



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

50 BEALE ST., SUITE 7200
SAN FRANCISCO, CA 94105

REGION IX
CALIFORNIA

April 8, 2014

Earnie Graham
Superintendent
Stony Creek Joint Unified School District
3430 County Creek Road 309
Elk Creek, California 95939

(In reply, please refer to # 09-13-1452.)

Dear Superintendent Graham:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed against the Stony Creek Joint Unified School District. The Complainant alleged that her daughter (Student 1, White) was subject to peer-peer racial harassment by another student (Student 2, Native American) in the form of racial slurs and physical abuse; and subsequent to being notified of the harassment, the District failed to respond appropriately.¹

OCR enforces Title VI of the Civil Rights Act of 1964 and its implementing regulation. Title VI prohibits discrimination on the basis of race, color or national origin in programs and activities operated by recipients of Federal financial assistance. The District receives funds from the Department and is subject to Title VI and the regulation.

To investigate the complaint, OCR spoke with District administrators and Board members. OCR attempted to contact the Complainant, however, she was unavailable. OCR also reviewed documents that were provided by both the Complainant and the District.

Under Article III, Section 302, of OCR's Case Processing Manual, a complaint may be resolved at any time before the conclusion of an investigation when the district expresses an interest in resolving the complaint. Prior to OCR concluding its investigation, the District expressed a strong interest to resolve the complaint voluntarily. OCR and the District entered into an agreement to resolve the complaint on March 25, 2014. Accordingly, OCR did not complete its investigation or reach conclusions regarding the District's compliance with Title VI.

The following is a summary of the evidence gathered in OCR's preliminary investigation, the applicable legal standard, and the terms of the voluntary resolution agreement.

¹ OCR notified the District of the identities of Student 1 and the Complainant when the investigation began. We are withholding their names from this letter to protect their privacy.

The regulations implementing Title VI, at 34 C.F.R. §100.3(a) and (b), prohibit discrimination based on race, color or national origin by recipients of Federal financial assistance. School districts are responsible under Title VI and the regulation for providing students with a nondiscriminatory educational environment. Harassment of a student based on race, color or national origin can result in the denial or limitation of the student's ability to participate in or receive education benefits, services, or opportunities.

Under Title VI and the regulations, once a district has notice of possible harassment between students on the basis of race, color or national origin, it is responsible for determining what occurred and responding appropriately. The district is not responsible for the actions of a harassing student, but rather for its own discrimination in failing to respond adequately. A district may violate Title VI and the regulations if: (1) the harassing conduct is sufficiently serious to deny or limit the student's ability to participate in or benefit from the educational program; (2) the district knew or reasonably should have known about the harassment; and (3) the district fails to take appropriate responsive action. These steps are the school's responsibility whether or not the student who was harassed makes a complaint or otherwise asks the school to take action.

OCR evaluates the appropriateness of the responsive action by assessing whether it was prompt, thorough, and effective. What constitutes a reasonable response to harassment will differ depending upon the circumstances. However, in all cases the district must conduct a prompt, thorough and impartial inquiry designed to reliably determine what occurred. If harassment is found, it should take reasonable, timely, age-appropriate, and effective corrective action, including steps tailored to the specific situation. The response must be designed to stop the harassment, eliminate the hostile environment, and remedy the effects of the harassment on the student who was harassed. The district must also take steps to prevent the harassment from recurring, including disciplining the harasser where appropriate. A series of escalating consequences may be necessary if the initial steps are ineffective in stopping the harassment.

Other actions may be necessary to repair the educational environment. These may include special training or other interventions, the dissemination of information, new policies, and/or other steps that are designed to clearly communicate the message that the district does not tolerate harassment and will be responsive to any student reports of harassment. The district also should take steps to prevent any retaliation against the student who made the complaint or those who provided information.

In determining whether a hostile environment based on race, color or national origin has been created, OCR evaluates whether or not the conduct was sufficiently serious to deny or limit the student's ability to participate in or benefit from the school's program. OCR examines all the circumstances, including: the type of harassment (e.g. whether it was verbal or physical); the frequency and severity of the conduct; the age, race, and relationship of the parties; the setting and context in which the harassment occurred; whether other incidents have occurred at the school; and other relevant factors.

