



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

March 5, 2018

Dr. Alicia M. Roy
Superintendent of Schools
New Fairfield Board of Education
3 Brush Hill Road
New Fairfield, CT 06812

Re: Complaint No. 01-16-1117
New Fairfield Board of Education

Dear Dr. Roy:

This letter is to advise you of the outcome of the complaint that the U.S. Department of Education (Department), Office for Civil Rights (OCR) received against the New Fairfield Board of Education (the District). The complaint, which was filed with OCR on February 9, 2016, alleged that the District failed to respond appropriately to a racially hostile environment that was created for her daughter (the Student) and other students following certain events during the 2015-2016 school year. As explained further below, after OCR began its inquiry, the District contacted OCR and expressed its interest in proactively addressing school climate matters. Based on the District's request to resolve the complaint and other legal considerations, OCR did not complete its review. The District's commitments are reflected in the enclosed Resolution Agreement.

Legal Standards

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. The District is subject to the requirements of Title VI because it is a recipient of Federal financial assistance from the Department.

The regulation implementing Title VI, at 34 C.F.R. § 100.3, provides that no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in a recipient school district's programs or activities. Racial harassment is a form of discrimination prohibited by Title VI.

A violation of Title VI may be found if a recipient has created or is responsible for a racially hostile environment, i.e., harassing conduct that is 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. A recipient has subjected an individual to different treatment on the basis of race if it has effectively caused, encouraged, accepted, tolerated, or failed to correct a racially hostile environment of which it has actual or constructive notice. Under this analysis, an alleged harasser need not be an agent or employee of the

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

recipient, because this theory of liability under Title VI is premised on a recipient's general duty to provide a nondiscriminatory educational environment.

To establish a violation of Title VI under the hostile environment theory, OCR must find that: (1) a racially hostile environment existed; (2) the recipient had actual or constructive notice of the racially hostile environment; and (3) the recipient failed to respond adequately to redress the racially hostile environment. Whether conduct constitutes a hostile environment must be determined from the totality of the circumstances. OCR enforces the requirements of Title VI consistent with the requirements of the First Amendment to the U.S. Constitution. The laws that OCR enforces protect students from discrimination, but are not intended to restrict the exercise of protected speech in violation of the First Amendment. However, harassment of students, which can include both verbal and physical conduct, can be a form of discrimination, prohibited by the laws enforced by OCR. Thus, for example, in addressing harassment allegations, OCR has recognized that the fact that a particular expression is offensive, standing alone, is not a legally sufficient basis to establish a hostile environment under the statutes enforced by OCR. In order to establish a hostile environment under the laws enforced by OCR, harassment must be sufficiently serious (*i.e.*, severe, persistent, or pervasive) as to limit or deny a student's ability to participate in or benefit from a recipient's educational program or activity. Thus, OCR's standards require that the conduct be evaluated from the perspective of a reasonable person in the alleged victim's position, considering all circumstances, including the alleged victim's age.

To determine whether a racially hostile environment exists, OCR must determine if the racial harassment is severe, pervasive, and/or persistent.

OCR will examine the context, nature, scope, frequency, duration, and location of racial incidents, as well as the identity, number, and relationships of the persons involved. In general, the harassment must consist of more than casual or isolated racial incidents to establish a Title VI violation. Generally, the severity of the incidents needed to establish a racially hostile environment under Title VI varies inversely with their pervasiveness or persistence.

When OCR evaluates the severity of racial 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. In addition to the curriculum, students learn about many different aspects of human life and interaction from school. The type of environment that is tolerated or encouraged by or at a school can therefore send a particularly strong signal to, and serve as an influential lesson for, its students.

As with other forms of harassment, OCR must take into account the relevant, particularized characteristics and circumstances of the victim, especially the victim's race and age, when evaluating the severity of racial incidents 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 program by a reasonable person of the age and race as the victim, under similar circumstances, OCR will find that a hostile environment existed. The reasonable person standard as applied to a child must incorporate the age, intelligence, and experience of a person under like circumstances to take into account the developmental differences in maturity and perception due to age.

To determine severity, the nature of the incidents must also be considered. Evidence may reflect whether the conduct was verbal or physical, and the extent of hostility characteristic of the incident. In some cases, a racially hostile environment requiring appropriate responsive action may result from a single incident that is sufficiently severe. Such incidents may include, for example, injury to persons or property, or conduct threatening injury to persons or property.

