

May 19, 2010

Joseph P. Merlino, MD, MPA  
Philip Pallone  
Co-Chairs, Board of Trustees  
Opportunity Charter School  
240 West 113<sup>th</sup> Street  
New York, NY 10026

Re: Opportunity Charter School  
SCI Case #2008-2565

Dear Dr. Merlino and Mr. Pallone :

An investigation conducted by this office has substantiated that, during the 2007-2008 school year, Opportunity Charter School (“OCS”) Co-directors Betty Marsella and Leonard Goldberg and Administrative Director Brett Fazio failed to adequately supervise staff and follow school policy.<sup>1</sup> As a result of this failure, OCS staff, including Fazio, and Behavior Management Specialists Deloris Johnson and Gregory Woods, failed to document interventions (“OCS incident reports”) as they were required to do and engaged in confrontations with students.<sup>2</sup> Verbal abuse of a student committed by Teaching Assistant Jamar Fields also was not documented.<sup>3</sup> The investigation also substantiated that, in response to anonymous allegations of physical abuse of students by the staff, Marsella produced a report (“OCS Report”) which excluded or minimized incidents of “physical intervention” or “physical restraints,” allowing OCS to falsely conclude that the anonymous allegations were unsubstantiated. The OCS Report included an Analysis of Students In Need of Physical Intervention (“Analysis”) which, in conclusory language, indicated the use of restraint, but did not provide details of the physical contact between OCS staff and students. For example, an incident involving

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<sup>1</sup> Marsella, Goldberg, and Fazio were not reassigned as a result of this investigation. Marsella currently works from home.

<sup>2</sup> Johnson, who also held the position of parent coordinator at one time, and Woods are no longer employed at OCS.

<sup>3</sup> Jamar Fields is no longer employed at OCS.

serious use of force against a student by Middle School Dean of Students Andre Cook, while included in the Analysis, ignored injuries to the student.<sup>4</sup>

This investigation began in June 2008, when the Department of Education (“DOE”) Office of Portfolio Development forwarded to the Office of the Special Commissioner of Investigation (“SCI”) an anonymous complaint about OCS, located in Manhattan, which has a charter authorized by the DOE Chancellor.<sup>5</sup> The complaint alleged physical abuse of OCS students by behavior management specialists (“Specialists”) with the acquiescence of the directors and the deans.<sup>6</sup> Over the course of the next approximately 21 months, SCI investigators interviewed 29 people, including OCS administrators and staff, parents and students, and other interested parties. Some individuals were interviewed more than once. SCI also obtained additional information and records from others, including DOE officials.

### **OCS Restraint Policy and Procedures**

OCS uses the Therapeutic Crisis Intervention method of behavior management, known as TCI, which emphasizes observation of student behavior and intervention before a situation escalates into crisis and places the student at risk of injuring another person, himself, or herself.

A review of the OCS “Restraint Policy and Procedures” revealed 16 steps to be followed “[i]n the event that a student poses a danger to himself or others.” Step 16 indicates: “All staff members involved are required to complete an incident report. The report is then submitted directly to the Director of Discipline.”

Administrative Director Fazio explained to SCI investigators that only the Specialists who initiated and assisted in the “take down” were required to make written statements. Marsella told investigators that a write up was done by the individuals who observed, participated in, or conducted the restraints.

### **The Report**

#### Marsella

SCI investigators spoke with OCS Co-director Betty Marsella on multiple occasions. During one meeting, Marsella said that, as a result of a telephone call from the Center for Charter School Excellence inquiring about a complaint of excessive student restraints, Dr. Joseph Merlino, the Chairman of the OCS Board, asked for an

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<sup>4</sup> Cook continues to be employed at OCS.

<sup>5</sup> The DOE Office of Charter Schools was within the Office of Portfolio Development. Two separate e-mail messages about the allegations were referred to SCI; one had been forwarded to the DOE from the Center for Charter School Excellence, an outside advocacy organization.

