



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION IV

61 FORSYTH ST., SOUTHWEST, SUITE 19T10
ATLANTA, GA 30303-8927

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March 23, 2016

VIA FACSIMILE AND REGULAR MAIL

Ms. Kathryn LeRoy
Superintendent
Polk County Public Schools
P.O. Box 391
Bartow, Florida 33831

Re: Complaint #04-14-1664

Dear Ms. LeRoy:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed on July 14, 2014, against Polk County Public Schools (District) alleging discrimination based on race and national origin. The Complainant alleged that the Student was subjected to harassment that created a hostile environment based on the perception that she was of XXXX national origin and race, including the shared ethnic characteristic of XXXXXXXX X XXXXX.¹ The Complainant further alleged that the District failed to appropriately respond to complaints about the harassment.

OCR investigated this complaint under the authority of Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d, *et seq.*, and its implementing regulations, which prohibit discrimination on the basis of race, color or national origin by recipients of Federal financial assistance from the Department. As a recipient of Federal financial assistance from the Department, the District is subject to these laws. Accordingly, OCR has jurisdiction over this complaint.

During the course of this investigation, OCR reviewed evidence provided by the Complainant and the District, including correspondence, student records, and the District's policies and procedures. OCR also interviewed the Complainant, the Student and members of the District's administrative staff.

OCR evaluates evidence under a preponderance of the evidence standard; in order to establish a violation the evidence must be sufficient to prove that it is more likely than not that a violation occurred. Based on its investigation, OCR has determined that the Student was subjected to

¹ XXX XXXXX XXXX "XXXXX" XXXXXXX XX XXX XXXX XX XXXXXXXXXXXX XXXX XX XXXX XX
XXXX XXXXXXX XXXXX.

harassment that created a hostile environment based on her perceived national origin and race (XXXX), including the shared ethnic characteristic of wearing a XXXXX, and that the District failed to respond appropriately to the harassment, in violation of Title VI and its implementing regulations.

Legal Standards

Title VI and its implementing regulations at 34 C.F.R. § 100.3 prohibit harassment based on national origin and/or race that creates a hostile environment. In addition, discrimination against a student who is a member of a religious group violates Title VI when that discrimination is based on the group's actual or perceived shared ancestry or ethnic characteristics, rather than solely on its members' religious practices.²

Harassing conduct may take many forms, including verbal acts and name-calling, as well as nonverbal behavior, such as graphic and written statements, or conduct that is physically threatening, harmful, or humiliating. Harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents.

Harassment creates a hostile environment when the conduct is sufficiently severe, pervasive or persistent that it interferes with or limits a student's ability to participate in or benefit from the services, activities or privileges offered by a school. OCR considers a variety of related factors to determine if a hostile environment based on race, national origin, or shared ancestry has been created and also considers the conduct in question from both an objective and subjective perspective. OCR examines the context, nature, scope, frequency, duration, and location of the incidents of discrimination. The harassment must in most cases consist of more than casual or isolated incidents to establish a violation.

In evaluating the severity of harassment, the unique setting and mission of an educational institution must be taken into account. An educational institution has a duty to provide a nondiscriminatory environment that is conducive to learning. OCR also takes into account the relevant particularized characteristics and circumstances of the victim, including the victim's national origin, age and shared ethnic characteristics, when evaluating the severity of harassment at an educational institution. If OCR determines that the harassment was sufficiently severe that it would have adversely affected the enjoyment of some aspect of the recipient's educational

² 34 C.F.R. § 100.3(a): "No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this part applies."

34 C.F.R. § 100.3(b): "A recipient under any program to which this part applies may not . . . on the ground of race, color, or national origin: (i) Deny an individual any service, financial aid, or other benefit provided under the program; (ii) Provide any service, financial aid or benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program; (iii) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program.

See also OCR's *Racial Incidents and Harassment against Students at Educational Institutions: Investigative Guidance*, 59 Fed. Reg. 11,448 (Mar. 10, 1994) and OCR's *Dear Colleague Letter* concerning discrimination on the basis of shared ancestry and ethnic characteristics (Sept. 13, 2004).

program by a reasonable person, of the same age, national origin and shared ethnic characteristics as the victim, under similar circumstances, OCR will find that a hostile environment existed. OCR also considers the identity, number, and relationships of the individuals involved. For example, harassing conduct by a teacher may have a greater impact on a student than the same conduct by another student. The effect of conduct may be greater if perpetrated by a group of students rather than by an individual student.

If a recipient has actual or constructive notice of a hostile environment, the recipient is required to take appropriate responsive action to investigate or otherwise determine what occurred. If an investigation reveals that the harassment created a hostile environment, the recipient must then take prompt and effective steps reasonably calculated to end the harassment, eliminate the hostile environment, prevent its recurrence, and remedy its effects, by ensuring that participants are not restricted in their participation or benefits as a result of a hostile environment.