The size of the recipient and the location of the incidents also will be important. Less severe or fewer incidents may more readily create racial hostility in a smaller environment, such as an elementary school, than in a larger environment, such as a college campus. The identity, number, and relationships of the individuals involved will also be considered on a case-by-case basis. The effect of conduct may be greater if perpetrated by a group of students rather than by an individual student.

In determining whether a hostile environment exists, OCR investigators will also review the possible existence at the recipient institution of racial incidents other than those alleged in the complaint, and will obtain evidence about them to determine whether they contributed to a racially hostile environment or corroborate the allegations.

A recipient can be deemed to have notice of a racially hostile environment in many different ways. For example, a student may have filed a grievance or complained to a teacher about fellow students racially harassing him or her. A student, parent, or other individual may have contacted other appropriate personnel, such as a principal. An agent or responsible employee of the institution may have witnessed the harassment. A recipient is charged with constructive notice of a hostile environment if, upon a reasonably diligent inquiry in the exercise of reasonable care, it should have known of the discrimination. A recipient also may be charged with constructive notice if it has notice of some, but not all, of the incidents involved in a particular complaint. In some cases, the pervasiveness, persistence, or severity of the racial harassment may be enough to infer that the recipient had notice of the hostile environment. If the alleged harasser is an agent or employee of a recipient, acting within the scope of his or her official duties (i.e., such that the individual has actual or apparent authority over the students involved), then the individual will be considered to be acting in an agency capacity and the recipient will be deemed to have constructive notice of the harassment.

Once a recipient has notice of a racially hostile environment, the recipient has a legal duty to take reasonable steps to eliminate it. If OCR finds that the recipient took responsive action, OCR will evaluate the appropriateness of the responsive action by examining reasonableness, timeliness, and effectiveness. The appropriate response to a racially hostile environment must be tailored to redress the specific problems experienced at the institution as a result of the harassment. In addition, the responsive action must be reasonably calculated to ensure that participants are not restricted, i.e., denied or limited, in their participation or benefits as a result of a racially hostile environment created by students or non-employees.

OCR's Preliminary Review

As a part of its inquiry, OCR reviewed documents provided by the District and the Complainant.

OCR also interviewed the Complainant and the Assistant Principal of the District's high school (the School).

District Policies/Procedures

The District's Nondiscrimination policy in effect at the time of the underlying complaint allegations states that the Superintendent and/or designee is required to "investigate the factual basis of the complaint including, as applicable, conducting interviews with individuals deemed relevant to the complaint," and "conduct the investigation in a confidential manner." In addition, the policy provided that the Superintendent and/or designee is required to communicate the findings and/or results of any investigation to the complainant, and take appropriate corrective and disciplinary action, as deemed appropriate by the Superintendent and/or designee.

The School's December 21-22, 2015 Investigation

On December 21, 2015, the Complainant sent emails, including screenshots taken on approximately December 20, 2015, of several tweets from another student's (Student 2's) Twitter handle, to the Assistant Principal. Student 2's Twitter account was open to the public and the screenshots captured Student 2's Twitter feed from approximately September 17-18, 2015, December 4, 2015, and December 19-21, 2015. One of the screenshots showed that Student 2 referred to himself in his Twitter profile as a "[f]uture leader of the 4th Reich, proud to be part of the master race, will go to war when the fatherland needs me." The screenshots of Student 2's Twitter feed also made references to "devot[ing] his life to finish what [mein fuhrer] started, long live the fatherland," "hav[ing] a final solution," "shoot[ing] on sight at the border," and stated that "the SS will once again show the world the power of the fatherland." Based on the information reviewed by OCR, on December 21, 2015 at approximately 9 p.m., while the Student and Student 2 were in a chat on Twitter, the Student tweeted to Student 2 asking him if he was serious about his posts, and Student 2 replied that he was "dead serious, the SS will once again show the world the power of the fatherland."