<sup>6</sup> A similar complaint was communicated to OCS.

internal investigation. According to Marsella, along with Co-director Goldberg, Administrative Director Fazio, and possibly then-Director of Operations Omar Fields, she conducted an investigation about incidents of student restraints which occurred at OCS.

Marsella said that she coordinated the writing of the OCS Report which she believed was based on OCS incident reports and interviews of staff members. Marsella could not remember the names of the staff members who were interviewed. Marsella acknowledged that she was aware that the OCS Report did not include complete information about incidents involving certain OCS students (“Student B” and “Student G”).

At a subsequent interview, Marsella recounted that Merlino asked Goldberg for an internal review and that Goldberg asked Fazio and Omar Fields to write the OCS Report under her oversight. Marsella asserted that she did not interview anyone in connection with the OCS Report and she did not see anyone interviewed. Marsella said that she and Fields worked on the cover letter. Marsella added that she had difficulty supervising Fazio, and that he wrote up some incidents, but not others. According to Marsella, “no one reviewed the write up of restraints after Fazio, the buck stopped with Brett.” Marsella’s statements relating to specific incidents are found in the relevant section of this document.

### Goldberg

SCI investigators spoke with Co-director Leonard Goldberg on multiple occasions. During one interview, Goldberg confirmed that, at the end of the 2007-2008 school year, an anonymous allegation of physical abuse of students by staff members was made against OCS and Merlino asked for an internal investigation. Goldberg said that Marsella gathered information from Fazio to compile the OCS Report. Goldberg added that Marsella conducted the investigation by incorporating information from the 2007-2008 OCS incident reports and by interviewing staff members. Goldberg did not know which staff members Marsella interviewed.

Goldberg continued that he was aware of the investigation and had spoken to Marsella about the findings. Goldberg asserted that the investigation was unsubstantiated and the OCS Report was given to Merlino who subsequently came to OCS to address the staff about the allegations.<sup>7</sup> At an additional interview, Goldberg could not say whether he read the OCS Report before it went to Merlino: “I might have looked it over, I don’t recall.”<sup>8</sup>

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<sup>7</sup> In a report to the OCS Board of Trustees, Merlino described the allegations as “recent anonymous vague reports of abusing students” and concluded that there was no evidence of any student being abused.

<sup>8</sup> Marsella told investigators that she “sent the Report to Lenny [Goldberg], he said he read it, and he thought it was fine.”

According to Goldberg, although Marsella supervised Fazio, there came a time when he started helping Marsella do her job and he started meeting with Fazio on a regular basis. Goldberg conceded that he “did probably tell Fazio to report to [him].” Goldberg’s statements relating to specific incidents are found in the relevant section of this document.

#### Fazio

SCI investigators spoke with Administrative Director Brett Fazio on multiple occasions. During one interview, Fazio said that he was in charge of all aspects of student restraints, that all restraints had to be documented, and that he had to be notified of all restraint situations. Fazio acknowledged that not all restraint and verbal incidents were documented. Fazio added that he reported to “Lenny” Goldberg and asserted: “Anything I was aware of, I always filled him in on it; he was my direct supervisor.”

At another interview, Fazio reported that OCS did not have a form for reporting a complaint against a staff member for verbal abuse of a student. Fazio said that the policy was for the student to make a written statement. Fazio acknowledged that reports were not always prepared for incidents with students. Fazio was unable to produce any student complaint of verbal abuse. Fazio’s statements relating to specific incidents are found in the relevant section of this document.

#### Omar Fields

SCI investigators interviewed Omar Fields who said that, during the 2007-2008 school year, he held the position of Director of Operations at OCS.<sup>9</sup> Fields said that Marsella asked him to gather the OCS incident reports for the 2007-2008 school year and to tally up the total number. Fazio told Fields where the reports were kept, he gathered them, tallied the data, and gave the information to Marsella. According to Fields, he was not instructed to interview anyone and did not interview anyone.

