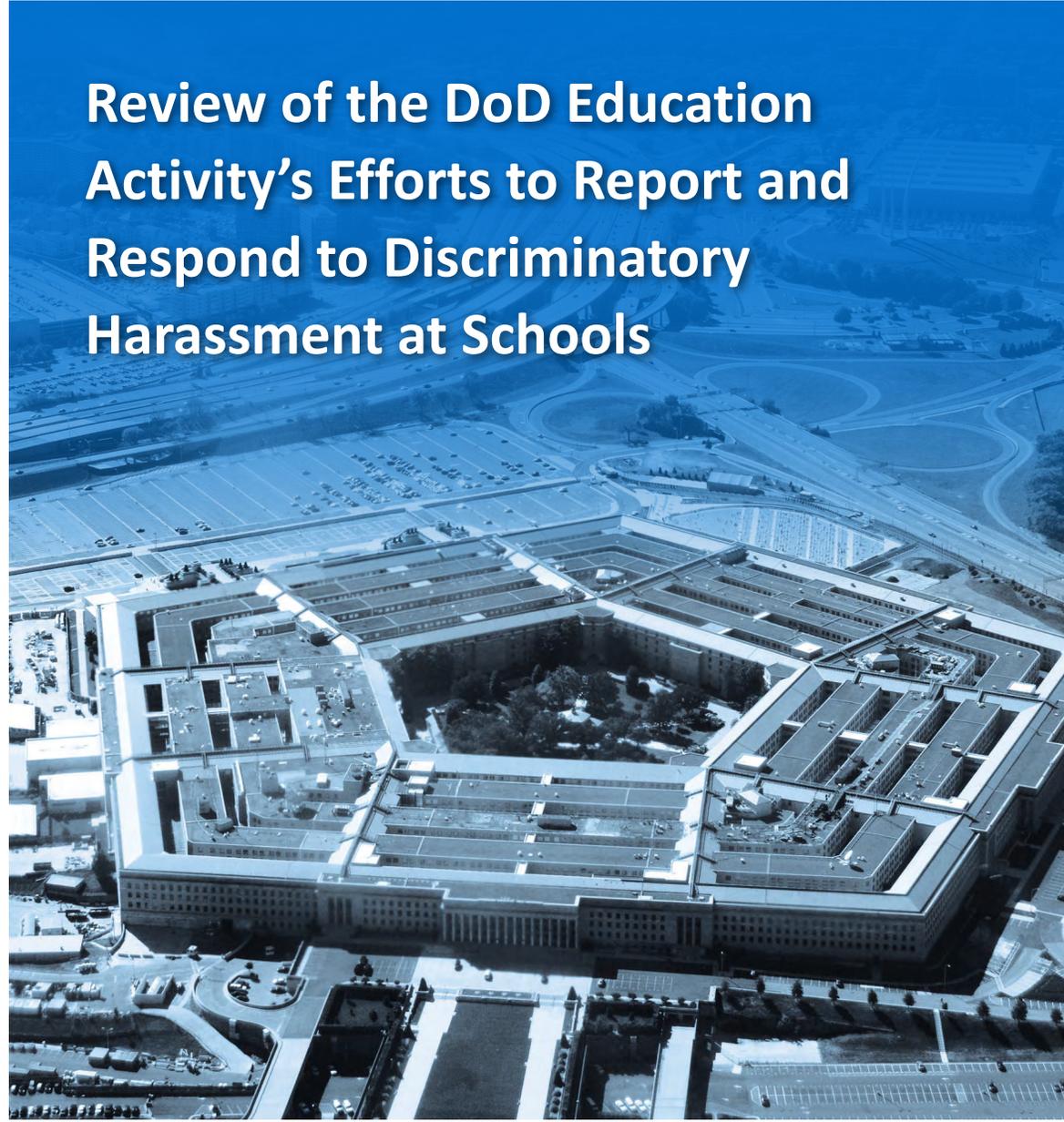




INSPECTOR GENERAL

U.S. Department of Defense

APRIL 22, 2024



Review of the DoD Education Activity's Efforts to Report and Respond to Discriminatory Harassment at Schools

INDEPENDENCE ★ INTEGRITY ★ EXCELLENCE ★ TRANSPARENCY





OFFICE OF INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
4800 MARK CENTER DRIVE
ALEXANDRIA, VIRGINIA 22350-1500

April 22, 2024

MEMORANDUM FOR DOD EDUCATION ACTIVITY DIRECTOR

SUBJECT: Review of the DoD Education Activity's Efforts to Report and Respond to Discriminatory Harassment at Schools (Report No. DODIG-2024-077)

This final report provides the results of the DoD Office of Inspector General's review. We previously provided copies of the draft report and requested written comments on the recommendations. We considered management's comments on the draft report when preparing the final report. These comments are included in the report.

This report contains recommendations that are considered unresolved because comments from the DoD Education Activity Director did not fully address the recommendations. Therefore, the recommendations remain open. We will track these recommendations until management agrees to take actions that we determine to be sufficient to meet the intent of the recommendations and management officials submit adequate documentation showing that all agreed-upon actions are completed. DoD Instruction 7650.03 requires that recommendations be resolved promptly. Therefore, please provide us within 30 days your response concerning specific actions in process or alternative corrective actions proposed on the recommendations. Send your response to DIEMReporting@dodig.mil.

The DoD Education Activity Director proposed corrective action to address one recommendation in this report; therefore, we consider the recommendation resolved and open. We will close this recommendation when documentation is provided that shows that all agreed-upon actions to implement it are completed. Therefore, please provide us within 90 days your response concerning specific actions in process or completed on the recommendation. Send your response to either followup@dodig.mil if unclassified or rfunet@dodig.smil.mil if classified SECRET.

If you have any questions or would like to meet to discuss the review, please contact me at [REDACTED]. We appreciate the cooperation and assistance received during the review.

FOR THE INSPECTOR GENERAL:

A handwritten signature in cursive script that reads "Sean McDonald".

Sean McDonald
Acting Deputy Inspector General for Diversity
and Inclusion and Extremism in the Military



Introduction

Executive Summary

DoDEA's records did not consistently identify that a complaint related to discriminatory conduct. Additionally, DoDEA's policy does not require all received complaints of discriminatory conduct to be reported. This occurred because:

- policy gaps exist in the Civil Rights Program (CRP) review of the Serious Incident Report (SIR) or Director's Critical Information Report (DCIR) reporting process;
- DoDEA officials do not receive mandatory training to assist in the identification of discriminatory conduct;
- DoDEA policies do not require the CRP to identify and track all informally resolved complaints made to school administrators.

As a result of these policy gaps and inconsistent training, incidents of discriminatory conduct are likely underreported. Underreporting discriminatory conduct hampers DoDEA's ability to reliably complete a required annual trend analysis, which could be used to identify areas of improvement related to discriminatory conduct and harassment and to improve student experiences at DoDEA facilities. Consequently, DoDEA cannot identify the extent of discriminatory conduct in its schools. This prevents DoDEA from determining the effectiveness of its policies and whether additional action is necessary to mitigate the impact of discriminatory conduct on the student population.

Objective

The objective of this review was to determine the effectiveness of DoDEA's efforts to address and prevent incidents of discriminatory conduct in accordance with policies and procedures. Specifically, we focused this review on DoDEA's reporting of student-related, peer-to-peer discriminatory conduct, which includes discriminatory harassment.

Background

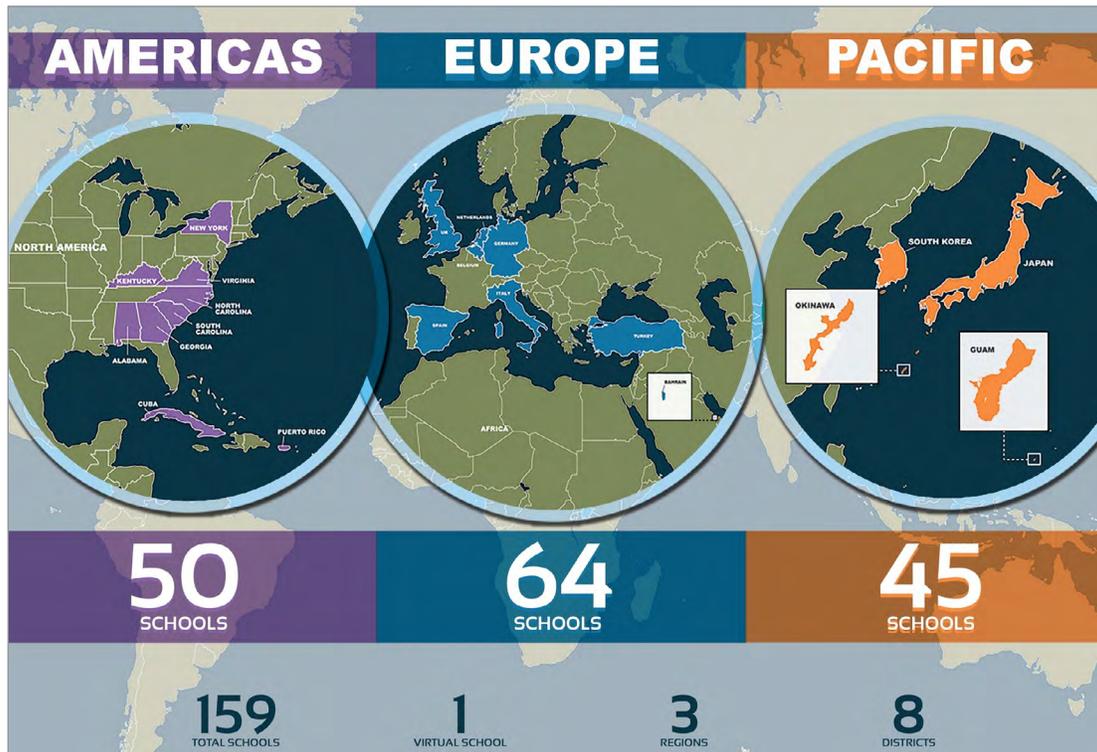
DoDEA's Executive Order 13160 Responsibilities and Structure

Executive Order (EO) 13160 establishes that discrimination on the basis of the nine classifications of a protected class (race, sex, color, national origin, disability, religion, age, sexual orientation, and status as a parent) is prohibited in federally conducted education and training programs and activities.¹ DoDEA schools serve

¹ EO 13160, "Nondiscrimination on the Basis of Race, Sex, Color, National Origin, Disability, Religion, Age, Sexual Orientation, and Status as a Parent in Federally Conducted Education and Training Programs," June 23, 2000.

approximately 66,000 students whose parents or guardians serve in the Armed Forces or work for the DoD as civilian employees or in another special category. DoDEA employs approximately 11,800 personnel and manages 160 schools in 11 countries, 7 states, and 2 territories. Displayed in Figure 1, DoDEA divides its 160 schools into 8 districts that report to 3 regional directors for the Americas, Europe, and the Pacific. DoDEA's CRP is a collaborative process designed to help DoDEA recognize and take reasonable steps to eliminate unlawful discrimination in DoDEA schools, programs, activities, and workplaces, as required under EO 13160.

Figure 1. DoDEA's Geographic Locations



Source: DoDEA.

Discriminatory Conduct and Discriminatory Harassment

DoDEA Administrative Instruction (AI) 1443.01, "Civil Rights Program and Compliance," establishes policy, assigns responsibilities, and implements procedures to reasonably prevent, equitably respond to, and resolve unlawful discrimination in DoDEA-conducted or sponsored education, training programs, and activities in accordance with EO 13160.² Specifically, the Instruction provides guidance on DoDEA processes and procedures for reporting discriminatory conduct, including discriminatory harassment. The Instruction defines discriminatory conduct as

² DoDEA AI 1443.01, "Civil Rights Program and Compliance," November 16, 2022.

“Conduct that a DoDEA Participant considers to be unwelcome and offensive based on one or more of their protected classes.” Discriminatory harassment is identified in the Instruction as “A form of discriminatory conduct consisting of harassment based on one or more protected classes to include sexual harassment.”

