



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

May 24, 2018

By Email

Superintendent Frank Hackett (fhackett@braintreema.gov)

cc:

Attorney Paige Tobin (ptobin@mlmlawfirm.com)

Attorney Caitlin Leach (cleach@mlmlawfirm.com)

Re: Complaint No. 01-16-1158
Braintree Public Schools

Dear Superintendent Hackett:

The U.S. Department of Education, Office for Civil Rights (OCR) has completed its investigation of the complaint filed against Braintree Public Schools (the District) alleging discrimination based on disability, race, and national origin. Specifically, the Complainant alleged that the District: failed to evaluate her daughter (the Student) to determine whether she required special education or related services despite being on notice of a possible disability requiring such services, before her initial placement in XXXX 2015 and through XXXX 2016, resulting in a denial of a free appropriate public education (FAPE) (Allegation 1); and treated her and the Student differently on the bases of race and/or national origin, when investigating a confrontation between the Student and a XXXX XXXX (Allegation 2).

OCR enforces Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and its implementing regulation found at 34 C.F.R. Part 100 (Title VI), which prohibit discrimination based on race, color, or national origin. In addition, OCR enforces Section 504 of the Rehabilitation Act of 1973 and its implementing regulation found at 34 C.F.R. Part 104 (Section 504), and Title II of the Americans with Disabilities Act of 1990 and its implementing regulation found at 28 C.F.R. Part 35 (Title II). Both Section 504 and Title II broadly prohibit disability discrimination by educational institutions, and also require that they provide students with disabilities with a FAPE. The District is subject to the requirements of Title VI and Section 504 because it receives Federal financial assistance from the U.S. Department of Education, and it is subject to the requirements of Title II because it is a public entity operating an education system.

Because OCR determined that it had jurisdiction and that the complaint was timely filed, OCR investigated the following legal issues:

Allegation 1: Whether the District failed to evaluate the Student to determine whether she required special education or related services despite being on notice of a possible disability requiring such services, before her initial placement in XXXX 2015 and through XXXX 2016,

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resulting in a denial of a FAPE, in violation of 34 C.F.R. Sections 104.33 and 104.35, and 28 C.F.R. Section 35.130; and

Allegation 2: Whether the District treated the Complainant and the Student differently on the basis of their race and national origin (XXXXX), when investigating a confrontation between the Student and a XXXX XXXX, evidenced by derogatory statements about the Complainant’s “XXXX XXXX” and repeated inquiries about the Complainant’s XXXXX XXXXX, in violation of 34 C.F.R. Section 100.3(a).

Prior to the conclusion of OCR’s investigation into Allegation 1, and pursuant to Section 302 of OCR’s *Case Processing Manual*, the District expressed an interest in resolving this allegation. Subsequent discussions between OCR and the District resulted in the enclosed Agreement which, when fully implemented, will address Allegation 1. OCR will monitor the District’s implementation of the Agreement.

In reaching a determination into Allegation 2, OCR reviewed documents provided by the Complainant and the District; and interviewed the Complainant and District faculty/staff (specifically the Principal and the Assistant Superintendent). After carefully considering all of the information obtained during the investigation, OCR found insufficient evidence of a violation. OCR’s findings and conclusions of Allegation 2 are discussed below.

Background

The Complainant’s central concern is that after she complained about an altercation involving Student on the XXXX in XXXXX 2016, the District’s response was unsatisfactory and culminated in the Principal XXXX XXX XXXX XX XXX, which she claims was traumatizing.

The key facts about the underlying incident are summarized as follows: on XXXXX, 2016, the Student XXX XXX XXX and was involved in an altercation. The Complainant alleges that she witnessed the XXXX XXX shout out at and push the Student. The District maintains that the Student splayed her legs on the XXXX, was uncooperative with the XXX XXXX, and that the Complainant XXXXX XX XXX to assist with redirecting the Student. The District maintains that the XXXX XXXX did not shout at or push the Student. The XXX XXXX submitted an incident report, and Complainant submitted faxed complaints that week accusing the XXX XXXX of shoving the Student.

The District’s “XXXX XX XXXXXX” state that the XXX XXXX will report violations of the regulations in writing to the XXX XXXXX and the school administration on the day a violation occurs, and that the principal of the school will review the complaint with the pupil and notify the parent. It warns that students may lose XXXX privileges.

The District conducted an investigation, and interviewed the Student and the XXX XXXX. According to the District, both admitted that the Student had kicked the XXX XXXX, and that the XXX XXXX did not touch the Student. The Principal oversaw the investigation and delivered the written findings to the Complainant on XXXXX, 2016 – nine days after the

incident. The District also XXXX XXX XXX XXX XXX so she would not interact with the Student.

OCR found no evidence that anyone used derogatory or racially-charged language at any time. When OCR discussed this allegation further with the Complainant, she explained that her main concern with the District's response was that the Principal XXXX XXX XXXX on the Complainant the following week when she continued to protest the District's resolution of this matter. The Complainant alleged that when she arrived at school on XXXXX, 2016 to confront the Principal, she and the Student were XXX XXX XXX XXXX XXXXX. The Complainant reported feeling incensed and embarrassed, and she expressed that the Student was traumatized because she has terrible memories of XXX XXX XXX XXXX XXX XXXX. The Complainant alleges that this overreaction was the result of discrimination.

OCR's investigation into this related concern indicates that the Complainant complained about this incident the next day, on XXXX XX, 2016, and the District promptly responded, concluding its investigation and circulating a notice of outcome of no discrimination 11 days later, on XXXX XXXX, 2016. In investiXXXX XXXX, and the XXXXX XXXXX staff.