#### Dr. Merlino

SCI investigators interviewed the Chairman of the OCS Board of Directors, Joseph P. Merlino, MD, MPA, who confirmed that he received a telephone call from the Center for Charter School Excellence advising him about an anonymous complaint that OCS students requiring TCI restraints were being abused by OCS staff members. Merlino said that he charged Betty Marsella to look into every physical encounter with an OCS student, during the 2007-2008 school year, and to direct the information to him. Merlino added that, sometime in May 2008, he asked Marsella to provide the number of incidents along with any corroborating statements of what happened, and to determine whether OCS followed the guidelines.

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<sup>9</sup> Omar Fields is the brother of former OCS Specialist Jamar Fields. Omar Fields is currently the OCS Director of Marketing.

According to Merlino, at that time, Marsella and Goldberg were both members of the OCS board, but that this type of investigation fell within Marsella's area of supervision and responsibility. Merlino explained that Goldberg was "more the business side." Merlino did not recall interviewing anyone during the internal review. Merlino asserted that things were different at OCS now, but back in 2008, there was no Human Resource Department. Merlino added that procedures were not always followed, but that was not done purposely; it occurred more through ignorance and naïveté.

#### Content of the OCS Report

SCI investigators obtained from Marsella the results of the OCS internal investigation. The OCS Report described the OCS incident review system, the OCS restraint policy and procedures, and the investigation of restraints-adverse events. It also included memoranda and statements concerning the restraint of a student ("Student D") on May 7, 2008, the two-page Analysis of the physical interventions for the 2007-2008 school year, and the 2008 Year End Incident Report. The cover page was a memorandum from Dr. Merlino, dated June 18, 2008, concerning "Incident Review Current Academic Year." It began:

Please find attached the information I requested following recent anonymous vague reports of "abusing students" at the OCS....  
Immediately hearing of these reports, I asked [for] a full review of our entire incident management system....

Dr. Merlino wanted to know about nine specific categories of information. The OCS Report indicated that only nine students required physical interventions for a total of 13 incidents during the 2007-2008 school year.<sup>10</sup> These were described in the Analysis, which explained the history and behavior management of each student at the time before the incident.

Two of the physical interventions described in the Analysis contained in the OCS Report concerned students described in this document as Student B and Student D. This document also describes incidents involving Student G and two other students ("Student J" and "Student C") who were subjected to physical contact, but were not mentioned in the OCS Report, even though either Marsella, Goldberg, or Fazio was aware of the incidents. In addition, this document describes the verbal abuse of a student ("Student I") which was not documented, even though Marsella and Fazio were aware of the incident.

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<sup>10</sup> One student appeared to have been involved in four restraints, while another student was involved in two restraints.

## The Incidents

### Student B

The Analysis described the incident involving 14-year-old male Student B as follows: “On 5/1, after being told that he would have to remain after school to complete class work, [Student B] became verbally aggressive increasing to physical aggression where [Student B] began pushing the classroom furniture, ultimately resulting in a restraint.”<sup>11</sup>

SCI investigators interviewed Student B who said that, on May 1, 2008, Fazio, a School Safety Agent, and two Police Officers approached him and asked whether they could look into his book bag and then did so. Finding nothing wrong, they told Student B to go back to class. According to Student B, Fazio told him that the police were looking for a student who had the same first name as Student B who had a gun.

Student B continued that Teaching Assistant Riley Myers came over to him and asked for his class work to which Student B replied: “See Fazio, I don’t have it, I’m not doing it.” After more words, Myers and Specialist Lenin Grullon, whom Student B knew as “Mr. G,” asked the teacher to leave the room.<sup>12</sup> Myers then grabbed Student B from behind, Mr. G punched him in the stomach, and they took him down to the floor causing his right arm and forehead to rub into the floor. They remained on top of him until he promised to calm down.

SCI investigators interviewed Student B’s father who said that, when Student B came home, his forehead and arm were visibly scraped, he was mad, and almost was crying. According to the father, Student B told him the same facts which Student B had given to investigators. The father added that OCS Social Worker Paul Magyar telephoned and asked him to bring Student B to school the next day.