In response to the Complainant's December 21, 2015 email, the Assistant Principal reported to OCR that he reviewed the screenshots, and Student 2's disciplinary record, and spoke with Student 2 about the tweets. The Assistant Principal stated that he determined that none of the tweets were sent over the school server and that he spoke with Student 2's parent, who responded that he would speak with Student 2 and monitor his Twitter account. In addition, the Assistant Principal stated that Student 2 met with the School's social worker, who did not find that Student 2 was an imminent risk to other students. The Assistant Principal also reported to OCR that he met with other students whose Twitter handles appeared in chats with Student 2, all of whom reported that they "just took offense to what [Student 2] was writing." The Assistant Principal stated that he reminded these students to speak with a District staff member if they felt uncomfortable.

According to the Complainant, on December 22, 2015, the Assistant Principal informed her that there was "nothing the District could do" because of Student 2's "First Amendment rights." According to the Assistant Principal, he completed his review on December 22, 2015, and on the

same day, informed the Complainant that the situation “should not continue.” The Assistant Principal reported to OCR that there were no further issues regarding the matter.

The School’s January 25-February 4, 2016 Investigation

On approximately January 25, 2016, a student reported to the Assistant Principal that a student athlete (Student 3) tweeted the word “nigger” from her Twitter account, and that students were “going back and forth” about it on Twitter. The tweet was sent at approximately 11:30 p.m. on January 24, 2016, while Student 3 was attending a school-affiliated trip to a national competition in Texas.

According to the Assistant Principal, on January 25, 2016, the Principal interviewed Student 3. Student 3 initially claimed that her Twitter account had been hacked. According to the Assistant Principal, the Principal contacted Student 3’s parent to discuss the post, and Student 3 acknowledged that she posted the tweet to “irritate” another student who had posted her feelings on Twitter about the use of the word.

OCR also learned that on January 26, 2016, another student sent the Assistant Principal an email citing “racism and homophobia,” and naming three students, including the Student, who were allegedly being harassed on Twitter by four student athletes (Students 4, 5, 6, and 7). According to the Assistant Principal, the next day he conducted a group interview with Students 4-7, who denied engaging in the alleged conduct, and were advised to conduct themselves appropriately. The Assistant Principal also spoke individually with the three named students, including the Student, who said they did not feel unsafe due to any harassment by Students 4-7. According to the Assistant Principal, the Athletic Director attended and assisted with both sets of interviews. Although she acknowledged it was likely well-intentioned, the Complainant expressed concern to OCR that District staff interviewed the Student because they were “looking for a minority student to prove that they were harmed,” and the Student was “expected to speak for all African American students.”

On January 28, 2016, the Complainant emailed the Assistant Principal regarding the January 24, 2016 tweet. On February 4, 2016, Student 3 received a one-day suspension for lying to the Principal, and for disruption of the School environment. In addition, the District determined that Student 3 would be denied the opportunity to serve as an athletic captain the following school year.¹ Also, on February 4, 2016, the Principal informed the Complainant that information about the District’s interactions with Student 3 and her parents, and any consequences imposed, were confidential; in addition, the Principal stated that appropriate disciplinary action was being taken, and that she was working with a non-profit organization to bring programming to the School.²

¹ The District stated that on January 28, 2016, the Student sent the Assistant Principal an email regarding Student 3, citing language from the School’s policies about the responsibilities of an athlete, and how privileges can be taken away. The District stated that because the athletic season had already ended, the penalty was imposed for the following season.

² As of December 2017, the District was in the process of implementing a School-wide training regarding race discrimination, including harassment.

Conclusion

Prior to OCR completing its review, including conducting an analysis of whether evidence supported the Complainant's allegations that the District failed to respond appropriately to a hostile environment harassment (see legal standards outlined above regarding the interplay between the requirements of Title VI and First Amendment free speech rights), the District notified OCR of its request to resolve the complaint. Specifically, the District indicated that it planned to enhance its supports for a positive school climate, including ensuring that it will respond immediately to any subsequent allegations of discrimination, including harassment on the basis of race, take all steps reasonably designed to ensure it that students enrolled in the District are not subject to a hostile environment, and implement training for staff and students. The District also planned to review its handling of the underlying complaint allegations. The attached resolution agreement reflects the District's commitments.

This letter should not be interpreted to address the District's compliance with any regulatory provisions, or to address any issues other than those addressed in this letter. This letter sets forth OCR's resolution in an individual OCR matter. 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.

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 Emma Kim at (617) 289-0159 or by e-mail at emma.kim@ed.gov.

Sincerely,

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

Enclosure

cc: Leander Dolphin, Esq.