OCR's preliminary investigation showed the following:

- The District is located in rural northern California. The District covers approximately six hundred square miles, nearly half of which is within the boundaries of the Mendocino National Forest. Also included in this area is a Native American reservation.
- Based on 2012-2013 data from the California Department of Education, the District is predominately White (42%) and Native American (38%). In 2012 the total student population was 111 students.
- On August XX, 2013, a fight occurred between Student 1 (White) and Student 2 (Native American).² The Complainant stated to OCR that racial slurs were used during this fight, and that Student 1 had been called honky, cracker, and white b—ch in years past. Following the fight, Student 1 wrote a detailed statement about the fight and her history with Student 2; this statement did not mention racial language. Student 2's statement also did not mention racial language.
- The District uses its Uniform Complaint Procedure (UCP) to resolve discrimination complaints. The UCP has a "Level I" complaint form for initial complaints, and a "Level II" form for appeals. The District also has forms designated Level I and Level II under its procedure for complaints against District personnel, which is unrelated to the UCP.
- On September X, 2013, the Complainant filed a complaint on the District's Level I form for complaints against personnel. The complaint described in detail the Complainant's dissatisfaction with the District's response to the fight between Students 1 and 2. It also alleged that Student 1 had been subject to racial bullying and physical and verbal abuse by Student 2.
- Apparently because of the form the Complainant used, the Board interpreted her complaint as a grievance against the Superintendent and the Board informed her that it would investigate her complaint. The Board's investigation consisted of speaking with the Principal and Superintendent; the Board did not interview the Complainant or any other witnesses. The Board was unaware that Students 1 and 2 had made written statements until they were produced in response to the OCR complaint.
- On November X, 2013, the Complainant received a letter from the Board President explaining, in pertinent part, the disciplinary action taken against Student 2. The letter did not acknowledge the Complainant's allegation of racial harassment or reach conclusions about whether harassment occurred. The

² The Complainant alleged that the Student 1 and Student 2 had a contentious history, however, the District was unable to locate records of previous altercations. The District attributed the records deficiency to recent turnover of District leadership.

District told OCR that it did not interpret the complaint as a race discrimination complaint.

- The UCP states that it should be used to resolve complaints of discrimination based on disability, sex and ethnicity, among other bases. OCR identified a number of problems with the UCP. It requires that complainants attempt to resolve complaints informally with the other party before proceeding to a formal process, which is generally inappropriate in harassment cases. It states confusingly both that it should be used to resolve complaints of sex discrimination, and that complaints under Title IX are exempt. Other than requiring an initial investigative meeting with the complainant, it does not specify that the District will investigate the complaint or how.
- The UCP's time frames for important stages of the resolution process are unclear; in one instance it states the District will inform the complainant of the outcome within 60 days; in another it suggests that it will provide notice within 20 days. It provides for a first level of appeal to the District and a second level through the California Department of Education, and specifies a 15-day deadline for the state appeal. This timeline does not seem to be required by the state but rather arbitrarily imposed by the District. The UCP refers to other outside agencies as well, including the State Superintendent of Public Instruction and OCR, but does not explain the function of these agencies.
- Additionally, the Parent Handbook's description of the UCP process conflicts in certain respects with the UCP itself. For example, the Handbook suggests that informal mediation is voluntary while the UCP states that it is mandatory. The Handbook also provides outdated contact information for the Superintendent, who is designated to resolve UCP complaints. While the Handbook states that the UCP may be obtained at the school site or District office, it does not state where complaint forms are located. The UCP and complaint forms are not available on the District website.
- District witnesses told OCR that there is a history of racial tension between Native American and White students in the District. However, the District does not maintain a record keeping system to document the processing and resolution of complaints, maintain a log of complaints received or otherwise have a means to assess the presence and effect of harassment based on race, color or national origin.

As noted above, under OCR's procedures, a complaint may be resolved at any time when, before the conclusion of an investigation, a district expresses an interest in resolving the complaint. OCR did not complete its investigation or make a determination in this case due to the District's request to enter into a voluntary agreement. The Agreement commits the District to (1). revise its policy and procedure relating to discrimination complaints, (2). notify all District employees of the revisions to its policy and procedure, (3). maintain a record keeping system, (4). train all

administrators, teachers and counselors on how to appropriately respond to discrimination complainants, (5) conduct a survey related to discrimination in District schools, and (6) conduct an appropriate investigation of the September incident underlying this complaint.

OCR is closing this complaint as of the date of this letter. OCR will monitor the District's implementation of the agreement. Resolution of this complaint 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 is based on 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 file a private suit in federal court, whether or not OCR finds a violation.

Please be advised that the District 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 personal privacy.

If you have any questions about the complaint, please call Rhonda Ngom, Civil Rights Attorney at (415) 486-5540.

Sincerely,

/s/

James M. Wood
Team Leader

Enclosure