SCI investigators interviewed Social Worker Magyar who said that he did not witness the incident, but observed marks on Student B’s arm and forehead.

SCI investigators interviewed Specialist Grullon who confirmed that staff and students called him Mr. G. Grullon denied punching Student B whom Grullon maintained attempted to pick up a chair. Grullon acknowledged that Student B was placed on the floor by Grullon, but said he was assisted by Trainer Anthony Jones, who was the high school dean of students.<sup>13</sup> Grullon added that he wrote a statement and gave it to Fazio.

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<sup>11</sup> Student B has turned 16.

<sup>12</sup> Grullon was not reassigned as a result of this investigation.

<sup>13</sup> Student B told investigators that Myers assisted Grullon. The OCS incident report completed by Grullon, dated May 1, 2008, reflected that Myers and Grullon were the staff members involved in the restraint.

Grullon's OCS incident report indicated that Student B "was being physically aggressive when asked to stay for detention for disrespecting a teacher verbally; after Grullon came to assist Myers, Student B became upset that Grullon was taking Myers side and stated 'Fuck this school, and fuck you, too!' and pushed Grullon out of anger which led to the 2-man physical restraint."<sup>14</sup> The incident report also indicated that Student B had been "in crisis most of the day because of prior issues," that no one was injured, and that the nurse was "gone for the day."

During one of the interviews with Fazio, he confirmed the search of Student B, but claimed he did not recall the facts of the restraint of Student B. However, Fazio believed that Jones told him that Student B's father wanted to press charges for the way his son was treated. Fazio acknowledged that he did not document the search and maintained that he did not include it in the documentation of the restraint because he did not believe it was a precipitating factor of the restraint. According to Fazio, no disciplinary action was taken against staff members because of this incident.

During one of the interviews with Marsella, she asserted that she was peripherally involved with the restraint of Student B, on May 1, 2008, but did not see or hear about any injury to the boy. Marsella said that she had a vague memory of Student B being searched earlier in the day and she acknowledged that it should have been written up. According to Marsella, she told Goldberg that they had to address the Student B incident.

During one of the interviews with Goldberg, he said that a report should have been prepared for the incident where Fazio had Student B searched for a gun.

#### Student D

The Analysis described the incident involving 12-year-old male Student D as follows: "On and [*sic*] 5/7, [Student D] was involved in a situation where a physical restraint ensued as a result of his posture and intent to assault 2 staff members.<sup>15</sup> Consequently, [Student D's] mom has a complaint on file alleging that [Student D] was mistreated and only that 1 of the staff involved in the restraint is guilty of misconduct."

In addition to the complaint filed with OCS, Student D's mother lodged a complaint with the New York City Police Department. At the request of his mother, SCI investigators did not interview Student D. Moreover, Student D's mother did not want to meet with SCI investigators to discuss the assault on her son.

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<sup>14</sup> Myers also prepared an incident report, using a slightly different form. In the section requesting information about the "Precipitating Factor/Trigger," Myers wrote that the student was "upset because of accountability given for [cross out] disrespecting" a teacher. He continued that it was "[a]lso [cross out] triggered by search."

<sup>15</sup> Student D has turned 14.

SCI investigators interviewed a 13-year old male student (“Student E”) who said that he witnessed Middle School Dean of Students Andre Cook place Student D in a headlock on the floor with Specialist Dwight Dixon holding Student D’s legs.<sup>16</sup> When Student D tried to get up, Cook pushed him back to the floor, and Student E saw that Student D’s nose was bleeding. Student E added that he observed blood on Student D’s T-shirt and that Student D’s face below the eye and cheek appeared to be swollen.

Student D was brought to the nurse’s office on the date of the incident, May 7, 2008. The nurse’s log indicated that Student D complained of pain in his left cheek, left shoulder, and right knee.

