



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION I
5 POST OFFICE SQUARE, 8th FLOOR
BOSTON, MASSACHUSETTS 02109-3921

April 18, 2018

Jennifer Curtis-Whipple
jennifer.whipple@weymouthschools.org

Re: Complaint Nos. 01-15-1110 & 01-16-1085
Weymouth Public Schools

Dear Superintendent Curtis-Whipple:

This letter is to advise you of the outcome of the complaints that the U.S. Department of Education (Department), Office for Civil Rights (OCR) received against Weymouth Public Schools (District). In Complaint Number 01-15-1110, the complainant (Complainant 1) alleged that the District discriminated against her XXXXXXXX (Student 1) on the basis of race when on September 18, 2014, a XXXXXX teacher (Teacher 1) told Student 1 she was “a little XXXX to be the XXX” for a presentation on the XXXXXX system; on January 8, 2015, a XXXXX teacher (Teacher 2) failed to take action when Student 1 reported a classmate’s XXXXXX jokes; during the 2013-2014 school year, Teacher 1 treated other students of color differently than white students, white students repeatedly made racist comments to Student 1 or in front of her in class and in the XXXXXXXX, and Teacher 1 retaliated against Student 1, including by assigning her XXXXX XXXXXX after she reported the teacher’s racially motivated comment to the school principal. In Complaint Number 01-16-1085, the complainant (Complainant 2) alleged that the District discriminated against her XXX (Student 2) on the basis of race and sex when on December 9, 2015, a XXXXXX school teacher (Teacher 3) pushed Student 2 XXXXX XXXXX in his back, chest, and face, and threatened him, and the District failed to adequately respond to the report of these incidents.

OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin in any program or activity receiving federal financial assistance from the Department. OCR also enforces Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any program or activity receiving federal financial assistance from the Department. Because the District receives federal financial assistance from the Department, OCR has jurisdiction over it pursuant to Title VI and Title IX.

Legal Standard

Racially & Sexually Hostile Environment

A recipient’s failure to respond promptly and effectively to racial and sexual harassment about which it knew or should have known, and that is sufficiently serious that it creates a hostile

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

environment, is a form of discrimination prohibited by Title VI and Title IX. A recipient may also violate Title VI and Title IX if an employee engages in racial and sexual harassment of students in the context of the employee carrying out his/her responsibility to provide benefits and services, regardless of whether the recipient had notice of the employee's behavior. Harassing conduct may take many forms, including verbal acts and name-calling; graphic and written statements, which may include use of cell phones or the internet; physical conduct; or other conduct that may be physically threatening, harmful, or humiliating. Harassment creates a hostile environment when the conduct is sufficiently severe or pervasive as to interfere with or limit a student's ability to participate in or benefit from the recipient's programs, activities, or services. When such harassment is based on race or sex, it violates Title VI and Title IX.

To determine whether a hostile environment exists, OCR considers the totality of the circumstances from both an objective and subjective perspective and examines the context, nature, scope, frequency, duration, and location of incidents, as well as the identity, number, and relationships of the persons involved. Harassment must consist of more than casual, isolated incidents to constitute a hostile environment.

When responding to harassment, a recipient must take immediate and appropriate action to investigate or otherwise determine what occurred. The specific steps in an investigation will vary depending upon the nature of the allegations, the source of the complaint, the age of the student or students involved, the size and administrative structure of the school, and other factors. In all cases, however, the inquiry should be prompt, thorough, and impartial. If an investigation reveals that discriminatory harassment has occurred, a recipient must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring.

Race- and Sex-Based Different Treatment

The Title VI regulation, at 34 C.F.R. § 100.3(a), provides that no person shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under a recipient's programs or activities on the basis of race, color, or national origin. The Title IX regulation, at 34 C.F.R. § 106.31(a), provides that no person shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under a recipient's education programs or activities on the basis of sex.

When investigating an allegation of different treatment, OCR first determines whether there is sufficient evidence to establish an initial, or *prima facie*, case of discrimination. Specifically, OCR determines whether the recipient treated the student less favorably than similarly situated individuals of a different race or sex. If so, OCR then determines whether the recipient had a legitimate, nondiscriminatory reason for the different treatment. Finally, OCR determines whether the reason given by the recipient is a pretext, or excuse, for unlawful discrimination.

Retaliation

The Title VI regulation, at 34 C.F.R. § 100.7(e), prohibits retaliation against any individual who asserts rights or privileges under Title VI or who files a complaint, testifies, assists, or

participates in a proceeding under Title VI. The Title IX regulation, at 34 C.F.R. § 106.71, incorporates, *inter alia*, 34 C.F.R. § 100.7(e), to prohibit retaliation against any individual who asserts rights or privileges under Title IX or who files a complaint, testifies, assists, or participates in a proceeding under Title IX.

