's basis for disagreeing with OCR's decision to deny information and requests complete records or justification for withholding them. As stated above, OCR was legally required to make a determination on the District's appeal by September 13, 2013, but has not made a determination (see Attachment E).

**February 19, 2014:** This is the District's response to the request by OCR's Regional Director to submit a letter documenting the January 14, 2014, meeting discussion with OCR requesting an OCR review and remedy of their substantial factual errors in case no. 09-11-1337 including false statements of the District's disciplinary actions, misquoted staff members, and the omission of well-documented evidence (see Attachment F).

**April 23, 2014:** This is the District's response to OCR's request for group interviews of high school students. The letter requests legal and procedural clarification and cooperation on procedures that will assure student confidentiality and parental permission while delivering relevant, factual, and verifiable information. The District outlines possible solutions and notes the continuing lack of response to the District's requests for the review of OCR errors in case no. 09-11-1337 which has significantly diminished the District's confidence in OCR procedures (see Attachment G).