



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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November 7, 2017

Dr. Peter Morikis
Superintendent
Griffith Public Schools
602 N. Raymond
Griffith, IN 46319

Re: OCR Docket #05-14-1060

Dear Dr. Morikis:

This is to notify you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed against Griffith Public Schools (Corporation) alleging discrimination on the basis of race.

The complaint alleges the following:

1. in XXXXXXXX, the Corporation subjected a XXXXXXXX student (Student A) to discrimination based on race when on several occasions teachers engaged in actions that negatively affected his grades;
2. in XXXXXX, the Corporation subjected Student A and his parent (Parent A) to discrimination based on race when teachers harassed them, and the Corporation was aware of the harassment, but failed to address the harassment;
3. the Corporation subjected Student A and Parent A to retaliation because Parent A complained of discrimination based on race, in that in XXXXXXXX the Corporation XXXXXX Student A; and
4. the Corporation subjected Student A to discrimination based on race when it XXXXXX him in XXXXXXXX.¹

OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d - 2000d-7, and its implementing regulation, 34 C.F.R. Part 100. Title VI prohibits discrimination on the basis of race, color, or national origin. The Corporation is a recipient of

¹ By letter dated March 17, 2014, OCR notified the Corporation that this allegation raised whether the Corporation subjects black students to discrimination on the basis of race when imposing exclusionary discipline. OCR has concluded that there is no current systemic allegation appropriate for further investigation and resolution and is administratively closing the systemic allegation pursuant to Section 110(o) of OCR's Case Processing Manual. OCR's Case Processing Manual can be found here: <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Federal financial assistance from the Department, and therefore is subject to the provisions of Title VI.

During its investigation, OCR reviewed data provided by Parent A and the Corporation and interviewed Parent A and Corporation employees. Based upon its investigation, OCR has determined that the preponderance of the evidence does not establish a violation with regard to complaint allegations #1-3. Prior to the completion of OCR's investigation of allegation #4, the Corporation signed the attached Resolution Agreement (Agreement) to resolve the allegation. The bases for OCR's determinations are set forth below.

Legal Standards

The Title VI implementing regulation, at 34 CFR § 100.3(a), provides, in relevant part, that no person shall, on the basis of race, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance from the Department.

The Title VI implementing regulation, at 34 CFR §§ 100.3(b)(1)(i)-(vi), provides that a recipient may not, directly or through contractual or other arrangements, on the grounds of race, color or national origin, deny an individual any service or benefit of its programs; provide any service or benefit to an individual which is different or is provided in a different manner from that provided to others under the program; subject an individual to segregation or separate treatment in any matter related to receipt of any service or other benefit under the programs; restrict an individual in the enjoyment of any advantage or privilege or other benefits of its programs; treat an individual differently in determining whether he or she satisfies any requirement in order to be provided any service or benefit under the program; or deny an individual an opportunity to participate in a program through the provision of services which is different from that afforded others under the program.

Title VI prohibits intentionally disciplining students differently on the basis of race, color, or national origin. In determining whether a recipient subjected an individual to discrimination on the basis of race, OCR considers whether the recipient treated similarly-situated individuals differently on the basis of race. If evidence of different treatment is found, OCR then determines whether the reasons offered by the recipient for the different treatment are legitimate or a pretext for unlawful discrimination. Additionally, OCR examines whether the information shows that the recipient treated the individual in a manner that is inconsistent with its established policies, practices and procedures or whether any other evidence of discrimination based on race exists.

Racial harassment that creates a hostile environment can constitute a form of discrimination prohibited by Title VI. Harassment based on race is intimidation or abusive behavior toward a student based on race that creates a hostile environment by interfering with or denying a student's participation in or receipt of benefits, services, or opportunities in the institution's program. Harassing conduct may take many forms, including verbal acts and name calling, 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.

To find a violation of Title VI under the hostile environment theory, the evidence must establish that: (1) a hostile environment on the basis of race existed, i.e., harassing conduct (e.g., physical, verbal, graphic, or written) occurred 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 recipient; (2) the recipient had notice of the hostile environment; and (3) the recipient failed to respond adequately to address the hostile environment. In analyzing claims of harassment based on race, OCR considers the totality of the circumstances to determine whether a hostile environment has been created. These circumstances include the context, nature, scope, frequency, duration, and location of the harassment incidents, as well as the identity, number, and relationships of the persons involved. Once a recipient has notice of a racially hostile environment, the recipient must take reasonable steps to eliminate it and prevent recurrence.