DoDEA’s Discrimination Report Process

DoDEA prohibits discrimination within its operations, including:

discriminatory disparate treatment of a participant compared to their similarly situated peers; a hostile environment based on discriminatory conduct; disparate impact by policies, practices, or other methods of operating; and retaliation against any participant who made a report of or cooperated in any manner with DoDEA’s response to and equitable resolution of a report of discrimination. [This also includes] retaliation in its operations through the actions of an employee or other DoDEA agent or through policy, procedure, practice, criteria, or other method of operating.³

DoDEA AI 1443.01 details the discrimination report process (DRP), which provides two options for raising a discrimination concern. The first is an initial option to informally raise a discrimination concern in which the reporter may make a good faith attempt to resolve the matter informally by contacting DoDEA officials and sharing their concerns, either verbally or in writing.⁴

The second option is for any DoDEA participant who believes that DoDEA is directly responsible for discrimination in DoDEA operations to submit a formal written report of discrimination to the CRP. This type of report is processed as a formal discrimination report if the reporter is able to describe a fact-based reason to believe that a DoDEA participant is facing:

- the creation of a hostile environment;
- discrimination in DoDEA operations caused by the actions of a DoDEA employee, volunteer, or other agent of DoDEA; or
- discrimination in DoDEA operations created by a DoDEA policy, procedure, practice, criteria, or method of operating.

³ DoDEA AI 1443.01, “Civil Rights Program and Compliance,” November 16, 2022. A DoDEA agent is “an individual who is not a DoDEA employee or volunteer, but who is authorized by DoDEA to act on DoDEA’s behalf.” DoDEA’s previous AI 1443.01 “Executive Order 13160 Administration: Discrimination Complaints Processing,” February 21, 2019, identified a hostile environment based on discriminatory harassment.

⁴ According to AI 1443.01, DoDEA is not “officially on notice of a concern and required to respond in an official capacity unless and until the concern is reported in writing and accepted by the DoDEA CRP.” AI 1443.01 refers to the “reporter” as “Any DoDEA participant [that] may submit a written formal report to the DoDEA [Civil Rights Analyst/Program Manager] alleging DoDEA is not fulfilling its responsibilities to protect against discrimination in its operations.”

The CRP program manager reviews formal written reports of discrimination in DoDEA operations to determine if a report should be accepted as complete or dismissed, if not able to be made complete. According to DRP, if peer-to-peer discriminatory conduct creates a hostile environment, any DoDEA participant can make a report to the CRP.

DoDEA's Discriminatory Conduct Reporting Process

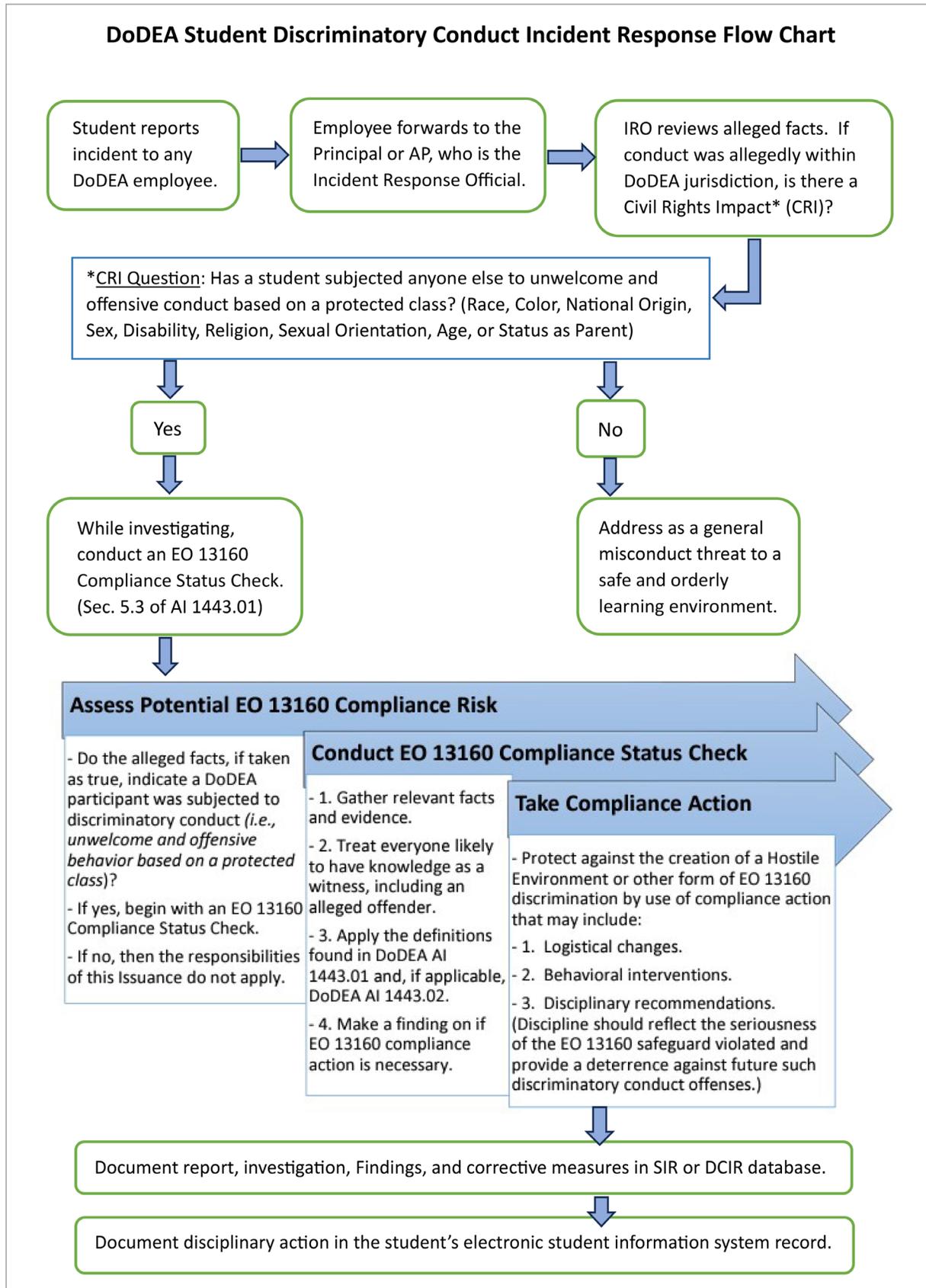
DoDEA AI 1443.01 also details the process for reporting and responding to reports of discriminatory conduct, which was the focus of this review. The discriminatory conduct reporting process is separate from DRP. Reports of discriminatory conduct are documented in either a SIR or DCIR. According to DoDEA AI 3030.01:⁵

- “The SIR is used by DoDEA School Principals and their designees to report events involving students whose activity meets SIR criteria.”
- “The DCIR is used by [certain DoDEA officials] and their designees to report events involving employees, parents, and students whose activity meets DCIR criteria.”

If DoDEA fails to adequately address and prevent ongoing discriminatory conduct, any DoDEA participant can make a formal complaint of a hostile environment to the CRP for formal DRP. The student-related, peer-to-peer discriminatory conduct reporting process is outlined in Figure 2.

⁵ DoDEA AI 3030.01, “Director’s Critical Information Requirements and Serious Incident Reports,” July 26, 2021.

Figure 2. DoDEA Discriminatory Conduct Reporting Process Flow Chart for Student-on-Student Allegations

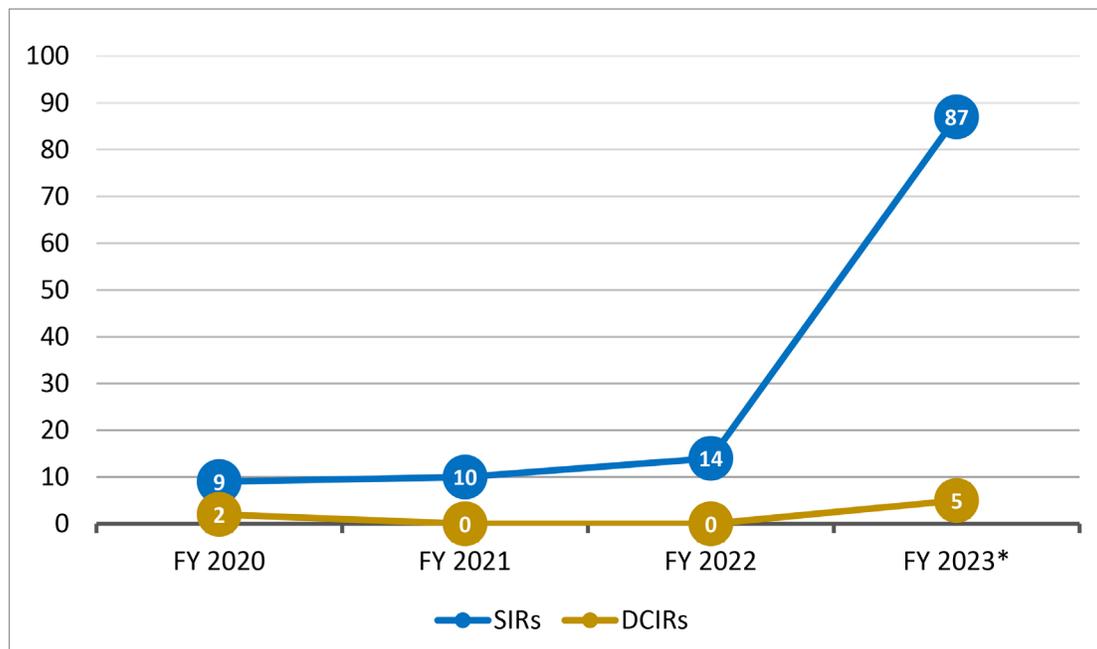


Source: DoDEA.

DoDEA Data Review

DoDEA tracks reported incidents of discriminatory conduct in either its SIR or DCIR database. We reviewed 120 reported SIRs and 7 reported DCIRs from FY 2020 to August 2023 that DoDEA identified as related to peer-to-peer discriminatory conduct. In addition, we reviewed 4 accepted formal DRP complaints from February 2019 to February 2020 and 52 DRP complaint-related forms of contact, such as emails, that were not accepted as formal DRP complaints in FY 2023. Figure 3 shows the number of reported SIRs and DCIRs by fiscal year from FY 2020 to August 2023, highlighting the significant increase in reported SIRs from 14 in FY 2022 to 87 in FY 2023.

Figure 3. Reported SIRs and DCIRs by Fiscal Year



Note: The scope of our review for FY 2023 was from September 1, 2022, to August 31, 2023.

Source: DoDEA & the DoD OIG.

Results

There are Opportunities to Strengthen the Effectiveness of DoDEA's Policies on Reporting Discriminatory Conduct

We found that DoDEA records did not consistently identify that a complaint related to discriminatory conduct. Additionally, DoDEA's policy does not require all received complaints of discriminatory conduct to be reported. This occurred because policy gaps exist in the CRP review of the SIR and DCIR reporting process. Additionally, DoDEA officials are not provided mandatory training to assist in the identification of discriminatory conduct. Finally, DoDEA policies do not require the CRP to identify and track all informally resolved complaints made to school administrators. As a result of these policy gaps and inconsistent training, incidents of discriminatory conduct are likely underreported. Underreporting discriminatory conduct hampers DoDEA's ability to reliably complete a required annual trend analysis, which can be used to identify areas for improvement related to discriminatory conduct and harassment and to improve student experiences at DoDEA facilities. Consequently, DoDEA cannot identify the extent of discriminatory conduct in its schools. This also prevents DoDEA from determining the effectiveness of its policies and whether additional action is necessary to mitigate the impact of discriminatory conduct on the student population.

In addition, our review identified another matter related to limited acceptance of complaints. During the DoDEA formal discriminatory complaint process, DoDEA may require a specific level of detail to accept a formal complaint. Because of DoDEA's restriction of student information, this level of detail may be unattainable for a reporting individual and some complaints may not be accepted.