OCR evaluates the appropriateness of a recipient's responsive action by examining its reasonableness, timeliness, and effectiveness. The appropriate response to a hostile environment based on race or national origin must be tailored to redress fully the specific problems experienced at the school as a result of the harassment. Examples of appropriate responses include such actions as separating the accused harasser and the target of the harassment, providing counseling for the harasser and target of the harassment, taking disciplinary measures against the harasser, implementation of racial awareness training, not only for the accused harasser, but for the larger school community, development and dissemination of a policy prohibiting racial harassment, and provision of grievance or complaint procedures.

Background

During the 2013-2014 school year, the Student was XX years old and in the XXXXX XXXXX at XXXXX XXXXXXXXXXXX XXXX XXXXXXX (School), which enrolled XXXX students. The Student is a XXXXXXXXXXXX XXXXXXX whose ancestry is XXXX XXXXXXX from XXXXXXX. The Student began XXXXXXXXXXX X XXXXXXX to school on XXXXXXXXXXX X, XXXX; only one other student in the School, a senior, XXXX X XXXXXXX. The Student XXXXXXXXXXX from the school at the end of the spring 2014 semester.

Summary of allegations

The Complainant alleged that the Student was subjected to the following incidents of harassment:

- In XXXXXXXXXXX XXXX, the Student's XXXXXXX XXXXXXXXXXX XXXXXXXXXXX XXXXXXXXXXX XXXXX (XXXXX) instructor stated to the Student's class of approximately thirty students that XXXXXXXXXXX XXXXXXX XX XXXX XXX XXXXXXXXXXXXXXXXXXX "XXXXXXXX XXXXXXX XXXX XXXX XXXX XXXX XXXX XX XXXX X XXXX XXXX, XXX XXXX XXXX XX XXX XXXXXXXXXXX XX X XXXXX XXX." The Student asked the instructor whether the comment meant that XXXXXXXXXXX were "the enemy," to which the instructor replied "No, but XXXXXXXXXXX XXXX XXXXXXX XX XXXXXXX XXXXXXXXXXX XXX XXXX XXX XXXXXXX." At the

time the instructor made these comments, the Student was contemplating XXXXXXXX XXX XXXXX to school, but became uncomfortable and nervous about doing so after hearing these remarks. The Student informed the principal of the School of the instructor's comments about XXXXXXXX.

- On XXXXXXXX X, XXXX, the first day that the Student began XXXXXXXX XXX XXXXX to school, Student 1 "grabbed [the Student's] XXXXX and said, 'XXXX XX XXXX, XXXX XXX XXXXX?'" The dean of the School was informed of this incident.
- On XXXXXXXX XX, XXXX, Student 2 shouted at the Student, "Yo, we got XXXXXXXXXXX, XXX!" This incident took place in the hallway where students were travelling between classes. Later the same day, Student 3 shouted at the Student, "It's X XXXXXXXXXXX, XXX!" This incident took place in the presence of other students, many of whom stared and laughed at the Student. Following these incidents, the Student's mother sent an e-mail to the principal of the School, expressing concern over these incidents.
- On XXXXXXXX XX, XXXX, Student 4, in the presence of the Student and other students, XXXXXXXX XXX XXXXX XXXXXXXX XXX XXXX XXX XXXXXXXX "X XX XX XXXX! XXX! XXX XXXX XXX XX! XX XXXXX XX XXXXX XXX!" while XXXXXXXX XXX XXXX XXX XXXXXXXXXXXX XX XXXXX XXXXXXXXXXXXXXX XXXX XXXXXXXX. Student 5, who witnessed Student 4's actions, then XXXXXXXX XXX XXXXX XXX XXXXXXXX "Look at me, XX XX XXXX! XX XX XXXX!" The Student's mother sent an e-mail to the principal of the School expressing concern over these incidents.
- In XXXXXXXX XXXX, Student 5 attempted to trip the Student by stepping on her foot while the Student was walking to carpool during dismissal. The Student's mother notified the principal of the School of this incident in a voicemail message. Later the same day, the Student called her mother and told her that she was extremely upset and wanted to be home-schooled.
- In XXXXXXXX XXXX, the Student's XXXXX XXXXXXXX XXXXXXXX (Student 6) asked the Student XX XXX XXX XXXXXXXX, because XXX XXXX XXXX XXXXXXXX XXXXXXXX. The Student's mother notified the principal of the School of this incident in an e-mail message.