Harassment of a student by an employee can be discrimination in violation of Title VI. The extent of a recipient's responsibilities when an employee harasses a student is determined by whether or not the harassment occurred in the context of the employee's provision of aids, benefits, or services to students. OCR will consider a variety of factors in determining whether or not the harassment has taken place in this context including the type and degree of responsibility given to the employee to provide aids, benefits, or services to students, to direct and control student conduct, or to discipline students generally; the degree of influence the employee has over the particular student involved, including in the circumstances in which the harassment took place; where and when the harassment occurred; the age and educational level of the student involved; and as applicable, whether, in light of the student's age and educational level and the way the institution is run, it would be reasonable for the student to believe that the employee was in a position of responsibility over the student, even if the employee was not.

In cases involving allegations of harassment of elementary and secondary school students by an employee during any school activity, consideration of these factors will generally lead to a conclusion that the harassment occurred in the context of the employee's provision of aid, benefits, or services. If an employee who is acting (or who reasonably appears to be acting) in the context of carrying out these responsibilities over students engages in racial harassment, the recipient is responsible for the discriminatory conduct. The recipient is, therefore, also responsible for remedying any effects of the harassment on the victim, as well as for ending the harassment and preventing its recurrence.

The regulation implementing Title VI does not contain an explicit requirement that recipients adopt and implement complaint procedures to address allegations of discrimination based on race, color, or national origin. However, grievance procedures that encompass race discrimination can be part of a prompt and effective response to harassment or other forms of discrimination prohibited by Title VI. In addition, a recipient that has adopted discrimination complaint procedures must apply the procedures in a manner that does not constitute Title VI discrimination.

The Title VI implementing regulation, at 34 C.F.R. § 100.7(e), prohibits recipients from intimidating, threatening, coercing or discriminating against any individual for the purpose of interfering with any right or privilege secured by the regulation or because the individual has made a complaint or participated in any manner in an investigation or proceeding under the regulation.

A recipient engages in unlawful retaliation when it takes an adverse action against an individual either in response to the exercise of a protected activity or to deter or prevent protected activity in the future. To find a *prima facie* case of retaliation, each of the following three elements must be established: (1) an individual experienced an adverse action caused by the recipient; and (2) the recipient knew that the individual engaged in a protected activity or believed the individual might engage in a protected activity in the future; and (3) there is some evidence of a causal connection between the adverse action and the protected activity.

If all of the elements of a *prima facie* case of retaliation are met, then OCR considers whether the recipient presented a facially legitimate, non-retaliatory reason for taking the adverse action. If so, then OCR considers whether the reason for the adverse action is genuine or a pretext for retaliation, or whether the recipient had multiple motives for taking the adverse action. OCR determines whether the legitimate, non-retaliatory reason is credible by considering all relevant evidence, such as changes in the treatment of the individual after the protected activity occurred, the proximity in time between the protected activity and the adverse action, the recipient's treatment of the individual compared to similarly-situated individuals, and the recipient's deviation from established policies or practices.

Corporation Policies and Procedures

The Corporation's Nondiscrimination and Access to Equal Educational Opportunity Policy (Nondiscrimination Policy)² states that the Corporation "does not discriminate on the basis of ... race, color, [or] national origin, ... in its programs, activities, or employment." The Nondiscrimination Policy also states that the Corporation will "provide an equal opportunity for all students, regardless of race, color, ..., national origin, place of residence within the boundaries of the [Corporation], or social or economic background, to learn through the curriculum offered" in the Corporation.

The Corporation's Bylaws and Policies pertaining to student discipline³ state that removal from the educational program, including by suspension or expulsion, is the most severe sanction that can be imposed and that no "student is to be suspended and/or expelled from an activity, program, or a school unless his/her behavior represents misconduct or substantial disobedience while the student is on school grounds immediately before or during school hours, or immediately after school hours, or at any other time when the school is being used by a school group; off school grounds at a school activity, function, or event; or traveling to or from a school activity, function, or event."

² <http://www.neola.com/griffith-in/>

³ <http://www.neola.com/gfps-in/>

The Corporation's Elementary Schools Datebook (Datebook), provided to all students and parents, lists several examples of conduct in violation of the Corporation's Conduct Code, including unacceptable, profane, or obscene language, acts and gestures, or harassment; the Datebook indicates that these examples are not all-inclusive.

The Datebook states that engaging in prohibited behaviors or activities, or violating the Corporation Conduct Code in other ways may subject a student to discipline "ranging from a conference to expulsion depending upon the severity and/or frequency of the violation." The Datebook lists several potential grounds for suspension or expulsion, including failing in a substantial number of instances to comply with directions of teachers or other school personnel and violating or repeatedly violating any rules that are reasonably necessary in carrying out school purposes or an educational function.