The DoDEA CRP Review of SIRs and DCIRs Has Policy Gaps

DoDEA records did not consistently identify that a complaint related to discriminatory conduct, and DoDEA's policy does not require all received complaints of discriminatory conduct to be reported. We identified several policy gaps related to the CRP review of the SIR and DCIR reporting process, particularly that policy does not require:

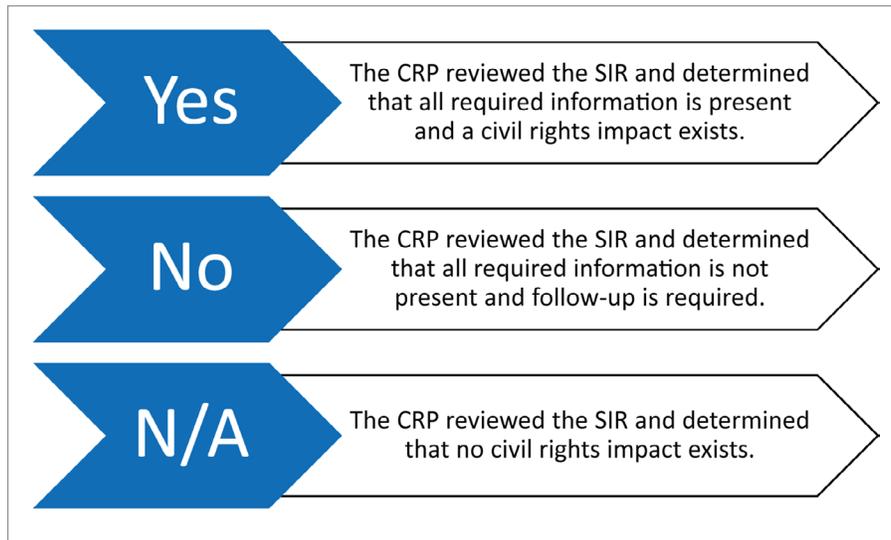
- the CRP to review all SIRs,
- administrators to update incorrectly identified discriminatory conduct SIRs after CRP review, or
- administrators to document all instances of reported discriminatory conduct in the SIR or DCIR database.

We determined that each record within the DoDEA SIR and DCIR databases contains a field for a Civil Rights Impact question and a Civil Rights Program question. These fields help the CRP identify whether reported incidents are related to discriminatory conduct and determine whether the incidents have all required civil rights information.

The Civil Rights Impact question asks, “Does this report involve a DoDEA student subjecting someone to unwelcome and offensive behavior based on their protected class?” Administrators are required to fill out the Civil Rights Impact question when they input a new record by selecting “YES” or “NO” from a drop-down menu and further identifying the specific protected class. DoDEA uses the answer to the Civil Rights Impact question, implemented in the databases on June 16, 2022, to identify and track civil rights-related SIRs.

The Civil Rights Program question, implemented in the SIR and DCIR databases on December 17, 2019, notes whether the CRP reviewed a SIR and determined whether the SIR contains all required civil rights information related to the CRP. The CRP may select from the following options in Figure 4 when reviewing an input record.

Figure 4. Civil Rights Program Question Responses



Source: DoDEA and the DoD OIG.

No Policy for the CRP to Review All SIRs

We learned through interviews with CRP officials that the CRP investigator manually reviews every SIR. The purpose of this manual review is to ensure that every SIR correctly answers the Civil Rights Impact question to accurately identify discriminatory conduct. Although the CRP investigator reviews every SIR, DoDEA policy does not require this review.

We reviewed DoDEA's 120 reported SIRs and identified 91 SIRs created after the implementation of the Civil Rights Impact question. Table 1 shows the number of SIRs reviewed and the results of the reviews.

Table 1. Outcome of SIR Review

| Category of Review | SIRs |
|--|------|
| Total SIRs Reviewed | 120 |
| Total SIRs Incorrectly Identified by Administrators | 42 |
| Total SIRs Created After the Civil Rights Impact Question | 91 |
| Total SIRs Created After the Civil Rights Impact Question and Incorrectly Identified by Administrators | 29 |

Source: The DoD OIG.

Administrators initially identified that 29 of the 91 SIRs did not contain discriminatory conduct. However, the CRP manual review discovered that these 29 SIRs documented discriminatory conduct. In addition, we found through interviews with the CRP that the CRP manual review of all SIRs is currently how CRP officials link SIRs that are related, whether by complainant, subject, or repeat occurrences.⁶ Linking related SIRs impacts DoDEA's ability to identify ongoing discriminatory conduct, which may lead to a hostile environment if not remedied. Therefore, DoDEA should develop and implement policy that requires the DoDEA CRP to review all SIRs, including ensuring that SIRs related to discriminatory conduct are linked when appropriate.

No Policy to Update Incorrectly Identified Discriminatory Conduct SIRs

Through interviews with CRP personnel and our review of DoDEA SIRs, we found that DoDEA does not have a policy that requires updating SIRs that failed to reflect discriminatory conduct, making the Civil Rights Impact question responses unreliable. Of the 120 discriminatory conduct SIRs we reviewed, 29 SIRs were incorrectly marked "NO" in response to the Civil Rights Impact question. However, after the DoD OIG initiated this project, DoDEA took action to correctly identify all previously submitted discriminatory conduct SIRs that had been misidentified. DoDEA did not update its policy to require updating incorrectly identified discriminatory conduct SIRs, which may result in improperly identified future records. Therefore, DoDEA should develop and implement policy that requires updating incorrectly identified discriminatory conduct SIRs.

⁶ Linking means electronically associating individual records within a database.

No Policy to Document All Instances of Reported Discriminatory Conduct

After reviewing DoDEA's discriminatory conduct incident reporting process, described in DoDEA AI 1443.01 and illustrated in Figure 2, we determined that DoDEA policy does not require documenting all instances of reported discriminatory conduct in the SIR or DCIR databases. Instead, DoDEA policy only requires administrators to input reported discriminatory conduct incidents in the SIR or DCIR databases after an administrator has already determined the possibility of a potential EO 13160 compliance risk and civil rights impact.

The CRP manual review of SIRs found that 42 of the 120 discriminatory conduct SIRs were incorrectly identified. In these cases, administrators did not correctly identify that a reported incident had a civil rights impact. As identified in Table 1, 29 of these incidents occurred after the implementation of the Civil Rights Impact question. The CRP review of input SIRs, which identified multiple additional instances of administrators failing to identify discriminatory conduct, shows that CRP subject matter expertise is required to correctly identify all instances of discriminatory conduct.

However, CRP review can only occur if all instances of discriminatory conduct are input and tracked, and only a correctly identified report of discriminatory conduct prompts DoDEA's responsibility to assess potential EO 13160 compliance risk. The absence of a policy requiring that all reported incidents of discriminatory conduct are reported in the SIR or DCIR databases increases DoDEA's risk of not complying with EO 13160. In addition, increased reporting will help DoDEA identify and prevent negative trends within the school system. Therefore, we recommend that DoDEA develop and implement policy that requires documenting in the SIR or DCIR databases all instances of reported discriminatory conduct.

DoDEA Does Not Require Mandatory Training for the Identification of Discriminatory Conduct

A CRP official stated that CRP training increases school administrators' ability to correctly identify and report discriminatory conduct, which, according to the CRP, also increases the quality of reported discriminatory conduct SIRs. Additionally, a DoDEA administrator described CRP-provided training as transformational for all school staff. However, we found that DoDEA does not mandate any CRP-provided training. We reviewed DoDEA training records and conducted interviews with CRP officials and DoDEA school administrators and found that the CRP provides training only when requested by DoDEA school districts.

Not requiring mandatory, standardized training provided by CRP experts has led to discrepancies in administrators' ability to appropriately identify and report discriminatory conduct and harassment, as discussed in the DoDEA CRP Review of SIRs and DCIRs Has Policy Gaps section of this report, which contributes to variances in discriminatory conduct and harassment reporting. Therefore, the DoDEA CRP should create and provide a mandatory training class to all current and incoming administrators on identifying and reporting discriminatory conduct and harassment.

Additional Policy Is Needed for the CRP's Oversight of the SIR and DCIR Reporting Process

We identified one issue related to the CRP's oversight of the SIR and DCIR reporting process and one issue related to the CRP's oversight of informally resolved complaints of hostile environments. As discussed in the Policy Gaps in the DoDEA CRP Review of SIRs and DCIRS section of this report, DoDEA's SIR and DCIR databases contain a field for the Civil Rights Program question, which denotes whether the CRP reviewed a SIR and determined whether all required CRP-related information was present. Through our review of DoDEA's 120 discriminatory conduct SIRs, we determined that DoDEA documented 118 discriminatory conduct SIRs since the CRP question was implemented. Of these 118 SIRs, we identified 28 responses to the CRP question indicating "NO" and an additional 6 that were blank, indicating that the SIRs did not have the required information. However, CRP personnel explained that the CRP cannot require all civil rights-related SIRs, specifically those that are discriminatory conduct-related, to be updated with the CRP's requested information. Without all of the requested information, CRP personnel are unable to ensure that civil rights-related incidents are appropriately identified and handled. Therefore, we recommend that DoDEA develop and implement policy that requires updates to SIRs at the CRP's request and requires the CRP to approve all civil rights-related SIRs prior to closing the records.

DRP allows a reporter to informally resolve their complaint with their local administrator, but DoDEA policy does not require the administrator to record the resolution in a standardized format or the CRP to track these informally resolved complaints. The CRP program manager stated that informally resolved complaints are business records that an administrator keeps independently. The CRP only obtains these records when a formal complaint is made to the CRP. Because DoDEA administrators incorrectly identify discriminatory conduct in submitted SIRs, we determined that, without a formalized reporting method and format for informally

resolved complaints, the CRP cannot: (1) identify all reports of discriminatory conduct and harassment, (2) ensure that cases are handled appropriately, and (3) ensure that records are adequate in instances where a formal complaint is subsequently filed after a failed attempt to informally resolve it. Therefore, we recommend that DoDEA develop and implement policy that requires that the CRP record and track in a standardized format all informally resolved complaints of hostile environments and discriminatory conduct.

DoDEA Underreports Discriminatory Conduct, and Trend Analysis Is Limited

We found that underreporting of discriminatory conduct incidents reduced DoDEA's ability to prevent and address discriminatory conduct. Although DoDEA is hampered by a lack of reporting and information, recent changes to the SIR and DCIR databases resulted in an increase in reported incidents. In total, from FY 2020 to FY 2022, DoDEA reported 35 discriminatory conduct-related SIRs and DCIRs. In contrast, for FY 2023 to August 2023, DoDEA reported 92 discriminatory conduct related-SIRs and DCIRs.

DoDEA's underreporting is also seen in the difference between the number of reported SIRs and DCIRs relative to its student population and the results of its customer satisfaction survey. For example, DoDEA received 35 SIRs and DCIRs related to discriminatory conduct for FY 2020 to FY 2022 for a reported student population of approximately 66,000. However, the 2021 DoDEA-administered customer satisfaction survey, completed by 9,718 DoDEA students attending fourth grade or higher, showed that 11 percent (1,069 students) responded that they "were made fun of for the color of [their] skin, origin, or religion at least once on school property," and 13 percent (1,263 students) responded that they "received insulting messages through the internet or on [their] cellphone at least once on school property."

Based on interviews with CRP personnel and our review of database changes, we determined that DoDEA's large increase of 92 reported SIRs and DCIRs related to discriminatory conduct from October 2022 to August 2023 was not caused by an increase of incidents but rather by an increase in reporting. The increase in reporting was a result of improvements to the discriminatory conduct reporting process, including additional CRP team oversight for SIRs and DCIRs, described by both the CRP program manager and the CRP investigator, in addition to the SIR database updates, specifically the enactment of the Civil Right Impact question. The increased reporting from October 2022 to August 2023 highlights the significant historical underreporting of discriminatory conduct incidents.

Information on all aspects of discriminatory conduct and hostile environment claims is necessary to determine the effectiveness of DoDEA's efforts in addressing and preventing incidents of discriminatory conduct. DoDEA AI 1443.01 requires the CRP to monitor the effectiveness of the DoDEA EO 13160 DRP and provide an annual trend analysis within 30 calendar days of the end of each fiscal year, highlighting any identifiable trends, strengths, and deficiencies in DoDEA EO 13160 compliance, along with recommendations for improvements.

Due to the low volume of both DRP complaints and reported discriminatory conduct SIRs, DoDEA's historical trend analysis was severely hampered. Underreporting of discriminatory conduct incidents lessens DoDEA's ability to derive meaningful insights from the required trend analysis. However, given the increase in reported discriminatory conduct SIRs submitted for FY 2023, DoDEA will now be able to complete a trend analysis that provides insight into its efforts to comply with EO 13160.

Other Matters of Interest

DoDEA should ensure that its identification and interpretation of what is considered a fact in DRP complaints adheres to its policy and that complainants can reasonably achieve the documentation requirements. As previously discussed, a reporter may submit a formal written report of discrimination in DoDEA operations if a reporter is able to describe a fact-based reason to believe that a DoDEA participant is facing a hostile environment; discrimination in DoDEA operations caused by the actions of a DoDEA employee, volunteer, or other agent of the DoDEA; or discrimination in DoDEA operations created by a DoDEA policy, procedure, practice, criteria, or method of operating.