Findings of Fact

OCR's investigation established that the District received notice concerning each of the alleged incidents of harassment and that it responded timely to each incident. OCR further determined that the District took the following actions with regard to each alleged incident:

- Incident in XXXXXXXX XXXX: District administrative staff met with the XXXXX instructor; the instructor apologized to the Student for his comments in early XXXXXXXX XXXX.
- Incident on XXXXXXXX X, XXXX: District administrative staff met with Student 1; no disciplinary action was taken.

- Incidents on XXXXXXXX XX, XXXX: District administrative staff met with Student 2 and his parent; Student 2 was counselled about his behavior, with counselling noted in his disciplinary record. The District imposed one day of out-of-school suspension on Student 3.
- Incidents on XXXXXXXX XX, XXXX: District administrative staff met with Student 4 and his parent; Student 4 was counselled about his behavior, with counselling noted in his disciplinary record. No action was taken with regard to Student 5.
- Incident in XXXXXXXX XXXX: District administrative staff interviewed Student 5 and the Student and reviewed video footage of the location of the alleged incident (not finding footage of the alleged incident). District administrative staff also met with Student 5, his parents, and the school resource officer. Although the investigation did not corroborate the Student's description of the incident, Student 5 was counselled and warned of the consequences if the District received further complaints concerning his behavior.
- Incident in XXXXXXXX XXXX: District administrative staff took statements from the Student, Student 6, and student witnesses. The District determined that the incident did not constitute harassment; no further action was taken.

In addition to the above-cited responsive actions, on XXXXXXXX XX, XXXX, the principal and the guidance counselor of the Student's School met with the Student, her mother, and an XXXX. During this meeting, the principal stated that the Student should communicate with the other XXXXXX XXXXXXXX (senior) in the School who XXXX X XXXXX, as she could serve as the Student's "XXXXXX," and also proposed that the Student communicate with a XXXX XXXXXXXX student in the School. The principal stated that the Student was free to contact the guidance counselor "whenever she wanted" and that the dean of the School would "check on" the Student each week. The guidance counselor stated to OCR that she from time to time "checked in with [the Student] to ask her how her day was going," and there is evidence that the guidance counselor communicated with the Student concerning her assignments in XXXXX XXXX. The dean stated to OCR that he "checked on [the Student] every day . . . and let her know she could talk to me or a guidance counselor any time." In addition, the School permitted the Student to XXXXXXXX XXX XXXXXXX XXXX for approximately two weeks, and in late XXXXX XXXX, permitted her to XXXXXXXX XXX XXXXXXXXXXXX in the School's XXXXX XXXXXXXX for three weeks.

The Student informed OCR that the XXXXXXX XXXXXXX student was not helpful to her and that she was uncomfortable communicating with the XXXX XXXXXXX student. She reported that she did not speak about the incidents of harassment with the guidance counselor. In addition, the Student informed OCR that she was not comfortable speaking with the male dean, and the dean stated to OCR that because the Student told him that she was not comfortable with him, he was "very careful about [his] contact with her." The Student further stated that toward the end of the spring semester 2014, she hid in the bathroom during the lunch period so that she would not have to eat alone in the cafeteria because her classmates would not talk with her, which she attributed to the fact that she had XXXXX XXXXX XXX XXXXXXXXXXXX XX

XXXXX XXXXXXXXXXXX XXXX. She reported feeling isolated and fearful, stating that her friends “turned their backs on me” and that students looked at her “weirdly.” At the end of the spring semester of the XXXX_XXXX school year, the Student XXXXXXXX from the District.

OCR noted that the District has policies prohibiting harassment and procedures for filing complaints of discrimination and harassment (*The School Board of Polk County Bylaws & Policies. Section 5517.01-Bullying and Harassment and Section 5517.02—Anti-Harassment Complaint Procedure*). The policies define harassment as “. . . any threatening, insulting, or dehumanizing gesture, use of data or computer software, or written, verbal or physical conduct directed against a student or school employee that . . . has the effect of *substantially* (emphasis added) interfering with a student’s educational performance, opportunities, or benefits . . .”

Analysis

OCR determined that the Student was subjected to harassment that created a hostile environment based on the perception that she was of XXXX national origin, including the Student’s manner of XXXX—XXX XXXXXXXX XX X XXXXX—which is not only a XXXXXXXXXXXX XXXXXXXXXXXX, but also an XXXXXXXX characteristic shared by many XXXXXXXX. OCR further determined that although the School’s response to each of the incidents was timely, the School failed to take steps reasonably calculated to end the harassment, eliminate the hostile environment to which the Student was subjected and its effects, and prevent the harassment from recurring.