Allegation #1

The complaint alleges that the Corporation subjected Student A to discrimination based on race when teachers engaged in actions that negatively impacted Student A's grades.

Facts

Student A was in XXXXX at XXXXX School in XXXXX. Parent A cited several incidents in XXXXX that she said negatively impacted Student A's grades.

First, Parent A stated that Student A's XXXX teacher (Teacher A) gave the class a study guide to assist all the students in the class in preparing for an exam; however, when Student A received a XXXXX grade on the study guide, Teacher A did not inform the parent. Parent A stated that Teacher A's failure to notify her of the XXXXX study guide grade, either via direct communication or on Student A's weekly progress report, was discriminatory because Student A was not able to adequately prepare for the exam. Parent A also said that Teacher A administered the exam to all students one week late later than originally scheduled, which disrupted Student A's studying and preparation.

Teacher A told OCR that all students were required to complete the study guide in class, as an open book assignment. She said that she sent the graded study guides home with each student for parent signature. Teacher A said that she spoke to Parent A via telephone regarding the study guide and recalls that the parent was upset because Student A had not performed well on it. Teacher A said that Parent A wanted Teacher A to allow Student A to resubmit the study guide for a better grade, but Teacher A told Parent A that she would not permit this because if she did she would then have to give each student in the class the same opportunity. Teacher A did not recall giving a test late, but stated that this may have occurred early in the school year when she took time off to XXXXXXXX. She stated that if the test was given late, all students would have been informed of the new date and administered the test together.

Parent A also stated that Student A's XXXXX teacher (Teacher B) did not permit him to retrieve homework assignments left in his homeroom class, which resulted in Student A receiving a XXXXX grade for each such assignment. Parent A told OCR that Student A had previously attended school in a corporation that did not change classes, and so Student A often forgot assignments for other classes in his homeroom. She acknowledged that the Corporation's policy is not to accept late assignments, but said she believes that white students are given more leniency than black students. The parent did not provide any specific examples of different treatment.

Teacher B told OCR that the Corporation's policy is not to accept a late assignment whether the assignment was left at home, in another class or not completed. She stated that students receive a XXXXX grade on assignments not turned in at the appropriate time, and that the policy applies to all students. Teacher B said that she spoke with Parent A on numerous occasions regarding Student A's late assignments and that she permitted Student A to turn them in. She said that although the Corporation's policy is not to allow late assignments, when a parent contacts her, she always grades the assignment and enters the grade. She said that each time Parent A contacted her, she accepted Student A's late assignment and entered the grade. Teacher B told OCR, and email correspondence between Parent A and Teacher B confirmed, that there was only one assignment not graded. Parent A told OCR that Student A completed and turned in the assignment, but that Teacher B misplaced it. Teacher B told OCR that she did not receive the assignment and that she permitted Student A to return to his homeroom class to locate the assignment, but that he could not find it.

Parent A told OCR that Student A's grades were also negatively impacted because his teachers gave him conduct marks for minor issues, such as leaving his book bag on the floor in the classroom; she specifically mentioned Teacher A as having done so, but did not identify any other teachers in connection with this allegation. She said that the conduct marks are calculated each week and are then factored into the student's quarter grade. Teacher A told OCR that she treated Student A like all students in her class and gave him conduct marks when he was disruptive in class, including when Student A walked around the room, talked with other students when Teacher A was teaching, removed items from another student's desk, or chewed gum.

Analysis and Conclusions

The evidence established that Teacher A administered a study guide to Student A and the entire science class to assist them in preparing for a science test. The evidence also established that Parent A was aware of Student A's grade on the study guide because she contacted Teacher A to discuss options for Student A to re-submit the study guide for a better grade. While it is unclear whether Teacher A administered the science test to which the parent referred late, the evidence established that all students took the test at the same time.

The evidence also established that, while Parent A alleged that Teacher B prohibited Student A from retrieving assignments left in another class, Parent A did not provide examples of other students being permitted to leave Teacher B's class to retrieve assignments. The evidence also revealed that the Corporation's policy is to give all students a XXXXX grade for any assignment

not turned in on time, whether the assignment was left in another class, at home, or not completed. However, the evidence established that Teacher B frequently permitted Student A to submit late assignments after communicating with his parent. To the extent that Teacher B varied from the Corporation policy it was to Student A's benefit.