We reviewed 4 accepted formal complaints from February 2019 to February 2020 and 52 formal complaint contacts that DoDEA did not accept as formal complaints in FY 2023. We did not identify any processes that did not follow DoDEA's policy.

However, we observed that DoDEA may be applying an unachievable standard in some instances based on the criteria that submissions must be fact based and not factually vague or speculative prior to formal acceptance, as detailed in DoDEA policy. Our review found that DoDEA may require a specific level of detail to accept a formal complaint. Because of DoDEA's restriction on the availability of student information, this level of detail may be unattainable for a reporting individual and may potentially limit the acceptance of complaints.⁷

⁷ Access to individual student records is restricted to that student's parents or guardians.

Management Comments on the Background and Results and Our Response

The DoDEA Director provided comments on the background and results presented in the report. Specifically, the DoDEA Director stated that:

1. the report confuses the CRP functions with the function of a school administrator.
2. the DoD OIG misinterpreted the EO 13160 operational compliance policy standards, DoDEA AI 1443.01, as the process and procedures for reporting and responding to incidents of student discriminatory conduct. Instead, DoDEA AI 1443.01 is the policy the CRP uses to judge school-level response when adjudicating a formal hostile environment report. The DoD OIG also incorrectly identified Figure 2 as the process and procedures for reporting and responding to incidents of student discriminatory conduct.
3. the DoD OIG's only foundation for determining that DoDEA may be underreporting incidents of discriminatory conduct was a cited DoDEA Diversity, Equity, and Inclusion Division survey.
4. the review incorrectly attributes an increase in reported SIRs between FY 2022 and FY 2023 to changes made in the SIR database. Instead, the increase was because DoDEA updated DoDEA policy, which requires administrators, starting in FY 2023, to report all instances of discriminatory conduct in SIRs.

Finally, the DoDEA Director disagreed with the review section titled Other Matters of Interest, which did not contain a recommendation. The DoDEA Director stated that DoDEA does not restrict access to student information and provided the policies that require DoDEA to restrict information. See the Management Comments appendix for the Director's full comments.

The DoD OIG disagrees that we misinterpreted the CRP's function as an oversight entity with those of a school administrator. The results of our review are based on review of the provided documentation and DoDEA policies along with interviews with the CRP program manager and CRP investigator, officials involved in both the DRP and discriminatory conduct report process, and DoDEA administrators involved in the discriminatory conduct report process. DoDEA's response provides that the CRP reviews the SIRs, to aid administrators. Nothing in our recommendations suggests any additional actions by the CRP. While the Director's response points to three separate policies, none of those policies explicitly state that all SIRs will be reviewed by the CRP. It is this gap between policy and practice

that requires formalization in policy. Therefore, the DoDEA Director's statement that formalizing this practice in policy presents a potential conflict of interest for DoDEA is counter to the DoDEA CRP manager's acknowledgement that the CRP investigator already does this practice as an oversight entity without a conflict of interest.

The DoD OIG also disagrees with the DoDEA Director's comments that we misinterpreted DoDEA AI 1443.01. The Director's comments on DoDEA AI 1443.01 in the Background are contrary to the Director's comments in response to the recommendations of this review. In response to recommendations 1.a and 1.c, the Director states that DoDEA AI 1443.01 is a policy which enforces a requirement for Administrators to report instances of Discriminatory Conduct and correspond with the CRP, thereby acknowledging that DoDEA AI 1443.01 provides the process and procedures for reporting and responding to incidents of student discriminatory conduct by Administrators. Furthermore, the DoD OIG's understanding of DoDEA AI 1443.01 is based on everything we reviewed, to include DoDEA AI 3030.01 which details that SIRs must be submitted in accordance with DoDEA AI 1443.01. DoDEA AI 1443.01 Section 5.2 and 5.3 states in writing the same process identified in Figure 2.⁸ Additionally, DoDEA officials provided Figure 2 to us and identified it as this process, and our interviews with DoDEA officials corroborated that the process outlined in the figure is accurate. The DoD OIG maintains that our report, which discusses reports of discriminatory conduct by a student, is consistent with DoDEA AI 1443.01 as written in "Section 5: Reporting Discriminatory Conduct by Students, Other Beneficiaries, and Employee Peers and Subordinates." While the Director points to three separate policies to create the whole picture of how student conduct should be reported, these three policies still lack specifics of the technical reporting discussed by the Director in the DoDEA response. If DoDEA policy is unclear or requires additional context to understand, it can be ineffective, and should be updated. Additional information on the DoD OIG's review of DoDEA's policy is included in our response to recommendation 1.c.

The DoD OIG disagrees with the Director's statement about the foundation for determining that DoDEA may be underreporting incidents of discriminatory conduct. As discussed in the report, we determined that DoDEA may be underreporting incidents of discriminatory conduct based on the identified policy gaps, inconsistent training, and the inaccurate labeling of incidents of potential discriminatory conduct, where only those reports identified as discriminatory conduct must be reported. The Director's statements referred to the use of

⁸ The CRP program manager identified Figure 2 to the OIG as "a flow chart to help visualize the process involved in addressing an incident report."

the DoDEA Diversity, Equity, and Inclusion Division survey. We discussed this survey in the report to provide a quantified point of comparison—for DoDEA’s student population, DoDEA reported a discriminatory conduct incident rate of less than 0.053 percent, but DoDEA students themselves had a significantly higher response rate in the survey to generalized statements related to discriminatory conduct. We specifically highlighted questions from the survey that mention student-on-student discriminatory conduct occurring on DoDEA grounds, which is the focus of our report. The DoD OIG does not state that DoDEA should report a one-to-one comparison of responses to the survey and reported incidents of discriminatory conduct. The two questions we highlight from the survey are used as one of several indicators that demonstrate DoDEA may be underreporting.

Finally, we disagree with the Director’s comments that the review incorrectly attributes an increase in reported SIRs between FY 2022 and FY 2023 to changes made in the SIR database. As stated in the review, we also credited the CRP team for the improvement:

The increase in reporting was a result of improvements to the discriminatory conduct reporting process, including additional CRP team oversight for SIRs and DCIRs, described by both the CRP program manager and the CRP investigator, in addition to the SIR database updates, specifically the enactment of the Civil Right Impact question.

During the review, the CRP program manager and the CRP investigator never presented or discussed DoDEA AI 3030.01 or DoDEA AI 1443.01 as a justification or reasoning for the increase in SIRs. Regardless, DoDEA AI 3030.01 and DoDEA AI 1443.01 do not require reporting all instances of discriminatory conduct. Additional information on the DoD OIG’s review of DoDEA’s policy is contained within our response to recommendation 1.c.

Regarding the Director’s comments on the Other Matters of Interest, the DoD OIG does not disagree that policy and law require DoDEA to restrict student information. However, the current DoDEA process requires a reporter to provide significant information for the report to be accepted as a formal complaint. The current requirement may be too burdensome, if part of that information required is restricted student information for which the reporter does not have access. The review does not state that DoDEA should change its restriction of student information but that, “DoDEA should ensure that its identification and interpretation of what is considered a fact in DRP complaints adheres to its policy and that complainants can reasonably achieve the documentation requirements.”

Recommendations, Management Comments, and Our Response

Recommendation 1

We recommend that the DoD Education Activity Director:

- a. **Develop and implement policy that requires the DoD Education Activity Civil Rights Program to review all Serious Incident Reports, including ensuring that Serious Incident Reports related to discriminatory conduct are linked when appropriate.**

DoDEA Comments

The DoDEA Director disagreed with the recommendation and stated that DoDEA AI 1443.01 already requires school administrators to consult DoDEA CRP personnel when student-on-student discriminatory conduct is reported and to submit notification into the SIR database to make sure that DoDEA CRP personnel are alerted. Additionally, the Director stated that DoDEA disagreed because the DoDEA CRP investigator position description requires the investigator to monitor newly created SIRs and offer technical assistance to school administrators on how to execute their EO 13160 Compliance Status Check responsibilities accurately. The Director stated that the CRP investigator is responsible for providing direct CRP guidance on every SIR that potentially involves discriminatory conduct by a student; however, if the CRP investigator were directly involved in and responsible for how a school administrator executes an incident response, the CRP would have a conflict of interest. The Director stated that the conflict of interest would keep the CRP from reviewing any formal report of hostile environment discrimination subsequently accepted by the CRP manager for formal CRP investigation and EO 13160 compliance policy enforcement. Additionally, the Director stated that the DoDEA CRP manual review of SIRs is not the only way to ensure that related SIR records are linked, and only delegating the responsibility to the CRP would create a conflict of interest and reduce the effectiveness of the current approach. See the Management Comments appendix for the Director's full comments.

Our Response

Comments from the Director did not address the recommendation; therefore, the recommendation is unresolved. We disagree that DoDEA AI 1443.01, as written, addresses the intent of the recommendation. We agree that DoDEA AI 1443.01 and specific text cited from the AI by the Director require DoDEA school administrators to consult the CRP when they receive a report of discriminatory conduct. However, this policy only applies if an administrator correctly identifies an incident as discriminatory conduct related. As stated in the report, based on our review

of SIRs, administrators initially identified that 29 of the 91 SIRs reviewed did not contain discriminatory conduct. These 29 SIRs were input as SIRs not because of discriminatory conduct but due to other qualifying behavior that rose to the level requiring a SIR. However, the CRP manual review discovered that these 29 SIRs documented discriminatory conduct. Without this manual review, DoDEA would have incorrectly recorded and tracked incidents that contained discriminatory conduct as incidents that did not contain discriminatory conduct, further limiting DoDEA's ability to prevent future incidents. Therefore, the cited policy does not fulfill or meet the intent of the recommendation.

The Director's comments acknowledge, as does the report, that the CRP investigator already manually reviews every SIR entered. The Director further stated that review of SIRs was a primary driver for creating the CRP investigator position and that the CRP investigator position includes providing direct guidance on every SIR that potentially involved discriminatory conduct by a student. Although the position description requires providing direct guidance on every SIR, a position's job description is not equivalent to policy. This recommendation and review do not require the CRP to become directly involved in and responsible for how a school administrator executes an incident response. However, given the CRP's limited staffing, DoDEA may assign the responsibility to review all SIRs for discriminatory conduct to an office which has the staffing and appropriate expertise to complete the intent of the recommendation.

Also, the Director did not address the part of the recommendation to ensure SIRs are linked as appropriate. The Director's comments do not conflict with the content of this review that manual review of SIRs is the only way to link repeat instances of SIRs after a SIR is entered and supports what the CRP investigator informed the DoD OIG occurs in practice. The CRP investigator described the process as a manual and sometimes cumbersome process of searching the SIR database for additional SIR records to identify related discriminatory conduct incident reports to link. The recommendation is consistent with the scope of the report and the process the CRP investigator already completes because the recommendation requiring the linking of records is specific to discriminatory conduct SIRs and does require the CRP to be responsible for linking all SIRs.

The recommendation only requires the CRP to formalize in policy that it already acknowledges it does in practice. This acknowledgement indicates the current practice does not provide a basis for a conflict of interest for the CRP. This recommendation is not suggesting any additional actions be taken by the CRP investigator. This recommendation will, however, have a positive impact by ensuring that discriminatory conduct incidents are correctly identified and tracked in the SIR database.

We request that the Director provide comments on the final report within 30 days. Those comments should describe the specific action the Director will take to develop and implement official policy that requires the DoDEA CRP to review all SIRs, including ensuring that discriminatory conduct SIRs are linked when appropriate.

- b. Develop and implement policy that requires updating incorrectly identified discriminatory conduct Serious Incident Reports.**

DoDEA Comments

The DoDEA Director disagreed with the recommendation and stated that agreeing with the recommendation would require the CRP to compromise its neutrality or create a potential conflict of interest for DRP. However, the Director noted that DoDEA will edit its DoDEA AI 3030.01 policy procedures to require school administrators to include in the record an explanation if the administrator does not update their record in accordance with a written recommendation entered into the SIR record by a subject matter expert. The Director stated that this modification will be published before FY 2025. See the Management Comments appendix for the Director's full comments.

Our Response

Although the Director disagreed with the recommendation, the Director's comments met the intent of the recommendation; therefore, the recommendation is resolved but will remain open. We will close the recommendation once we verify that the policy procedures are updated and implemented. We request that DoDEA provide the DoD OIG with documentation showing the updated policy procedures and that the policy procedures are implemented.

