



U.S. Department of Justice
Civil Rights Division



U.S. Department of Education
Office for Civil Rights

May 4, 2011

Dr. Tom Tapper
Superintendent
Independent School District #761
515 West Bridge Street
Owatonna, MN 55060

Re: OCR Complaint (#05-10-1148) and DOJ Investigation

Dear Dr. Tapper:

This is to advise you of the resolution of the complaint (#05-10-1148) filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), on March 19, 2010 against Independent School District #761 (District) alleging that the District discriminated against Somali students on the basis of race, color or national origin and of the portion of the investigation of the U.S. Department of Justice (DOJ), Civil Rights Division, Educational Opportunities Section, concerning allegations that the District discriminated against Somali students on the basis of race, color or national origin.¹

Specifically, the OCR complaint alleged that during the 2009-10 school year, students at the Owatonna High School harassed Somali students on the basis of race, color or national origin and the District failed to stop the harassment. The portion of the DOJ investigation being resolved focused on whether the District's treatment of Somali students discriminated against them on the basis of race, color, or national origin, with respect to harassment, student discipline and access to Advanced Placement and Honors courses.

Both OCR and DOJ are responsible for enforcing Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d, and its implementing regulation, 34 C.F.R. Part 100. DOJ is also responsible for enforcing Title IV of the Civil Rights Act of 1964 (Title IV), 42 U.S.C. § 2000c, *et seq.* Title VI, its implementing regulation and Title IV prohibit discrimination on the basis of race, color or national origin by public elementary and secondary schools.² The District is a

¹ The resolution and investigations described in this letter do not address a separate allegation that the District discriminated against Somali students on the basis of religion. That allegation is being addressed in a separate DOJ investigation that is ongoing.

² The regulation implementing Title VI, at 34 C.F.R. § 100.3(a), states that no individual may be excluded from

public elementary and secondary school system and is, therefore, subject to the provisions of Title VI, its implementing regulation and Title IV.

Harassment on the basis of race, color, or national origin is a form of prohibited discrimination. To determine whether a hostile environment based on race, color, or national origin exists, OCR and DOJ consider whether there was harassing conduct that was sufficiently severe, pervasive or persistent so as to interfere with or limit the ability of an individual to participate in or benefit from the services, activities or privileges provided by a school. If a hostile environment based on race, color, or national origin exists, and a school has notice of the hostile environment, then the school is required to take appropriate responsive action.³

Different treatment on the basis of race, color, or national origin is also a form of prohibited discrimination. To determine whether different treatment occurred, OCR and DOJ examine whether there were any apparent differences in the treatment of similarly situated students on the basis of race, color or national origin. If individuals were subjected to different treatment, OCR and DOJ determine whether the school can provide a legitimate, non-discriminatory reason for the different treatment and whether the proffered reason is a pretext for discrimination. OCR and DOJ also examine whether there is any evidence to suggest that the school treated the individual(s) in a manner that was inconsistent with its established policies and procedures, or whether any other evidence of race, color or national origin discrimination exists.

As part of their investigations, OCR and DOJ obtained and reviewed extensive data from the District and the OCR Complainant, the Council on American-Islamic Relations (CAIR). DOJ also conducted meetings with community advocacy groups, students and parents.

Owatonna High School is the only high school in the school district. The high school has a student population of over 1500 students; the School's enrollment includes fewer than 100 Somali students. The School's "Harassment and Violence" Policy (Policy) prohibits any form of religious, racial or sexual harassment and violence at the School.⁴ The Policy specifically defines racial harassment as consisting of physical or verbal conduct relating to an individual's race when the conduct:

- 1) has the purpose or effect of creating an intimidating, hostile, or offensive working or academic environment;
- 2) has the purpose or effect of substantially or unreasonably interfering with an individual's work or academic performance; or

participation in, be denied the benefits of, or otherwise be subjected to discrimination on the basis of race, color, or national origin under any program or activity that receives Federal financial assistance from the Department. The regulation at 34 C.F.R. § 100.3(b)(i)-(iii) prohibits the denial of any service or benefit, or the provision of different services or benefits, or separate treatment in a program, on the basis of race, color, or national origin.