The evidence also established that Teacher A gave Student A marks in conduct boxes for disruptive behavior. While Parent A indicated that Student A was given such marks for minor behavior, Teacher A reported that students of other races in her classes received conduct marks for similar conduct, and the parent provided no examples of similarly-situated students treated more favorably than Student A.

Based on the above, OCR determined that there was insufficient evidence to establish that the Corporation subjected Student A to discrimination based on race when teachers engaged in actions that negatively impacted Student A's grades.

Allegation #2

The complaint alleged that the Corporation subjected Student A and Parent A to harassment based on race when teachers harassed them.

Facts

Parent A told OCR that in XXXXXX, Student A's XXXXX teacher (Teacher C) yelled at her and was dismissive and rude to her during a telephone conversation about Student A's homework assignments. Parent A said that Teacher C accused her of not understanding the school's policy or quality work, and that Student A's home life must be poor because his behavior in school is unacceptable. Teacher C told OCR that he recalled one telephone conversation during which Parent A was loud, rude and very accusatory. He said that he could not recall what Parent A was angry about, but that she was shouting at him. He said that he recalls telling Parent A that he would not continue the conversation if she kept yelling. Teacher C said that he remained calm and did not yell at or make rude comments to Parent A, including the comments attributed to him by the parent, during the conversation. Parent A did not identify any witnesses to the alleged harassment.

Parent A also stated that Student A's XXXXXX teacher (Teacher D) often made mean comments to Student A in front of the classroom, including "You've been sitting here this whole time and all you've written is this?" Parent A said that Student A XXXXXX and that Teacher D's comments to him were unduly harsh.

Teacher D told OCR that she did not recall making the above statement to Student A, but said that she may have said something similar to him because she frequently tells all students to stay on task. She said that she has asked students, "What are you doing with your time?" when they have not completed an assignment. She said that she treats all students the same and stated that a XXXXX student in her class needed more redirection than Student A and that she often told the

XXXXX student to “Get on task.” Teacher D said that she is not influenced by the students’ race when making comments to redirect them.

Parent A told OCR that in XXXXX, she and Student A attended a Corporation-sponsored bowling night. She said that during the event, Student A was with a XXXXX student who turned the bathroom lights on and off while others used the facilities. Parent A said that a XXXX teacher (Teacher E) noticed, grabbed Student A and led him away from the bathroom and nothing happened to the other student. Parent A said that when she asked Teacher E what happened, Teacher E was rude to and yelled at her. The Principal, who was present during the incident, told OCR that Teacher E told all the students involved to stop turning the lights on and off and that Parent A subsequently came to her to say that Teacher E should not have spoken to Student A about his conduct but instead should have discussed it with Parent A. The Principal said Parent A became loud and angry. She said that she spoke with Parent A and explained that Student A had admitted to turning the bathroom lights on and off, and that the Corporation needed to maintain a positive relationship with the owners of the bowling alley. The Principal said that Student A and his parent left the bowling alley after this conversation.

Parent A also alleged that, in XXXXX, Student A’s XXXXX teacher (Teacher F) changed Student A’s seat and gave Student A a conduct mark when he asked a question in class. Parent A did not indicate that Teacher F made any reference to Student A’s race. Parent A said that Student A reported that Teacher F does not similarly discipline XXXX students, but did not identify any similarly situated XXXXX students who were not disciplined. Teacher F told OCR that she did not recall the December incident specifically, but said she did not give Student A a conduct mark for asking questions; she said that Student A was often disruptive by interrupting her when she was giving instructions, and she may have given him a conduct mark for such conduct. She said she treated students of all races in the same manner when they engaged in similar conduct. She also said she did not change his seat.

Analysis and Conclusions

Parent A cited four instances of alleged racial harassment, but the evidence did not establish that any comments were made on any of these occasions that referenced her race or that of Student A.

The evidence established that Teacher D routinely encourages students in her class to focus on their assignments, including by asking the students how they are using their time, and that any comments she made to Student A were part of such an effort. The evidence established that Parent A and Teacher C engaged in a telephone conversation regarding Student A and that the parent and Teacher E had a conversation about Student A’s misconduct at a bowling alley, but differed as to whether either Teacher C or Teacher E yelled at and was rude to the parent. Finally, the evidence established that Teacher F did not change Student A’s seat and that if she gave Student A a conduct mark, it was for disruptive behavior and was consistent with her practice with students of other races.

Based on the above, OCR determined that there was insufficient evidence to establish that the Corporation subjected Student A and his parent to discrimination based on race when teachers harassed them.