However, with DoDEA's proposed policy updates, the Civil Rights Impact question cannot be used to identify all instances of discriminatory conduct and the records must be manually reviewed for accuracy.

- c. Develop and implement policy that requires documenting in the Serious Incident Report or Director's Critical Information Report database all instances of reported discriminatory conduct.**

DoDEA Comments

The DoDEA Director disagreed with the recommendation and stated that documenting reported incidents of student discriminatory conduct in the DCIR and SIR electronic database is already expressly required under two existing policies, DoDEA AI 3030.01 and DoDEA AI 1443.01 section 5.3.b.(2). See the Management Comments appendix for the Director's full comments.

Our Response

Comments from the Director did not address the recommendation; therefore, the recommendation is unresolved. We disagree that DoDEA AI 3030.01 and the cited text meet the intent of the recommendation. The language of the policy identifies that administrators are required to submit SIRs for all allegations of “harassment-discriminatory” (discriminatory harassment). DoDEA AI 3030.01 does not define “harassment-discriminatory.” However, DoDEA AI 1443.01 identifies discriminatory harassment as “A form of discriminatory conduct.” As identified in DoDEA AI 3030.01, the policy only requires reporting a specific subset of discriminatory conduct. Therefore, this policy does not meet the specifics of the recommendation because the definition of discriminatory conduct is broader than “harassment-discriminatory.” Additionally, this policy provides no specific guidance on reporting procedures that address specific requirements for inputting SIRs on either discriminatory harassment or discriminatory conduct, such as those in DoDEA AI 1443.01.

We disagree that DoDEA AI 1443.01 and the cited text meet the intent of the recommendation. As stated in the report, after reviewing the entirety of DoDEA AI 1443.01, we determined that DoDEA policy does not require documenting all instances of reported discriminatory conduct in the SIR or DCIR databases. Instead, DoDEA AI 1443.01 only requires administrators to input reported discriminatory conduct incidents in the SIR or DCIR databases after an administrator has already determined the possibility of a potential EO 13160 compliance risk and civil rights impact.

Additionally, our findings show that for 29 SIRs the incident response official mismarked the SIR, indicating that it was not related to discriminatory conduct. When responding to student-related, peer-to-peer complaints, incident response officials are not required to document the incident or resolution unless it is identified by the official as discriminatory conduct or another required reporting criteria, such as drug-related incidents or vandalism. Because officials may misidentify incidents of discriminatory conduct, those incidents may not be documented in a SIR and the CRP’s role as the overseer does not occur. Therefore, there is potential for discriminatory conduct complaints to go unreported.

We request that the Director provide comments on the final report within 30 days. Those comments should describe the specific action the Director will take to develop and implement policy that requires documenting in the SIR or DCIR database all instances of reported discriminatory conduct.

- d. **Direct the Civil Rights Program to create and provide to all current and incoming administrators a mandatory training class on identifying and reporting discriminatory conduct and harassment.**

DoDEA Comments

The DoDEA Director disagreed with the recommendation and stated that DoDEA already requires mandatory training for administrators on the SIR database and their responsibilities for maintaining a safe, orderly, and discrimination-free learning environment, including their responsibility for recognizing, documenting in SIR, and responding to student discriminatory conduct as prohibited in DoDEA schools under EO 13160. See the Management Comments appendix for the Director's full comments.

Our Response

Comments from the Director did not address the recommendation; therefore, the recommendation is unresolved. We disagree that DoDEA already requires mandatory training by the CRP on identifying and reporting discriminatory conduct and harassment. As part of this review, the DoD OIG requested that DoDEA provide the DoD OIG with all mandatory training classes and completion records for those classes. In interviews, the CRP manager represented that only two mandatory training classes relate to discriminatory conduct. DoDEA was only able to provide completion records for a single class, "DoDEA Student Discipline and Student Rights and Responsibilities Policy Updates 2021." Upon review of this training class's documentation, the DoD OIG determined that the class did not provide training on identifying and reporting discriminatory conduct and harassment.

The class cited in the Director's comments, different from the two classes cited above, was not part of the documentation provided to the DoD OIG. Furthermore, DoDEA personnel reported to the DoD OIG that the DoDEA Curriculum and Instruction Division has not provided any training, curriculum, or guidance specific to "discriminatory" harassment or conduct for content educators or students. In the provided comments, the Director acknowledged that administrators do not always execute thorough and accurate SIR records, which results in inaccurate records. Not requiring mandated training on identifying and reporting discriminatory conduct and harassment contributes to administrators not executing thorough and accurate SIR records, which results in inaccurate records.

We request that the Director provide comments on the final report within 30 days. Those comments should describe the specific action the Director will take to direct the CRP to create and provide to all current and incoming administrators a mandatory training class on identifying and reporting discriminatory conduct and harassment.

- e. Develop and implement policy that requires updates to Serious Incident Reports at the Civil Rights Program's request and requires the Civil Rights Program to approve all civil rights-related Serious Incident Reports prior to closing the records.**

DoDEA Comments

The DoDEA Director disagreed with the recommendation and stated that implementing the recommendation would create a conflict of interest, similar to recommendations 1.a and 1.b above. The Director stated that mandating that the CRP staff micromanage and approve the SIR records of a school administrator would make the CRP staff directly responsible for the school administrator's performance, creating a conflict of interest that would jeopardize the CRP's ability to function impartially during any subsequent investigation of a formal report of hostile environment discrimination arising out of how the SIR incident was handled by the school. See the Management Comments appendix for the Director's full comments.

Our Response

Comments from the Director did not address the recommendation; therefore, the recommendation is unresolved. We disagree that implementing this recommendation would create a conflict of interest for the DoDEA CRP. As identified in this report, the CRP provides oversight of the SIR and DCIR reporting process. This recommendation does not require the CRP to be directly responsible for school administrator performance and instead continues the CRP's present oversight role. As the report states, the CRP, in practice, reviews SIRs to determine if all of the required information is present, a civil rights impact exists, and the matter is being handled and documented sufficiently. The CRP then documents that determination through the CRP's selection of a response to the Civil Rights Program question in the SIR database. Similar to what the DoD OIG stated in recommendation 1.a, this recommendation only requires the CRP to formalize in policy what it already acknowledges it does in practice. This acknowledgement indicates the current practice does not present a conflict of interest for the CRP. This recommendation is not suggesting any additional actions be taken by the CRP investigator other than ensuring that each SIR is accurately marked as pertaining to discriminatory conduct.

Additionally, in response to input SIRs, the CRP provides comments, requests for documentation, and requests for record changes. Furthermore, in response to recommendation 1.d, the Director acknowledged that administrators do not always execute thorough and accurate SIR records. Finally, incomplete records conflict with the documentation required for DRP. The Director's comments do not address the outcome of DoDEA knowingly having incomplete and inaccurate records of discriminatory conduct. According to DoDEA AI 1443.01, a hostile environment can be created by "a foreseeable act of severe discriminatory conduct." Knowingly having incomplete records decreases DoDEA's ability to comply with EO 13160 because the incomplete records limit DoDEA's ability to respond to a foreseeable act that could have been identified by tracking accurate and complete incident records.

We request that the Director provide comments on the final report within 30 days. Those comments should describe the specific action the Director will take to develop and implement policy that requires updates to SIRs at the CRP's request and requires the CRP to approve all civil rights-related SIRs prior to closing the records.

- f. Develop and implement policy that requires that the Civil Rights Program records and tracks all informally resolved complaints of hostile environments and discriminatory conduct (as identified in DoDEA AI 1443.01, section 4.1.a) in a standardized format.**

DoDEA Comments

The DoDEA Director disagreed with the recommendation and stated that there is no such thing as an "informally resolved" complaint of a student creating a "hostile" environment or committing acts of discriminatory conduct, and all such reported complaints are already required to be treated as incident reports documented in the standardized format of the DoDEA SIR database for tracking. See the Management Comments appendix for the Director's full comments.

Our Response

Comments from the DoDEA Director did not address the recommendation; therefore, the recommendation is unresolved. We disagree with the Director's comments that DoDEA policy does not allow for informally resolved complaints. As stated in the Directors comments to recommendation 1.f (see the Management Comments appendix) and in this report, as part of DoDEA AI 1443.01 section 4.1a, "Reporting EO 13160 Discrimination in DoDEA Operations," for formal complaints of discrimination, participants have an initial option to informally raise a discrimination concern in DoDEA operations. Using DoDEA AI 1443.01 section 4.1a, a reporter

may make a good faith attempt to resolve the matter informally by contacting DoDEA officials and sharing their concerns, either verbally or in writing. As described in the DoD OIG's response to recommendation 1.e, a single, foreseeable act of severe discriminatory conduct may create a hostile environment if DoDEA did not take reasonable steps to prevent it from happening. Therefore, counter to the Director's comments, a participant's informal complaint associated with a singular act of discriminatory conduct may fall under the requirements of DoD AI 1443.01 section 4 identified previously and not under DoDEA's policies providing guidance for SIRs.

This is in addition to participant complaints of hostile environments based on the inactions of DoDEA. This recommendation does not require the CRP to become involved in informally resolved complaints and only requires that these instances be reported as standardized records for CRP oversight and tracking after an administrator informally resolves the issues.

We request that the Director provide comments on the final report within 30 days. Those comments should describe the specific action the Director will take to develop and implement policy that requires that the CRP records and tracks all informally resolved complaints of hostile environments and discriminatory conduct in a standardized format.

Recommendations Table

| Management | Recommendations Unresolved | Recommendations Resolved | Recommendations Closed |
|----------------------------------|----------------------------|--------------------------|------------------------|
| Director, DoD Education Activity | 1.a, 1.c, 1.d, 1.e, 1.f | 1.b | |

Note: The following categories are used to describe agency management’s comments to individual recommendations.

- **Unresolved** – Management has not agreed to implement the recommendation or has not proposed actions that will address the recommendation.
- **Resolved** – Management agreed to implement the recommendation or has proposed actions that will address the underlying finding that generated the recommendation.
- **Closed** – The DoD OIG verified that the agreed upon corrective actions were implemented.

Appendix

Scope and Methodology

We reviewed DoDEA policies related to discriminatory harassment, including discriminatory conduct. Our scope included all peer-to-peer-related discriminatory conduct and discriminatory harassment complaints from FY 2020 to August 2023.

To determine the effectiveness of DoDEA's efforts in addressing and preventing incidents of discriminatory conduct in accordance with policies and procedures, we reviewed Federal, DoD, and DoDEA criteria and guidance; interviewed personnel responsible for executing the CRP; and reviewed DoDEA customer satisfaction survey results. We also obtained all discriminatory conduct SIRs and DCIRs from FY 2020 to August 2023 that DoDEA identified as related to peer-to-peer discriminatory conduct. Due to DoDEA's administrative burden of retrieving the records for formal complaints, we only reviewed 4 accepted formal complaints from February 2019 to February 2020 and 52 formal complaint contacts that were not accepted as formal complaints in FY 2023. We excluded incidents that DoDEA officials experienced, such as organizational and employee-to-employee discrimination. In addition, we excluded discriminatory conduct incidents requiring law enforcement involvement, such as sexual harassment and sexual assault.

To review DoDEA policies related to discriminatory harassment to include discriminatory conduct, we reviewed the following criteria and guidance.

- EO 13160, "Nondiscrimination on the Basis of Race, Sex, Color, National Origin, Disability, Religion, Age, Sexual Orientation, and Status as a Parent in Federally Conducted Education and Training Programs," June 23, 2000
- DoD Instruction 1020.04, "Harassment Prevention and Responses for Civilian Employees," June 30, 2020
- DoDEA AI 1443.01, "Civil Rights Program and Compliance," November 16, 2022
- DoDEA AI 1353.01, "Student Rights and Responsibilities," July 1, 2021
- DoDEA AI 1347.01, "Student Disciplinary Rules and Procedures," April 7, 2020
- DoDEA AI 3030.01, "Director's Critical Information Requirements and Serious Incident Reports," July 26, 2021

To assess DoDEA policy and procedures, we reviewed DoDEA's available data, which included 120 reported SIRs and 7 reported DCIRs from FY 2020 to August 2023 that DoDEA identified as related to peer-to-peer discriminatory

conduct. In addition, we reviewed 4 accepted formal complaints from February 2019 to February 2020 and 52 formal complaint contacts that were not accepted as formal complaints in FY 2023.