SCI was provided with statements by Cook, Dixon, the relevant classroom teacher, and others, relating to the incident on May 7, 2008.<sup>17</sup> An unsigned statement, completed by Student D’s Science teacher, described Student D as disrupting class on May “8,” 2008, which led the teacher to ask for the assistance of a behavior team. Cook’s undated statement indicated that, on May 7, 2008, he and Dixon asked Student D to step out of the classroom. Cook wrote:

Before he could refuse [Student D] threw his book bag off his shoulders and made a threatening gesture. Based on [Student D’s] history, Mr. Dixon and I initiated a 2 person therapeutic restraint as a result of his gesture and removal of his book bag. In the restraint [Student D] suffered a nose bleed.

Dixon’s undated statement gave additional details about the May 7, 2008, incident. Dixon reported that, when asked to step out of the classroom, Student D replied “I am going to punch any staff that comes near me or touches me.” Cook “came closer” and Student D threw his book bag off his shoulders. As Cook reached toward him, Student D tried to throw a punch. Dixon caught Student D’s arm and Dixon and Cook initiated a therapeutic restraint.

During one of the interviews with Fazio, he reported that he was not in school on the day of Student D’s restraint and learned about it from Student D’s mother. Fazio added that he suspended Cook with pay while he investigated the restraint. OCS provided a copy of Fazio’s memoranda concerning his investigation of the matter and the

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<sup>16</sup> Student E has turned 14; he was 12 at the time of the incident. Although he and his classmates had been removed from the room, Student E watched through a glass pane on the door. Dixon no longer works at OCS.

<sup>17</sup> These statements were not memorialized on the pre-printed OCS incident report forms which were used for Student B’s physical intervention. Undated statements were also prepared by the Specialist who attended to Student D’s bloody nose and brought the boy to the nurse and the teaching assistant from the Science class.



actions he took. In an unsigned statement, dated May 12, 2008, entitled "Investigation of Physical Restraint [Student D]," Fazio found that it was "clear that the student was a danger to himself and others." In a memo to Goldberg, dated June 10, 2008, Fazio reported that the actions taken were based on the restraint and the mother's complaint.

During one of the interviews with Marsella, she maintained that she did not know anything about the restraint incident involving Student D. Marsella said that she never spoke with Student D's mother and did not have any discussion with Goldberg or Fazio about Cook's suspension. Marsella added that it was her sense that Goldberg wanted to keep this a "private deal. I was given the impression that he wanted me to stay out of it."

During one of the interviews with Goldberg, he indicated that he had no firsthand information about the restraint which involved Student D.

#### Student G

There was no OCS incident report and the incident was not included in the Analysis.

SCI investigators interviewed Teacher Patricia Kulow about 15-year-old female Student G.<sup>18</sup> Kulow said that, on a day in the fall of 2007, Specialist Deloris Johnson came into her classroom and pulled Student G out of the room by her hair. Kulow added that she reported the incident to Fazio who told her that he would take care of the matter. Fazio never asked Kulow to prepare a statement about the incident.

SCI investigators interviewed Social Worker Magyar who said that he was in Kulow's classroom when Johnson came in and picked Student G's head up from the desk by her hair. Magyar continued that Johnson pulled Student G out of the room while saying to the girl: "How do you like it?" and "How does it feel to you?" Magyar was never asked to write a statement by Fazio.

SCI investigators interviewed Student G who asserted that Johnson touched her, but did not pull her hair.<sup>19</sup> Student G added that nothing like the incident described by Kulow happened and she had no other information.

SCI investigators interviewed Specialist Johnson who said that a teacher, who had since left OCS, told Johnson, Fazio, Goldberg and then-Principal Joann Murphy about an incident which occurred during the previous afternoon on a train. The teacher reported that she observed Student G grab a woman by the hair and swing her into the wall of the train. According to Johnson, upon hearing that, she went to Student G's classroom and

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<sup>18</sup> Student G has turned 18.

<sup>19</sup> Student G was 17 at the time of the interview.

grabbed Student G by the hair while saying: “How dare you grab anyone by the hair, how does it feel to have someone grab you by the hair?” Johnson maintained that she walked Student G out of the classroom with her hand on Student G’s head, but not pulling her hair. Johnson said that she did not write up an OCS incident report because the incident did not happen in the school.