Allegations #3 and #4

The complaint alleged that the Corporation subjected Student A to discrimination based on race when it XXXXX him in XXXXX and that the Corporation subjected Student A and Parent A to retaliation because Parent A complained that the XXXXX of the Student was based on race.

Facts

Parent A told OCR that she frequently communicated with Corporation administrators and teachers on behalf of Student A. In particular, she told OCR that in XXXXX, she met with the Principal and the Director, separately, to discuss Student A's conduct grades and Teacher C's treatment of Student A in class; however, she indicated that she did not complain specifically about discrimination based on race. No documentation provided to OCR indicated that the parent reported alleged race discrimination to Corporation officials.

Parent A said Student A was XXXXX for XXXXXX, and she believed that a XXXXX was too harsh of a consequence for this conduct. The school's Dean of Students told OCR that, in XXXXX, Student A was sent to the office on a referral slip for XXXXX. He said that Student A XXXXXX. The Dean of Students told OCR that Student A admitted to XXXXXX and that, in response, he and the Principal decided that XXXXX was appropriate. The Dean of Students said that each disciplinary incident is reviewed individually, but that the school had not had an incident XXXXX.

Information from the Corporation indicated that three XXXXX students, including Student A, two XXXX students, and one XXXX student were disciplined for XXXX during the XXXXX school year at XXXXX. Student A and one XXXXX black student disciplined for harassment/intimidation were given a XXXXX; however, no description is given for the incident leading to the discipline of the other student. The third XXXXX student was given a XXXXX for XXXXX. The two XXXX students were given XXXXX for XXXXXX, while the XXXXX student was given a XXXXX for XXXXX. There is no indication that any of the students who received less severe sanctions than XXXX had XXXXXX. OCR did not yet interview staff regarding whether the conduct of these other students was different from that of Student A.

Data from the District indicated that in the XXXXX school year, XXXXX students represented XXXXX of the students enrolled in the District, but XXXX of all disciplinary incidents were of XXXXX students. In addition, XXXXX of ISS, XXXXX of OSS, and XXXXX of expulsions were of XXXXX students. The racial disparity between XXXXX and XXXXX students was statistically significant in both ISS and OSS.

Analysis and Conclusions

Allegation #3

With regard to the allegation of retaliation, the evidence established that Parent A communicated regularly with staff regarding Student A's academics and conduct, and that she met with the Principal and Director to complain about Student A's conduct grades and how Teacher C treated Student A in class; however, she did not complain of race discrimination or harassment. OCR determines that Parent A did not engage in a protected activity of which the Corporation was aware. Therefore, there is insufficient evidence to establish that the Corporation subjected Student A to retaliation, as alleged.

Allegation #4

The evidence established that Student A was given a XXXXX for XXXXX. Two other XXXXX students were given a XXXXX for XXXXX and a XXXXX student was given a XXXXX for XXXXX. Two XXXXX students were only given XXXXX for XXXXX.

The Corporation advised OCR that it was interested in resolving the complaint pursuant to Section 302 of OCR's *Case Processing Manual*. In accordance with Section 302 of OCR's *Case Processing Manual*, it is appropriate to resolve allegation #4 at this juncture because OCR's investigation has not proceeded to a point where a finding is clear.

The Agreement requires the Corporation to designate an employee to serve as the Corporation's Discipline Supervisor and publish this individual's name and/or title, office address, e-mail address and telephone number; to revise its policies and procedures for discipline; to review the discipline of Student A to determine whether he was subjected to discrimination based on race when he was XXXXX in XXXXX and, if the Corporation determines that Student A's conduct was similar to XXXXX students who received less severe discipline, to expunge Student A's disciplinary records regarding the harassment incident that remain within the school's electronic records; to provide effective training on its revised discipline policies and procedures to Corporation personnel; and to collect available data regarding referrals for student discipline and the imposition of disciplinary sanctions at all Corporation schools.

Overall Conclusion

This concludes OCR's investigation of the complaint and should not be interpreted to address the Corporation's compliance with any other regulatory provision or to address any issues other than those addressed in this letter.

The 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.

Please be advised that the Corporation may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives 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 privacy.

The Complainant may file a private suit in federal court, whether or not OCR finds a violation.

We wish to thank you and Corporation staff for the cooperation and courtesy extended to OCR during this investigation. We also particularly wish to thank Ms. Monica Conrad, Corporation counsel, for her assistance. If you have any questions regarding this letter, please contact me at (312) 730-1611 or by email at Jeffrey.Turnbull@ed.gov.

Sincerely,

Jeffrey Turnbull
Team Leader

Enclosure

cc: Ms. Monica Conrad