In analyzing an individual’s claim of retaliation against a recipient, OCR analyzes whether: (1) the recipient knew the individual engaged in a protected activity or believed the individual might engage in a protected activity in the future;¹ (2) the individual experienced an adverse action caused by the recipient;² and (3) there is some evidence of a causal connection between the adverse action and the protected activity. If all these elements are present, this establishes an initial, or *prima facie*, case of retaliation. OCR then determines whether the recipient has identified a legitimate, non-retaliatory reason for taking the adverse action. OCR next examines this reason to determine whether it is a pretext for retaliation, or whether the recipient had multiple motives (illegitimate, retaliatory reasons and legitimate, non-retaliatory reasons) for taking the adverse action. If OCR finds that the reason was pretextual, then OCR will make a finding of retaliation; conversely, if OCR finds that the recipient proffered a legitimate, non-retaliatory reason for the action at issue and that the reason was not pretextual, then OCR will find insufficient evidence of a violation.

Relevant Facts

During the investigation of these complaints, OCR reviewed documents provided by the Complainants and the District, and interviewed the Complainants and District faculty and staff. For complaint number 01-15-1110, OCR also interviewed students who attended the Maria Chapman Middle School (School). Before OCR completed its investigation, the District expressed a willingness to resolve these complaints by taking the steps set out in the enclosed Resolution Agreement (Agreement).

Student 1 and Student 2 started attending the School at the beginning of the XXXX-XXXX and XXXX-XXXX school years, respectively. The District’s data confirmed that Student 1 and Student 2 reported that teachers subjected them to discriminatory conduct based on race and/or sex during their tenure at the School. Specifically, Student 1 alleged that during a XXXXXX system demonstration in September 2014, Teacher 1 commented on her XXXX XXXXX by stating that she was “a little too XXXX to play the XXX.” Student 2 alleged that in December 2015, Teacher 3 confronted and shoved him while he was walking in the hallway.

Complainant 1, Complainant 2, and the District confirmed that the District was made aware of these incidents. The District’s data indicated that in October 2014, Complainant 1 informed the Principal of Teacher 1’s comment to Student 1. Likewise, correspondence provided by the District revealed that on the date of the incident between Teacher 3 and Student 2, Teacher 3 reported the incident to a School administrator. Although the School responded to both incidents, their approach to the allegations was different. The Principal stated that Complainant 1 contacted him to complain about the incident involving Student 1, and that he responded by

¹ A “protected activity” is the exercise of a right that is protected under OCR’s non-discrimination laws.

² An adverse action is something that could deter a reasonable person from engaging in further protected activity.

asking Teacher 1 to contact the Complainant to resolve the situation. Teacher 1 confirmed that she advised Complainant 1 that she did not make the statement.

With respect to the incident involving Student 2, the Principal recalled that Teacher 3 reported the incident to him right after it occurred. The District's correspondence indicated that the Principal and Dean responded by interviewing Teacher 3; Student 2; a student of color (Student 3) who was in the XXXXXXXX with Student 2 at the time of the incident; and four teachers whose classrooms were off the XXXXXXXX where the incident occurred. The District's data indicated that the Principal concluded that the evidence did not support a finding that Teacher 3 engaged in abusive conduct toward Student 2, and therefore, provided no remedial measures to Student 2. The District's data does not indicate that the School examined whether Student 1 or Student 2 were subjected to discriminatory conduct based on race and/or sex.

The District's data indicated that Student 1 reported that she was also subjected to racially motivated comments by two white students (Student 4 and Student 5). In particular, Student 4 told her that he was part black because his XXXX were so large;³ and in Teacher 2's class, Student 5 made several comments in Student 1's presence, including that he did not understand how black people were getting into college, made repeated jokes about black people with darker skin, and used the N-word repeatedly. Correspondence provided by the District does not indicate whether Student 1 reported Student 4's comment to School staff, and if the School responded. Teacher 2 denied hearing Student 5 use any racial epithets or the N-word. The Dean confirmed that he spoke with Student 5. According to the Dean, Student 5 admitted that he used the N-word. The Dean disciplined Student 5 by speaking with his mother about his use of the word, and required Student 5 to complete a research paper about the dangers of making race-based comments and why people are offended by them.