In addition, we interviewed personnel from the following offices and regions to discuss current policies and procedures.

- DoDEA CRP
- DoDEA's Americas Region
- DoDEA's Europe Region
- DoDEA's Pacific Region

We conducted this review with integrity, objectivity, and independence, as required by the Council of the Inspectors General on Integrity and Efficiency's "Quality Standards for Federal Offices of Inspector General."⁹

⁹ Council of the Inspectors General on Integrity and Efficiency, "Quality Standards for Federal Offices of Inspector General," August 2012.

Management Comments

DoD Education Activity Director



DEPARTMENT OF DEFENSE EDUCATION ACTIVITY
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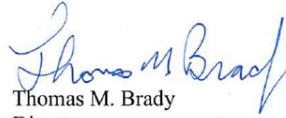
FEB 14 2024

MEMORANDUM FOR THE DEPARTMENT OF DEFENSE INSPECTOR GENERAL

Subject: DoDEA Management Comments for the DoD OIG Draft Report: Project No. D2023-D0DIEM-0151.000, dated January 23, 2024.

The Department of Defense Education Activity (DoDEA) submits the attached response to the subject draft report. The DoDEA response addresses the recommendation contained in the draft report. DoDEA requests the attached DoDEA response be incorporated into the final DoD IG report.

My point of contact is [REDACTED]


Thomas M. Brady
Director

DoD Education Activity Director (cont'd)

DoDEA Response to “Review of the DoD Education Activity’s Efforts to Report and Respond to Discriminatory Harassment at Schools” Project No. D2023-D0DIEM-0151.000 Draft Report.

The stated objective of the DoD OIG Project No. D2023-D0DIEM-0151.000 Report (Report) was “to determine the effectiveness of DoDEA’s efforts in preventing incidents of discriminatory harassment in accordance with policies and procedures.”¹ DoDEA cannot agree with the Report recommendations because the findings are based on factual inaccuracies that mix and misapply procedures from different policies created within separate DoDEA divisions and misinterprets as negative the data that, when reviewed in its proper context, demonstrates the positive impact and effectiveness of DoDEA’s efforts to continuously improve its ability to protect against discrimination in its schools. The factual inaccuracies and policy and data misinterpretations underlying the Report findings render the recommendations ineffectual.

There are two separate paths in DoDEA for “preventing incidents” of student discriminatory conduct: (1) DoDEA’s Education Policy and Operations (Ed Ops) Division student conduct and disciplinary policies supported by DoDEA Student Support Services (SSD) Division behavioral modification programs, such as antibullying campaigns, aimed at preventing students from committing acts of a discriminatory nature against each other; (2) DoDEA’s Civil Rights Program and Compliance (CRPC) Branch policies and formal Civil Rights Program (CRP) enforcement program aimed at protecting against a type of unlawful Executive Order 13160² (EO 13160) discrimination known as Hostile Environment that could exist if a school administrator received a report of student-on-student discriminatory conduct but who, instead of resolving it, permitted the offending student’s conduct to continue and become “*so sufficiently severe, persistent, and/or pervasive that it effectively denies or limits the [student victim’s] equal access to DoDEA educational or training opportunities and benefits.*”³ These are separate efforts governed under separate policies and procedures, but which are repeatedly misinterpreted and misapplied in the Report.

The Report conflates the DoDEA CRP functions for investigating and resolving formal reports of Hostile Environment discrimination raised against DoDEA, the agency, with the functions of a school administrator executing DoDEA Ed Ops Division policies and DoDEA SSD behavioral intervention strategies to prevent students from committing acts of discriminatory conduct or harassment against each other. A student reporting another student is a discriminatory conduct “incident report” that, if reported to a school, shall be investigated by the school administrator in accordance with DoDEA Ed Ops Division student conduct and disciplinary policies. In contrast, the DoDEA CRP exists to intervene on behalf of DoDEA and conduct an independent and impartial formal investigation into how the school administrator handled a student discriminatory incident if, after the incident was reported, the school administrator is accused of not having equitably resolved the matter but instead allowed conditions to worsen into a state of Hostile Environment discrimination requiring the DoDEA CRP’s intervention to equitably resolve in accordance with DoDEA AI 1443.01, “Civil Rights Program and Compliance,” November 16, 2022 (also known as the DoDEA EO 13160 operational compliance policy).

DoDEA cannot agree to the Report recommendations because they are aimed at requiring DoDEA CRP to be directly involved in and responsible for the school level handling of a reported student offense. If adopted, the recommended changes would create an insurmountable conflict of interest by requiring the

¹ Report, “Objective,” page 1.

² Executive Order 13160, “Nondiscrimination on the Basis of Race, Sex, Color, National Origin, Disability, Religion, Age, Sexual Orientation, and Status as a Parent in Federally Conducted Education and Training Programs,” June 23, 2000.

³ Section 3.5.b. of DoDEA AI 1443.01, “Civil Rights Program and Compliance,” November 16, 2022.

DoD Education Activity Director (cont'd)

DoDEA CRP to micromanage and be directly responsible for the very incident response the DoDEA CRP exists to objectively review and assess for EO 13160 compliance enforcement should the incident response be challenged by a student or parent in a formal report of Hostile Environment discrimination raised to the DoDEA CRP afterwards.

The Report's stated objective was to focus "on DoDEA's reporting of student related, peer-to-peer discriminatory conduct, which includes discriminatory harassment," but bases its recommendations on a misinterpretation of the EO 13160 operational compliance policy standards used by the DoDEA CRP as instead being the process and procedures for reporting and responding to incidents of student discriminatory conduct reported to a school. This misinterpretation leads to Report recommendations that are unworkable.

The reference "DoDEA's reporting" is to DoDEA's Serious Incident Report (SIR) central electronic database into which school administrators are required to document when they receive a report of student discriminatory conduct, known as an incident report. Each newly created SIR entry sends an alert notification up the chain-of-command and to various DoDEA subject matter experts, including the DoDEA CRPC Branch, who all work together as a team to give guidance and help the school administrator bring about a prompt, equitable, and effective response to protect the student victim, rehabilitate biased behaviors, and prevent the offending conduct from escalating into an unlawful Hostile Environment at the school. The Report misinterprets the technical processes and procedures for documenting a school administrator's receipt of and response to reported incidents of student discriminatory conduct with the EO 13160 operational compliance policy standards in Section 5 of DoDEA AI 1443.01 that apply to the school level incident response and by which the DoDEA CRP will judge that school-level response when adjudicating a formal Hostile Environment report raised subsequently.

On pages 3-4, the Report correctly described the DoDEA CRP "discrimination report processing" or "DRP" standards and procedures used by the DoDEA CRP to evaluate reports of Hostile Environment in accordance with DoDEA AI 1443.01 as being separate from the "discriminatory conduct reporting" of a student's misconduct that is made to a school. Immediately following, however, the Report incorrectly identifies the DoDEA CRP flow chart illustrating EO 13160 operational compliance policy standards as a student discriminatory conduct reporting flow chart. Figure 2 on page 5 is the DoDEA CRPC Branch training tool flow chart that illustrates the EO 13160 operational compliance policy standards that apply to school level incident response cited in Section 5 of DoDEA AI 1443.01, which standards will be used by the DoDEA CRP during DRP to evaluate whether a school administrator's incident report response was "equitably" handled. The Report misinterprets and mislabels the chart as a "discriminatory conduct reporting process" flow chart, which process is governed by the DoDEA Ed Ops Division student conduct policy AI 1353.01, "Student Rights and Responsibilities, Change 1,"⁴ not by DoDEA AI 1443.01. This mixing up of the two separate processes is reflected in the remainder of the review and makes inoperable the subsequent findings, conclusions, and recommendations made in the Report.

After conflating DoDEA's student incident response policies and procedures with DoDEA's formal EO 13160 compliance policy, operational standards, and DRP procedures, the Report concludes DoDEA cannot effectively measure the effectiveness of either of these student discriminatory conduct and Hostile Environment discrimination prevention efforts based on the Report's application of survey data gathered

⁴ DoDEA AI 1353.01, "Student Rights and Responsibilities, Change 1," Approved April 6, 2021; Effective July 1, 2021. Change 1 Approved February 17, 2023; Change 1 Effective July 1, 2023.

DoD Education Activity Director (cont'd)

from a third program operated by the DoDEA Diversity, Equity, and Inclusion (DEI) Division,⁵ which data was gathered solely for social sciences research, not student conduct or civil rights enforcement. The Report misapplies DEI data from a student satisfaction survey conducted by the DoDEA Research, Accountability, and Evaluation (RAE) Division in its 2023 DoDEA RAE Stakeholder Feedback Survey (SFS) as evidence DoDEA is somehow “underreporting” student conduct in its SIR database.

The Report concluded that DoDEA is “underreporting” acts of discriminatory conduct in its SIR database based on there being fewer SIR records than the percentage of students taking the DoDEA SFS who answered “yes” to having been “made fun of” based on their color, origin, or religion at least once or who ever received an insulting phone text or internet message while “on school property.”⁶ The Report did not consider the fact that the survey did not ask if the students had ever told anyone at the school about the incidents at the time. Participation in the SFS was voluntary and anonymous, offered only to 4th grade students or higher, and included a portion of vague DEI questions about students’ personal experiences with “discrimination.” The survey questions did not define discrimination, seek facts, or gather context of any practical use to the DoDEA CRP or DoDEA Ed Ops Division, such as if the experiences were recent or in the past, occurred during the school day or after, if the offender was another DoDEA student or someone else, and, most importantly, if the student had reported the experience to any teacher, coach, nurse, guidance counselor, or other school employee so that their school could take action to protect them.

The purpose of conducting the annual DoDEA RAE SFS is to provide an opportunity for students and parents to anonymously paint broad pictures about academic instruction, sense of belonging, school safety, and overall satisfaction.⁷ Feedback gathered on the DEI questions were intended to inform the future decisions DoDEA educators will make on how to offer educational services that are more inclusive, equitable, and sensitive to student diversity, not to contribute to decisions about how DoDEA Ed Ops Division or DoDEA SSD advisors will go about their efforts to prevent students from committing acts of discriminatory conduct against each other or the DoDEA CRP will go about evaluating whether administrators failed to promptly respond to and equitably resolve such student misconduct incidents once reported to a school. The Report misapplies the DoDEA RAE SFS data to DoDEA CRPC Branch and DoDEA ED Ops Division policies and programs the survey was not intended or designed to evaluate.

The Report also misapplied the technical improvements DoDEA made in how discriminatory conduct information is recorded in a SIR report as evidence that DoDEA is “underreporting” discriminatory conduct because the number of student discriminatory incident reports recorded in the SIR database increased between FY22 and FY23 after the changes were made. The technical improvements, cited in the Report, helped to improve the quality and accuracy of information captured in each record, but was not the reason the number of records began to increase. The Report did not consider the fact that in 2022 DoDEA revised its policies to mandate that, beginning in FY 23, all student discriminatory incidents shall be submitted into the SIR. Prior to FY23, only reported incidents of student discriminatory conduct based on sex, such as sexual harassment, were required to be documented in the SIR database for monitoring and tracking. DoDEA recognized the advantages of having all sex-based student misconduct documented in SIR and, as a result, revised its policies for FY23 to mandate discriminatory conduct based on all nine EO 13160 protected classes be entered into the SIR database. The Report overlooks how the increase in the number of SIR records between FY22 and FY23 is direct evidence of the effectiveness of DoDEA’s change in its policies issued in 2022.

⁵ The DoDEA DEI Division was dismantled in early 2023 and replaced with the DoDEA DEI Steering Committee.

⁶ Report, “DoDEA Underreports Discriminatory Conduct and Trend Analysis is Limited,” page 12.

⁷ “DoDEA Stakeholder Feedback Survey” webpage, retrieved February 6, 2024, at <https://www.dodea.edu/education/research-accountability-and-evaluation/dodea-stakeholder-feedback-survey-sfs>.

DoD Education Activity Director (cont'd)

Recommendation 1.a. Develop and implement policy that requires the Department of Defense Education Activity Civil Rights Program to review all Serious Incident Reports, including ensuring that Serious Incident Reports are linked when appropriate.