During one of the interviews with Fazio, he recalled some of the facts of an incident involving Johnson going into a classroom and pulling Student G out by her hair. Fazio said that a teacher whom he could not identify had reported that, the day before, Student G pulled another woman’s hair and swung the women into the wall of a train. Fazio added that he was told that Johnson pulled Student G’s hair while saying: “How would you like it if someone did this to you?” Fazio recalled having a conversation with Johnson about the incident, but did not direct Johnson to fill out an OCS incident report.

During one of the interviews with Marsella, she remembered hearing about Johnson pulling Student G out of the classroom by the girl’s hair. Marsella said that she did not write up the incident, but believed that she told Fazio to look into the matter and to take care of it. Marsella also thought that she told Goldberg about the incident. Marsella added that Fazio told her he was dealing with the incident, but she could not say that Merlino was made aware of it.

During one of the interviews with Goldberg, he said that he did not hear about a staff member pulling Student G out of the classroom by the girl’s hair. Goldberg added that he “heard vaguely there was some demonstration with Student G’s hair.” According to Goldberg, “with two co-directors things fall in the middle.”

#### Student J

There was no OCS incident report and the incident was not included in the Analysis.

The assigned SCI investigator interviewed the uncle of 15-year-old male Student J by telephone because the uncle maintained that he did not have time to meet with investigators.<sup>20</sup> The uncle said that Student J came home with a large bump on his forehead and reported that Specialist Gregory Woods had pushed him head first into a door jam in the school, causing a huge knot on Student J’s forehead.

The uncle continued that he became concerned about the unnecessary use of force at OCS. The uncle visited OCS and spoke with Fazio, Goldberg, and Woods. According to the uncle, he straightened out the situation with Fazio and Woods, but would not explain how it was settled.

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<sup>20</sup> Student J has turned 17.

During one of the interviews with Fazio, he recalled an incident between Woods and Student J during which Student J sustained a bump on his forehead. Fazio said that he was the first responder to the incident and contacted Student J's uncle about it. Fazio spoke with the uncle and it was agreed that Woods would not have any further contact with Student J. Fazio was not sure whether the incident was written up.

During one of the interviews with Goldberg, he recalled an incident where Student J's head was pushed into a door jamb by Woods. According to Goldberg, he spoke with Student J's uncle who agreed that it was an accident. Goldberg did not know whether any action was taken against Woods.

During one of the interviews with Marsella, she told investigators that she never heard of the incident between Woods and Student J.

### Student C

There was no OCS incident report and the incident was not included in the Analysis.

SCI investigators interviewed 14-year-old male Student C who said that he was on the 4<sup>th</sup> floor of the school and he had gang beads around his neck.<sup>21</sup> Student C added that Fazio told him to take the beads off, but he refused. Fazio directed Student C to step into a nearby room and, when he did, Specialist Grullon grabbed the beads off his neck. Fazio told Student C that he had to go to the "safe room" on the 3<sup>rd</sup> floor. According to Student C, as he was walking to the room, Fazio grabbed him and threw him to the ground. Student C said that Fazio was on top of him and Grullon was holding his legs and digging his elbow into Student C's calf. Student C added that Fazio's arm was cut by the glass in the stairwell door when Fazio threw Student C to the stairwell floor.

During one of the interviews with Fazio, he acknowledged that he should have prepared an OCS incident report regarding the restraint of Student C, but admitted that he did not do so. Fazio confirmed that he cut his arm during the restraint of Student C, when Fazio's arm hit and broke the hallway door window. Fazio said that he told either Goldberg or Marsella about the incident and then asserted that he believed it was Marsella. Fazio added that he spoke to Student C's aunt about the incident.

During one of the interviews with Marsella, she did not recall the incident when Student C wore gang beads in the school, but remembered something about Fazio's arm getting hurt. Marsella did not know whether a report had been made.

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<sup>21</sup> Student C has turned 16. Student C did not know the date of the incident.