Student 1 asserted that she experienced several other race-based incidents which the District did not investigate. Student 1 reported that in the early spring of 2015, she observed Teacher 1 direct a racially offensive comment at another black student (Student 6). Specifically, Student 1 stated that when Teacher 1 saw Student 6 writing on his arm with a XXXXX XXXXXXXXXXXX XXXXXXX, Teacher 1 told him that it was stupid for him to do so because the writing could not be seen due to his skin color. Student 1 recalled that Teacher 1 asked Student 1 and Student 6 to come into the hallway with her after she observed their reaction to her comment. Student 1 stated that Student 6 told Teacher 1 that he believed her comment was racist. According to Student 1, Teacher 1 apologized to them and reiterated that she was concerned that Student 6 had cuts on his arm that could have allowed the harmful chemicals from the XXXXXXXXXXXX XXXXXXX to enter his blood stream. Although Teacher 1 confirmed that she reported this incident to the Principal and Assistant Principal, the District's data does not indicate that the School conducted an investigation to determine whether Student 1 and Student 6 were subjected to discriminatory conduct based on race.

Complainant 1, Student 1, and School staff confirmed that in April 2015, Teacher 1 observed Student 1 copying another student's XXXXXXXXXXXX XXXXXXXXXXXX. Although Student 1 admitted that she was copying the XXXXXXXXXXXX XXXXXXXXXXXX, she denied that her conduct constituted cheating and believed Teacher 1's accusation was retaliatory because it occurred one

³ Neither Student 1 nor the data provided by the District indicated where this comment was made.

week after the incident involving Student 6’s use of the XXXXX XXXXXXXXXXXX XXXXXX. Teacher 1 convened a meeting with Complainant 1, Student 1, and the Dean to discuss the incident and provide Student 1 support to improve her course grade. Although School staff believed the meeting went well, the Student transferred to a school outside the District a few weeks later.

Analysis

Prior to the conclusion of OCR’s investigation and pursuant to Section 302 of OCR’s *Case Processing Manual*,⁴ the District expressed an interest in resolving these complaints. The evidence obtained to date raises potential concerns over whether the District: (1) treated Students 1 and 2 less favorably than similarly situated students of a different race and/or sex without a non-pretextual legitimate non-discriminatory reason; (2) took immediate and appropriate action to investigate the complaints made by Students 1 and 2; and (3) retaliated against Student 1 when it accused her of cheating on her XXXXXXXXXXX XXXXXXXXXXXX shortly after she engaged in protected activity. For its part, the District denied that Students 1 and 2 were treated as they alleged; maintained that it responded timely and appropriately to each incident reported; and denied that it had a retaliatory motive for its conduct towards Student 1. Because the District expressed a willingness to resolve these complaints pursuant to a voluntary resolution agreement, OCR has not at this time made a compliance determination with regard to these incidents. In order to complete the investigation and make a compliance determination, OCR would need to request data regarding the School’s treatment of students of a different race and/or sex under circumstances similar to those involving Student 1 and Student 2, as well as conduct supplemental interviews of the Principal, Dean, Teacher 1, Teacher 2, Teacher 3, Student 1, and Student 2.

Conclusion

OCR notes that since these complaints were filed, the District has taken several steps intended to foster a more inclusive climate at the School. During the summer of 2017, the District sent members of the School’s staff to a three-day anti-bias training, the Anti-Defamation League’s (ADL) *A World of Difference Institute* in Montpelier, VT. In addition, in November 2017, the District invited the ADL to conduct a one-day professional development training for staff responsible for elementary aged students. The training was aimed at increasing awareness of personal responses to racial and cultural differences, as well as developing instructional practices that foster a safe environment for discussions of, among other topics, racial and cultural differences. Finally, in January and February 2018, the District invited the ADL to provide a four-day Peer Education Training to twelve School students, preparing them to plan and implement projects of their own choosing that they believe will promote a more respectful and inclusive school community.

In addition, the District has signed the enclosed Agreement which, when fully implemented, will address all of the allegations raised in the complaints at issue here. The terms of the Agreement are aligned with the allegations in the complaints and are consistent with the applicable laws and regulations. OCR will monitor the District’s implementation of the Agreement.

⁴ The *Case Processing Manual* is available at <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

This concludes OCR’s investigation of these complaints. This letter 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 individual OCR cases. 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 Complainants may have the right to file private suits in federal court whether or not OCR finds a violation.

Please be advised that the District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

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

If you have any questions, you may contact Civil Rights Attorney Abra Francois at (617) 289-0142 or by e-mail at Abra.Francois@ed.gov.

Sincerely,

Meena Morey Chandra *w/p AMM*
Acting Regional Director

Enclosure

cc: XXXXXX XXXXXX
Stoneman, Chandler & Miller LLP
Counsel to the District