Disagree. This recommendation is ineffectual because DoDEA CRPC Branch personnel already monitor and provide EO 13160 compliance guidance for all reported incidents of student discriminatory conduct submitted into the DoDEA SIR electronic database, as part of the multilevel, multidisciplinary team of DoDEA officials and subject matter experts who, together, are alerted to and monitor newly created SIR records and who all have the ability to link related SIR incident reports in the database, as may be appropriate.

DoDEA Policy Mandating SIR Oversight

There are three (3) DoDEA policies that work effectively together to ensure incidents of student-on-student discriminatory conduct are reported to a school, documented in the central SIR database, equitably resolved, and prevented from being repeated in the learning environment.

- (1) The DoDEA Ed Ops Division AI 1353.01, "Student Rights and Responsibilities, Change 1," that requires incidents of student misconduct to be reported to the school in accordance with Section 2.7.n.:

[DoDEA Students shall] **Promptly report to the DoDEA School Principal, or another DoDEA school employee,** incidents or complaints, including, but not limited to, **discrimination, sexual harassment, sexual assault, or non-sexual harassment, based on race, sex, color, national origin, disability, religion, age, sexual orientation or status as a sponsor, parent or legal guardian;** intimidation, hazing, bullying (including cyberbullying), or retaliation against persons who report or participate in the investigation of such incidents herein. [Bold emphasis added.]

- (2) The DoDEA Operations, Planning, Legislation, and Policy (OPLP) Division AI 3030.01, "Director's Critical Information Requirements and Serious Incident Reports,"⁸ that requires all incident reports of student discriminatory conduct received by a school administrator to be documented into the electronic DoDEA SIR database, in accordance with Section 2.15:

DoDEA School Principals will: a. Submit SIRs in accordance with this Issuance. b. **Submit SIRs on all allegations of PSB-CY, harassment-discriminatory,** suicide attempts, or suicide ideation whether within or outside DoDEA jurisdiction, **and document the interim and long-term protective measures taken in support of all participants.** [Bold emphasis added.]

DoDEA OPLP Division policy mandating submission of reported student discriminatory conduct into the DoDEA SIR database serves the following dual purposes:

- a. Coordinating a team response as automatic email alerts are generated with each new entry and sent up to Community and District school leadership and subject matter experts from the DoDEA CRPC Branch, DoDEA SSD, and DoDEA OPLP Division,

⁸ DoDEA AI 3030.01, "Director's Critical Information Requirements and Serious Incident Reports," July 26, 2021.

DoD Education Activity Director (cont'd)

who work together as a team to observe the school administrator's activities and provide advisory guidance in support of a prompt response and equitable resolution of the student misconduct.

- b. Providing a central database for housing, monitoring, and tracking all the information and documentation related to each reported incident of student discriminatory conduct submitted into the database.
- (3) The DoDEA CRPC Branch AI 1443.01, "Civil Rights Program and Compliance," EO 13160 compliance policy that sets DoDEA's EO 13160 antidiscrimination operational compliance standards for what may be considered an equitable, in other words EO 13160 compliant, response by a school administrator to any reported act of student discriminatory conduct, in accordance with Section 1.2.e.:

DoDEA shall also promptly respond to and take reasonable steps to equitably resolve reported incidents of...discriminatory conduct. **DoDEA administrators and all supervisory officials will accept and address in accordance with Section 5 of this Issuance** reported allegations of discriminatory conduct committed between DoDEA [students] **as part of DoDEA's responsibility to protect against the creation of a Hostile Environment** as defined in Section 3.5.b. of this Issuance. [Bold emphasis added.]

The DoDEA CRPC Branch is an independent EO 13160 operational compliance advisory office within DoDEA headquarters operating impartially outside of the school administrative managerial and/or supervisory chain of command, reporting directly to the DoDEA Chief of Staff and DoDEA Director. The CRPC Branch Chief is the DoDEA Civil Rights Analyst and Program Manager (CRPM), who is supported by the Civil Rights Program Investigator (CRPI). The CRPM and CRPI are not directly responsible for maintaining EO 13160 compliance in DoDEA operations but for providing subject matter expertise on what constitutes compliance in accordance with DoDEA AI 1443.01 to those DoDEA officials who are.

The DoDEA "CRP" cited in Recommendation 1.a. is misconstrued in the Report as a having a direct role in the reporting to a school and response by a school to incidents of student discriminatory conduct, which incident reporting is governed under the DoDEA Ed Ops Division student conduct policy DoDEA AI 1353.01 and disciplinary policy DoDEA AI 1347.01, "Student Disciplinary Rules and Procedures."⁹ The DoDEA CRP is, in fact, the headquarters level formal EO 13160 compliance policy enforcement program operated by the DoDEA CRPM to accept and independently investigate on behalf of DoDEA a student or parent's allegation that a school administrator did not resolve the student-on-student discriminatory conduct incident that was reported to a school but instead permitted it to continue and escalate into an unlawful Hostile Environment in violation of DoDEA's responsibilities to operate discrimination-free under EO 13160.

Under EO 13160, there is a legally significant difference between a student feeling they are in a "hostile environment" (all lower-case letters) due to the discriminatory conduct of a classmate as focused on in the Report and a student being subjected to the legally defined civil rights law violation known as Hostile Environment discrimination prohibited in Federally conducted education programs by EO 13160, protected against in DoDEA operations in accordance with DoDEA AI 1443.01 and enforced through the

⁹ DoDEA AI 1347.01, "Student Disciplinary Rules and Procedures," April 7, 2020.

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functions of the DoDEA CRP. An unlawful Hostile Environment is a violation of a student's EO 13160 civil rights protections and could exist if a school administrator received an incident report of student-on-student discriminatory conduct but who, instead of resolving it, permitted the offending student's conduct to not only continue but also escalate and become "*so sufficiently severe, persistent, and/or pervasive that it effectively denies or limits the [student victim's] equal access to DoDEA educational or training opportunities and benefits.*" (Sec. 3.5.b. of DoDEA AI 1443.01.)

DoDEA disagrees with Recommendation 1.a., because DoDEA AI 1443.01 policy already requires that a school administrator consult with DoDEA CRPC Branch personnel upon the receipt of a report of student-on-student discriminatory conduct and submit notification into the SIR database to make sure DoDEA CRPC Branch personnel are alerted:

Section 5.3.b.(1). The DoDEA [school administrator] shall promptly consult with...the DoDEA CRPM upon receipt of a report of discriminatory conduct...to ensure that the DoDEA [school administrator] understands what EO 13160 student-related safeguards to apply during the EO 13160 Compliance Status Check and what EO 13160 compliance action may be necessary as a result.

Section 5.3.b.(2). The DoDEA [school administrator] shall ensure the reported incident is promptly entered into the applicable DoDEA electronic incident report database **for monitoring and tracking**, citing that the report involves a DoDEA student whose action and/or behavior has subjected someone to unwelcome and offensive conduct based on a protected class or classes and detailing the alleged facts that, if true, would substantiate discriminatory conduct that DoDEA is required to protect against under EO 13160. [Bold emphasis added.]

Section 5.3.b.(2) of DoDEA AI 1443.01 EO 13160 compliance policy exists to make sure no school administrator who receives an incident report about a student's discriminatory conduct responds on their own, but submits a SIR. Requiring a SIR ensures a school administrator has the benefit of a coordinated team response to support them in obtaining an equitable resolution that prevents the creation of an unlawful Hostile Environment at their school, even if they should miss the opportunity to consult with the DoDEA CRPC Branch personnel initially, as required in Section 5.3.b.(1).

DoDEA also disagrees with Recommendation 1.a. because Duty #2 of the DoDEA CRPI position description already requires the incumbent to monitor newly created SIRs and offer technical assistance to school administrators on how to execute their EO 13160 Compliance Status Check responsibilities accurately.¹⁰ After DoDEA reissued DoDEA AI 1443.01 in FY23 and made it mandatory that all reported incidents of student discriminatory conduct be entered into the SIR database, the number of SIR records increased. To handle the increase in the number of SIR records documenting alleged student discriminatory conduct, DoDEA created the position of DoDEA CRPI in the summer of 2023 for the express purpose, among other important duties, of providing direct DoDEA CRPC Branch guidance on every SIR report that potentially involved discriminatory conduct by a student.

¹⁰ PD 593174 CRP Investigator GS-1801-14. ("Duty 2. Reviews electronic DoDEA database reporting of alleged DoDEA participant offenders accused of discriminatory conduct to determine whether the DoDEA [CRPC] should intervene to provide direct guidance to DoDEA officials on the response and resolution, as well as provides investigative guidance upon direction by the DoDEA CRPM.")

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The DoDEA CRPI's role is only to advise, however, and remain impartial to protect the integrity of the DoDEA CRPC Branch as DoDEA's independent and impartial EO 13160 civil rights enforcement office. The DoDEA CRPI may not compromise their neutrality or take on the responsibility for the decisions, actions, documentation, and/or findings that are part of the school administrator's overarching responsibility for maintaining a safe, orderly, and discrimination-free learning environment at their school.¹¹ If the DoDEA CRPI were to become directly involved in and responsible for how the incident response was executed by a school administrator, the DoDEA CRPC Branch would be conflicted out of performing any review of a formal report of Hostile Environment discrimination subsequently accepted by the DoDEA CRPM for formal DoDEA CRP investigation and EO 13160 compliance policy enforcement.

Multiple DoDEA Officials May Link SIR Records for Multiple Reasons

DoDEA further disagrees with Recommendation 1.a., because the manual review of SIRs by the DoDEA CRPI is not the only way to ensure related SIR records are linked, and the linking of SIR records is not the way repeat occurrences by the same offending student are identified. SIR records can be linked for a variety of reasons other than a repeated act of misconduct and linked by anyone monitoring the database.

The reviewing of SIR records and the decision to "link" two or more SIR records as being related to each other is a team effort conducted by staff from several DoDEA divisions, simultaneously, to include the DoDEA CRPI, DoDEA SSD, and DoDEA OPLP Division, all of whom are able to link reports. The decision to link reports can be for multiple reasons, such as the victim in one SIR may be the subject or witness in another SIR or a student documented in a SIR for harassing another student may also have expressed suicidal thoughts and is the subject of a 2nd SIR for suicide ideation, which would warrant linking the harassment incident record to the suicide ideation record as being "related" for purposes of monitoring the student's actions and experiences and providing clues as to how one incident may have played a role in the other. There are numerous reasons for linking two SIR reports without it constituting a "repeat occurrence" of the same behavior.

An actual "repeat occurrence" of the same student engaging in similar prohibited conduct is identified at the time an incident report SIR record is created by going to the input field "Occurrence" and selecting "Repeat," which flags the new incident being submitted as conduct the subject had committed previously. When "Repeat" is selected, the new record is then manually linked to the previous incident, but the fact that two reports are linked is not reserved for only repeat occurrences and, contrary to what is stated in the Report,¹² the linking of SIRs is not the manner in which repeat occurrences are tracked by DoDEA. Repeat occurrences are tracked by monitoring those records that indicate "Repeat" in the "Occurrence" field of the SIR record, itself, and/or conducting an automated search of the database by the offending student's name to identify any prior related offenses.

Whenever it is deemed to be effective under the circumstances to link two related SIRs, the school administrator and any of the DoDEA officials monitoring as part of the team response are already empowered to see to it that the records are linked, as they may deem appropriate for a variety of reasons.

¹¹ Section 2.10.a. of DoDEA AI 1443.01. ("Each DoDEA School Principal and Assistant Principal: a. Takes reasonable steps to create and maintain a learning and work environment in which all DoDEA participants at their school can participate in an environment free from unlawful discrimination as defined in Section 3.5. of this Issuance.")

¹² Report, page 9.

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Acceptance of Recommendation 1.a. to mandate by policy that the linking of SIR records be the responsibility of the "DoDEA CRP" would not only create a conflict of interest for the independence of the DoDEA CRPC Branch personnel, but also would only reduce the current effectiveness of the team-orientated approach to SIR reviews now in operation by delegating the responsibility to only the DoDEA CRPC Branch to execute.

Recommendation 1.b. *Develop and implement policy that requires updating incorrectly identified discriminatory conduct Serious Incident Reports.*

Disagree. DoDEA does not foresee a policy mandate requiring a school administrator to adopt in their SIR record whatever subject matter experts consider to be "correct" information will improve the effectiveness of SIR documentation when subject matter experts provide guidance based on policy objectives, not on direct involvement in the school level response. With regards to the services provided by the DoDEA CRPC Branch, the DoDEA CRPI may not compromise their neutrality or create a potential conflict of interest for the DoDEA CRP process by taking on the responsibility for the decisions, actions, documentation, and/or findings that are part of the school administrator's overarching responsibility for executing an accurate SIR record.