The instructor’s criticism of the cultural characteristics of XXXXX XXXXXXXX XXXXX and his characterization of XXXXXXXX as “XXXXXXX” in a class composed of the Student and her XXXXX classmates had a significant negative impact on the Student, particularly in light of the fact that she was at that time contemplating expressing her XXXXXXXX XXXXXXXX through XXXXXXXX X XXXXXXXX. The harassing conduct of the Student’s peers was derogatory and intimidating, and it was expressed both verbally and physically. The incidents occurred in close temporal proximity to each other—eight incidents over approximately four months—and were public in nature, occurring during a class or in hallways and other public spaces in the School. Furthermore, some of the incidents are closely related. For example, the behavior of Student 3 on XXXXXXXX XX, XXXX, appeared to be related to that of Student 2, and the conduct of Student 5 on XXXXXXXX XX, XXXX, is similar to the conduct of Student 4. The Student reported to the School and confirmed to OCR that she felt isolated and uncomfortable as a result of the incidents, which led to her request to be XXXXXXXXXXXXXXXX. Accordingly, OCR finds that the incidents of harassment, when viewed in their totality, were sufficiently severe, pervasive or persistent that they interfered with or limited the Student’s ability to participate in or benefit from the services, activities or privileges offered by the School.

Other than informing the Student that she was free to contact the guidance counselor “whenever she wanted,” which all students in the School presumably had a right to do, and asking a dean to “check on” the Student, no counselling was offered to the Student, even when it was clear to School administrators that the Student was so upset by the incidents that she wanted to leave the School. In addition, the School failed to recognize that a response that focused on the broader School community may have been appropriate and effective in preventing the recurrence of the

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harassment. For example, with regard to the XXXXX instructor's comments to a class of students concerning XXXXXXXX, the School's response was limited to having the instructor apologize to the Student. There is no evidence that the School considered the effect that such negative comments about XXXXXXXX would have on the other students in the class who heard them and whether broader remedial efforts were necessary. Similarly, the evidence reflects that the District characterized the incidents that involved the Student's peers in a manner that minimized their significance. With regard to the incidents of XXXXXXXX XXXX, the School failed to recognize that a response that focused on the larger School community may have been appropriate. Instead, the School treated each of the incidents that took place in December as a discrete matter, focusing only on the conduct of the students involved: The dean reported to OCR that he took no action with regard to Student 1 because Student 1's grabbing the Student's XXXXX was not "purposefully mean" and Student 1 "tends to talk about appearances," and the School addressed the other incidents with the imposition of discipline for Students 2, 3 and 4 (counselling, out-of-school suspension). There was no evidence that the School considered that the incidents, most of which took place in public areas in the presence of other students, affected not only the Student, but also evidenced a need to address the School environment.

Further, the District's policies incorrectly defined harassment as conduct that "substantially" interferes with a student's educational performance, opportunities, or benefits.

Conclusion

OCR has determined that the Student was subjected to harassment based on her perceived national origin that created a hostile environment and that the District failed to take steps reasonably calculated to end the harassment, eliminate the hostile environment to which the Student was subjected and its effects, and prevent the harassment from recurring, in violation of Title VI and its implementing regulations, 34 C.F.R. § 100.3(a) and (b).

The District has entered into a Resolution Agreement pursuant to which the District will, among other steps, revise District policies 5517.01 and 5510.02 regarding harassment; conduct annual climate surveys that will include questions aimed at gathering information regarding national origin and racial stereotyping; and conduct annual harassment training for staff and students about the District's revised harassment policy, including a discussion regarding national origin and racial stereotyping. To address the hostile environment to which the Student was subjected, the Resolution Agreement includes remedies for the Student should she decide to reenroll in the District.

OCR will closely monitor the District's implementation of the Resolution Agreement to ensure that the commitments made are implemented timely and effectively. OCR may conduct visits and may request additional information as necessary to determine whether the District has fulfilled the terms of the Resolution Agreement and is in compliance with Title VI with regard to the issues raised. As stated in the Resolution Agreement entered into by the District on December 2, 2015, if the District fails to implement the Resolution Agreement, OCR may initiate administrative enforcement or judicial proceedings, including to enforce the specific terms and obligations of the Resolution Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10) or judicial proceedings, including to enforce the Resolution

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Agreement, OCR will give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

This concludes OCR's investigation of the complaint and should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. 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 complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records, upon request. If we receive such a request, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Intimidation or retaliation against complainants by recipients of Federal financial assistance is prohibited. No recipient may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws OCR enforces, or because one has made a complaint, or participated in any manner in an investigation in connection with a complaint.

This concludes OCR's consideration of this complaint, which we are closing effective the date of this letter. If you have any questions regarding this matter, please contact Ms. Ebony Calloway-Spencer, Compliance Team Leader, at (404) 974-9367.

Sincerely,

Melanie Velez
Regional Director

cc: XXX XXXXXXXX, XXX., via electronic mail

Enclosure: Resolution Agreement