Student I

There was no OCS incident report.<sup>22</sup>

SCI investigators interviewed 15-year-old female Student I who said that, during April 2008, Specialist Jamar Fields yelled and screamed at her, rolled up his sleeves, and made gestures toward Student I in school.<sup>23</sup> Student I reported that Fields's conduct caused her to feel threatened.

Student I explained that, in the school hallway, Fields yelled and screamed: "I'm not your nigger, do you understand that?" Student I added that she responded: "Get out of my face, you're not my father." According to Student I, Fields replied: "I'm glad I am not your father; I don't want a fucking daughter like you anyway." Student I reported that Social Worker Magyar came out of his office, got between them, and directed Student I into his office.

SCI investigators interviewed Magyar who confirmed Student I's description of the incident with Fields.

SCI investigators interviewed Student I's mother who had written an official letter of complaint to Marsella regarding the incident. The mother said that she then spoke to Marsella about the incident. Marsella told the mother that Fields was an "asset" to OCS, that Marsella did not want to lose him, and that Marsella would take care of the issue about which the mother was concerned. Marsella advised that she would contact the mother when the matter was addressed by OCS, but Student I's mother did not hear from Marsella again.

During one of the interviews with Marsella, she said that she did not think she did a write-up about the complaint Student I made against Fields. Marsella added that she spoke to Fields about the incident, but did not fire him. According to Marsella, she met with Fields and Student I's mother and felt that they "seemed to come to an understanding about the incident."

During one of the interviews with Goldberg, he did not recall an incident involving Student I and Jamar Fields. However, Goldberg reported that Fields was no longer employed at OCS.

During one of the interviews with Fazio, he recalled hearing that Jamar Fields told Student I: "I am not your nigger." Fazio believed that the student's parents came into the

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<sup>22</sup> Verbal incidents were not part of the Analysis.

<sup>23</sup> Student I has turned 16; she was 14 at the time of the incident.

school and spoke with Marsella about the incident. Fazio added that no OCS incident report was prepared about the verbal outburst. Fazio acknowledged that not all restraint and verbal incidents were documented.

### **Conclusions**

Betty Marsella acknowledged that she did not interview anyone in connection with the OCS Report and did not see anyone interviewed. According to Marsella, no one reviewed the write-up of restraints after Fazio. Marsella admitted that the search of Student B should have been documented. Marsella also was aware of the incidents involving Student G, Student C, and Student I, for which no reports were made.

Leonard Goldberg acknowledged that he was aware of the anonymous allegation of physical abuse and had spoken to Marsella about the findings, but did not recall whether he read the OCS Report. Goldberg admitted that the search of Student B should have been documented. Goldberg also was aware of the incident involving Student J and “some demonstration” with Student G’s hair, for which no reports were prepared.

Brett Fazio acknowledged that not all restraint and verbal incidents were documented. Fazio admitted that the search of Student B should have been documented. Fazio also was aware of the incidents involving Student G, Student J, Student C, and Student I, for which no reports were made.

The statements of Marsella, Goldberg, and Fazio were not consistent. It is not clear who knew what about each incident and who should have taken action.

The incidents described in this document show that the use of TCI must be monitored much more closely. The staff conduct at OCS during the 2007-2008 school year went beyond restraint and could be considered condoned assaults and abuse of schoolchildren. At OCS, there was inadequate supervision of the use of physical intervention, there was inadequate response to parental complaints about its use, and there was inadequate follow up of the action taken by the Specialists.

### **Recommendations**

We refer this matter for your review and action which is not inconsistent with our findings.

We are sending a copy of this document to Chancellor Klein for his information and any action he deems appropriate.

We would appreciate being notified about any action you take regarding the findings reported here. Should you have any inquiries regarding the above, please contact Ann E. Ryan, the attorney assigned to this case. She may be reached at (212) 510-1493.

Sincerely,

RICHARD J. CONDON  
Special Commissioner  
of Investigation for the  
New York City School District

By:

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Regina A. Loughran  
First Deputy Commissioner

RJC:RAL:AER:gm