There are circumstances in which a school administrator may have a legitimate reason for deviating from the specific procedures or neutral guidance provided to them by the assisting subject matter experts. Only the school administrator knows the totality of circumstances, and they should retain their autonomy and responsibility for creating an accurate record of what has happened at their school.

In the alternative, DoDEA shall edit its DoDEA AI 3030.01 policy procedures to require that, if a school administrator does not update their record to adopt a written recommendation entered into the SIR record by a subject matter expert, the school administrator is to include in the record an explanation for their deviation from guidance. This modification shall be published prior to FY25.

Recommendation 1.c. *Develop and implement policy that requires documenting in the Serious Incident Report or Director's Critical Information Report database all instances of reported discriminatory conduct.*

Disagree. Documenting reported incidents of student discriminatory conduct in the Director's Critical Information Requirements and SIR electronic database is already expressly required under two existing policies, DoDEA AI 3030.01¹³ and Section 5.3.b.(2) of AI 1443.01,¹⁴ as cited in the response to Recommendation 1.a., above.

¹³ Section 2.15.b. of DoDEA AI 3030.01. ("[All School Principals shall:] Submit SIRs on all allegations of PSB-CY, harassment-discriminatory, suicide attempts, or suicide ideation whether within or outside DoDEA jurisdiction, and document the interim and long-term protective measures taken in support of all participants.")

¹⁴ Section 5.3.b.(2) of DoDEA AI 1443.01. ("The DoDEA [Incident Response Official] IRO shall ensure the reported incident is promptly entered into the applicable DoDEA electronic incident report database for monitoring and tracking, citing that the report involves a DoDEA student whose action and/or behavior has subjected someone to unwelcome and offensive conduct based on a protected class or classes and detailing the alleged facts that, if true, would substantiate discriminatory conduct that DoDEA is required to protect against under EO 13160. Copies of evidence gathered and the DoDEA IRO's actions taken to ensure EO 13160 compliance shall be uploaded into the DoDEA electronic incident report record to document the basis upon which the DoDEA IRO's ultimate findings are made.")

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Recommendation 1.d. *Direct the Civil Rights Program to create and provide to all current and incoming administrators a mandatory training class on identifying and reporting discriminatory conduct and harassment.*

Disagree. DoDEA already requires mandatory training for administrators on their responsibilities for maintaining a safe, orderly, and discrimination-free learning environment that includes their responsibility for recognizing, documenting in SIR, and responding to student discriminatory conduct as prohibited in DoDEA schools under EO 13160.¹⁵ DoDEA also provides mandated DoDEA OPLP Division SIR database training on when and how to create a SIR record, which includes identifying and documenting in SIR any reported incidents of discriminatory student conduct. The DoDEA SIR database, itself, also includes in the user dashboard links to numerous definitions and self-explanatory reference tools for responding to student discriminatory conduct that a reporting school administrator may consult while creating their SIR.

The DoDEA AI 1443.01 EO 13160 compliance policy also mandates that a school administrator directly consult with DoDEA CRPC Branch staff upon receiving information about potentially discriminatory student conduct¹⁶ to ensure they understand their responsibilities regardless of their prior experience with or training on student discriminatory conduct. DoDEA has also delegated to the DoDEA CRPI position the responsibility to review all newly created SIR records to help ensure a school administrator receives guidance in real time on correctly identifying “discriminatory conduct” and how to apply the EO 13160 operational compliance standards from Section 5 of DoDEA AI 1443.01 by which they will be judged if the school administrator’s actions ever become the subject of a subsequent formal report of Hostile Environment discrimination accepted by the DoDEA CRP.

DoDEA supervisory officials at all levels also are already responsible in accordance with Section 2.8. of DoDEA AI 1443.01 for providing “to all DoDEA participants under their supervision the opportunity to be informed of their EO 13160 safeguards and reporting responsibilities as defined under this Issuance through the distribution of DoDEA CRP promotional outreach, education, and/or training resources.” A wide variety of DoDEA CRPC Branch training already exists and is available for school administrators upon request.

DoDEA will continue efforts to ensure new and existing school administrators are sufficiently trained on and held accountable for executing thorough and accurate SIR records in accordance with DoDEA AI 3030.01 and DoDEA AI 1443.01, to better help reduce inaccuracies in newly created SIR records and reduce the frequency with which the DoDEA CRPI and/or the DoDEA OPLP Division SIR Database Program Manager may need to recommend technical edits.

Recommendation 1.e. *Develop and implement policy that requires updates to Serious Incident Reports at the Civil Rights Program’s request and requires the Civil Rights Program to approve all civil rights related Serious Incident Reports prior to closing the records.*

Disagree. DoDEA disagrees for the same conflict of interest concerns cited in the responses to Recommendations 1.a. and 1.b., above.

¹⁵ DoDEA mandates school administrators complete the Defense Acquisition University (DAU) online training entitled, “DoDEA Student Discipline and Student Rights and Responsibilities Policy with Dress Code (2023),” which includes a separate section on addressing student discriminatory conduct that DoDEA must take reasonable steps to protect against under EO 13160.

¹⁶ Section 5.3.b.(1) of DoDEA AI 1443.01.

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DoDEA also disagrees because the Report incorrectly concluded that if a school administrator does not update their SIR record to reflect recommendations made by the DoDEA CRPI that the DoDEA CRP cannot “ensure that civil rights-related incidents are appropriately identified and handled.”¹⁷ Ensuring a school administrator executes their responsibilities in accordance with the procedural requirements of DoDEA AI 3030.01 and the EO 13160 compliance policy operational standards of DoDEA AI 1443.01 is a performance matter reserved for the District or Community Superintendent to ensure. Mandating that the DoDEA CRPC Branch staff micromanage and approve the SIR records of a school administrator would make the DoDEA CRPC Branch staff directly responsible for the school administrator’s performance, creating a conflict of interest that would jeopardize the ability of the DoDEA CRP to function impartially during any subsequent investigation of a formal report of Hostile Environment discrimination arising out of how the SIR incident was handled by the school.

Recommendation 1.f. *Develop and implement policy that requires that the Civil Rights Program records and tracks all informally resolved complaints of hostile environments and discriminatory conduct in a standardized format.*

Disagree. DoDEA disagrees because there is no such thing as an “informally resolved” complaint of a student creating a “hostile” environment or committing acts of discriminatory conduct, and all such reported complaints are already required to be treated as incident reports documented in the standardized format of the DoDEA SIR database for tracking by DoDEA Ed Ops Division, DoDEA SSD, DoDEA OPLP Division, and DoDEA CRPC Branch, as needed. Documenting in the SIR database is required regardless of whether the incident report of student-on-student discriminatory conduct was reported to the school administrator or to a higher level DoDEA official responsible for supervising how the school administrator operates their school, because either way the complaint is still an “incident report” to be documented in the SIR database in accordance with DoDEA AI 3030.01.

The Report concluded that “without a formalized reporting method and format for informally resolved complaints, the [DoDEA] CRP cannot: (1) identify all reports of discriminatory conduct and harassment, (2) ensure that cases are handled appropriately, and (3) ensure that records are adequate in instances where a formal report is subsequently filed after a failed attempt to informally resolve it.” The DoDEA CRP does not accept and address complaints about student conduct, however, and to do so would be a conflict of interest, as cited in the responses to Recommendations 1.a., 1.b. and 1.e, above. In support of recommendation 1.f., the Report misappropriated these three responsibilities to the DoDEA CRP that are, in fact, the sole responsibility of the school administrator to perform as part of their incident response documentation responsibilities in accordance with DoDEA AI 3030.01 and that will be judged by the DoDEA CRP in accordance with the EO 13160 Compliance Status Check standards in Section 5 of DoDEA AI 1443.01, if what the school administrator did became the subject of a formal Hostile Environment discrimination complaint raised afterwards.

The Report overlooks that, if a formal report of Hostile Environment discrimination is accepted by the DoDEA CRP alleging the school administrator did not adequately respond to and equitably resolve student-on-student discriminatory conduct but instead permitted the conduct to escalate into ongoing Hostile Environment, it is exactly the function of the DoDEA CRP to then, subsequently, evaluate how well the school administrator (1) identified reported student conduct as being “discriminatory,” (2) if, while documenting their incident response in the SIR database, whether they followed any DoDEA CRPI guidance and met EO 13160 Compliance Status Check standards or had a reasonable basis for deviating from these standards, and (3) evaluate the adequacy of the school administrator’s incident response record as part of the relevant evidence considered when determining whether the allegation of discrimination by DoDEA for EO 13160 discrimination is substantiated and requires DoDEA CRP intervention to restore

¹⁷ Report, “Additional Policy Needed for CRP’s Oversight of the SIR and DCIR Reporting Process,” page 11.

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EO 13160 compliance at the school or if the allegations are unsubstantiated because the evidence supports the school administrator ultimately met their EO 1316 compliance policy responsibilities.

Recommendation 1.f. further overlooks the fact that under EO 13160 students and parents retain the option to voluntarily work out their concerns directly with the school or with Community or District leadership¹⁸ without having to resort to requesting formal intervention by the DoDEA CRP. The option provided in the DoDEA AI 1443.01 EO 13160 compliance policy to ask a higher level DoDEA official for help in resolving ongoing student discriminatory conduct not yet resolved by a school administrator is still an incident report about student misconduct to be tracked in the SIR database, not an allegation of Hostile Environment discrimination in violation of EO 13160 to be tracked by the DoDEA CRP.

The threshold requirement before a report of Hostile Environment discrimination may be accepted by the DoDEA CRP for independent review and formal action is evidence that the school administrator was given notice of the underlying student-on-student discriminatory conduct and the opportunity to resolve it. If a student or parent is not satisfied with the school administrator's response, however, they are not required under EO 13160 to immediately turn to requesting "formal" DoDEA CRP intervention at the headquarters level. They have the option in accordance with Section 4.1.a. of DoDEA AI 1443.01 to put off making a "formal" report and instead attempt an "informal" resolution of their concern over the not-yet-resolved student discriminatory harassment by asking the Community or District Superintendent to intervene and help bring an end to the student misconduct. Efforts undertaken by the Community or District Superintendent to help stop the student discriminatory conduct is still a response to an incident report at that stage, however, and already being documented and tracked in the SIR database.

Other Matters of Interest. *"DoDEA may be applying an unachievable standard" for acceptance of formal complaints due to "DoDEA's restriction on the availability of student information."*

Disagree. The criteria for accepting a formal report of discrimination is not set by DoDEA but set for all Federal agencies by the Department of Justice in its "Executive Order 13160 Guidance Document: Ensuring Equal Opportunity in Federally Conducted Education and Training Programs."¹⁹

It also is not accurate to state that DoDEA is restricting access to student information. DoDEA, as a Federal agency, does not have the lawful authority or discretion to disclose to one student or their parent information about another student who is not a member of their family. Information is restricted by DoDEA in accordance with the Freedom of Information Act, as amended²⁰ and The Privacy Act of 1974, as amended.²¹

Prepared by [REDACTED]

¹⁸ Section 4.1.a. of DoDEA AI 1443.01. ("a. Option to Informally Raise a Discrimination Concern. Any Reporter who believes or suspects that there is discrimination in DoDEA operations prohibited pursuant to this Issuance is free to make a good faith attempt to resolve the matter informally by contacting and sharing their concerns, either verbally or in writing, directly with any of the following DoDEA officials: (1) The DoDEA employee, educator, administrator, or supervisor you believe is responsible for the discrimination or a higher-level official in their chain-of-command. (2) The DoDEA official with supervisory authority over the program, event, and/or activity where, or in which, the discrimination occurred or is occurring.")

¹⁹ Department of Justice, "Executive Order 13160 Guidance Document: Ensuring Equal Opportunity in Federally Conducted Education and Training Programs," January 18, 2001, located in Federal Register, Volume 66, No. 12, pages 5398-5410.

²⁰ United States Code, Title 5, Section 552.

²¹ United States Code, Title 5, Section 552a.

Acronyms and Abbreviations

- AI** Administrative Instruction
- CRP** Civil Rights Program
- DCIR** Director's Critical Information Report
- DoDEA** Department of Defense Education Activity
- DRP** Discrimination Report Processing
- EO** Executive Order
- SIR** Serious Incident Report

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