³ See OCR's 2010 Dear Colleague letter on Harassment and Bullying, which is available at

<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html>

⁴ Available at <http://www.owatonna.k12.mn.us>

- 3) otherwise adversely affects an individual's employment or academic opportunities.

The Policy encourages persons reporting a violation of the Policy to use the specific form developed by the District for that purpose and advises potential complainants that the form is available from the principal of each school building or available from the District office. However, the Policy makes clear that oral reports "shall be considered complaints as well." According to the Policy, upon receipt of a report, the principal is required to notify the District's human rights officer immediately. The human rights officer can investigate the complaint herself or authorize an investigation of the complaint by a school official or a third party designated by the District. The Policy provides that complaints shall immediately be investigated, and that the investigations will be "completed as soon as practicable."

The specific harassment alleged in the OCR complaint and DOJ investigation involved offensive and derogatory comments made by white students about Somalis and Somali students in fall 2009. The comments resulted in a fight between the students and suspensions of only the Somali students. Information obtained in the investigations indicated that the District issued more severe disciplinary sanctions to the Somali students who were involved in the fight than to the white students involved in the fight. OCR and DOJ also received reports of additional incidents of harassment of Somali students, including the use of a racial epithet, in the winter and spring 2010.

In the summer 2010 and prior to the completion of the OCR and DOJ investigations, the District requested to voluntarily enter into a settlement agreement to address both the OCR and DOJ investigations. During the course of subsequent discussions, the District took several steps to address the issues in the OCR and DOJ investigations, including revising its harassment policies and procedures and addressing differences in the discipline imposed on white and Somali students involved in response to the November 2009 incident. The discussions with the District resulted in the District signing the enclosed agreement (Agreement) which, when fully implemented, will resolve the issues in the OCR complaint and the portion of the DOJ investigation referenced above. The provisions of the Agreement are aligned with the OCR complaint allegation and issues being investigated by DOJ and with the information obtained during the OCR and DOJ investigations. The Agreement provisions are consistent with the applicable regulations and statutes. As a result of the Agreement, OCR and DOJ are not making any compliance determinations regarding the OCR complaint or the issues being investigated by DOJ that are addressed by the Agreement.

Under the provisions of the Agreement, the District will take all reasonable steps to ensure that all students in the district are not subjected to harassment or discrimination on the basis of race, color or national origin, and to respond promptly and appropriately to all reports of harassment. The Agreement includes a number of specific steps that the District has agreed to take to further this objective, including: (1) issuing an anti-harassment statement to all District students, parents and staff; (2) reviewing and revising its harassment and disciplinary policies and procedures to ensure that they are reasonably designed to prevent, address and respond to incidents of harassment; (3) conducting training of all district faculty, staff and students on discrimination and harassment; (4) meeting with high school Somali students to discuss their concerns about

harassment; (5) establishing a working group of District personnel, students and parents to make recommendations to the District regarding the effectiveness of the District's anti-harassment program; (6) developing a district-wide monitoring program to assess the effectiveness of the district's anti-harassment efforts; (7) investigating its class assignment process for Advanced Placement and Honors course offerings; and (8) providing annual compliance reports to OCR and DOJ.

OCR and DOJ will monitor the District's implementation of the Agreement. We look forward to receiving the District's first report regarding its implementation of the Agreement by August 1, 2011.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The OCR Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

We commend the District for the affirmative and positive efforts it has taken to address and prevent the harassment of its students. Thank you for the courtesy and cooperation that you and your staff extended to OCR and DOJ during the investigations.

If you have any questions regarding this letter, you may contact Jason Frazer, OCR Regional Attorney, at (312) 730-1653 or Nicholas Murphy, DOJ Trial Attorney, at (202) 307-6358. Mr. Frazer and Mr. Murphy can also be reached by email at Jason.Frazer@ed.gov and Nicholas.Murphy@usdoj.gov.

Sincerely,

/S/
Dave Blom
Team Leader
U.S. Department of Education
Office for Civil Rights
Chicago Office

/S/
Nicholas Murphy
Trial Attorney
U.S. Department of Justice
Civil Rights Division
Educational Opportunities Section
Washington D.C.

Enclosure

cc: Ms. Jennifer K. Early, Esq.
District Counsel