The key facts from OCR's investigation are summarized below:

- On XXXX XX, 2016, the Complainant contacted the XXXXX XXXX. The Complainant claims she may have spoken loudly but was not shouting, and that she wanted to notify the XXXXX XXXX XXX XXX XXX XXX XXXX XXXX XX.
- The Principal told OCR in an interview that the XXXXX XXXXX called her while their staff was being screamed at by the Complainant. The Principal stated that the screaming was so loud that she could hear it over the phone. Staff purportedly told her that an angry parent was headed her way.
- The Principal and Assistant Superintendent both told OCR that the school has a partnership with a "XXXX XXXX" – a XXX XXX XXX XX as needed. This can range from XXXX XXX XXX XXX XXXX XXX XXX XXX.
- The Assistant Superintendent confirmed that either most or all schools in the District have relationships with a "XXXXXXXX XXXXX." She told OCR that there is no list of XXXXXX XXXX circulated district-wide, and that different building principals would only know the name and contact information of that building's XXXXXX XXXXX.
- The Assistant Superintendent told OCR during an interview that she was familiar with the Complainant because, earlier that year, she had called her office and screamed at her administrative assistant.
- The Principal strongly maintained to OCR that the XXXXX XXXXX had told her that he would be out that week for a serious XXXXX, and that she should contact XXXX XXXX XXX XXX. This is consistent with what she reported during the internal investigation that occurred around the time of the incident.

- There is no dispute that the Principal contacted the XXXXX XXXXX.
- The Principal strongly maintains that she did not sensationalize anything, and was expecting one XXXX XXX XXX XXX XXXX XX XXXXX.
- There is no dispute that at least XX XXXX XXXX XXXXX XX instead. The Complainant told OCR that there were XXX XXXXX; the Principal said she was in her office and saw XXXXX XXXX but there may have been XXXX XXXXXX; a complaint by the Complainant the next day said that there were around XXXX XXXX. It is likely that X-X XXXX XXXX, meaning X-X XXXXXX were present total.
- According to her OCR interview, the Assistant Superintendent spoke to the XXXX XXXX afterwards, or to one of the XXXXX XXXXXXXX (on the XXXXX behalf), and the XXXXXX/XXXXX said that they decide how many XXX XX XXXX, and they XXXXXXXX XXX XXX XXX XXXX XXX XXX XXXX XXX XXXXX.

The District’s “Bullying, Harassment, Discrimination, Sexual Harassment, Discrimination, Hate Crimes and Hazing Policy” says in relevant part that the Building Principal or designee shall be responsible for overseeing investigations, and that if the complaint is against the Building Principal then the Superintendent or designee shall conduct the investigation. (There are additional protections if even the Superintendent is a conflicted party, not relevant here.) The District’s “Grievance Procedures” state that the Assistant Superintendent of Schools is the Civil Rights Compliance Coordinator charged with resolving complaints of discrimination on protected classes, and sets out general timeframes for resolution – specifically, 15 days to resolve complaints.

Legal Standards

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 the District’s programs or activities on the basis of race, color, or national origin.

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

Analysis

OCR has concluded that there is insufficient that the District’s response to the Complainant’s complaints in XXXXX 2016 were motivated by race or national origin, as alleged.

There is no direct evidence that anyone was motivated by the Complainant’s protected class; while the Complainant alleged that she was asked questions about her XXXXXX or criticized

over her XXXXX, the Principal and the Assistant Superintendent – who investigated the events from XXXXX X and XXXXX XX, respectively – strongly dispute this allegation, and the record is devoid of evidence corroborating the Complainant’s allegation.

Nor is there indirect evidence that suggests the Complainant was treated so unusually or differently that there may have been some other motivation. Here, OCR found that the District’s response to the XXXXX X incident was consistent with District policy: the XXX XXXX promptly submitted a report of the alleged altercation, and the building principal (i.e., Principal) met with the Student and notified the parent of the incident – all consistent with the XXXXX XXXX Regulations. In response to the Complainant’s allegations that the XXXX XXXX acted inappropriately, the building principal (i.e., Principal) conducted a prompt investigation, interviewed the appropriate witnesses (Student and XXXXXX), and submitted a written report of her findings within approximately one week. This response was consistent with the “Bullying, Harassment, Discrimination, Sexual Harassment, Discrimination, Hate Crimes and Hazing Policy.” OCR identified no obvious deficiencies with the investigation: the investigation was timely, appeared to be appropriate in scope, and its conclusions were consistent with the factual record. All in all, there was nothing about the response that creates an inference of race or national origin discrimination; the Complainant’s disagreement alone, without more, is not enough to call into question the investigation’s outcome – much less conclude that there was an improper motive based on a protected class.

As to the XXXX XX incident, OCR acknowledges that the XXXXX XXXX was facially severe and understandably very concerning to the Complainant and the Student. There is no dispute that at least XX XXX XXXX were present and that the family was very agitated and perturbed by this confrontation. However, even if OCR were to find that the severity of this response and the absence of comparable responses with other families create an inference of discrimination, the District articulated a facially legitimate non-discriminatory explanation: the Principal was warned by the XXXX XXXX that the Complainant was angry and coming to confront her, and the Principal wanted to contact the XXXXX XXXX XX XXX, as she has done in tense situations with parents. However, because the XXXX XXXX was absent that week, the Principal spoke to the XXXXX XXXX, who themselves determined how to respond due to their own relationship with the Complainant. OCR did not identify sufficient evidence to disprove this explanation as a pretext for discrimination: the Principal’s explanation has remained consistent, and the Assistant Superintendent’s investigation corroborated this explanation after interviews with the Complainant, Principal, XXXXX XXXXX, and the XXXX XXXX. As a result, there is insufficient evidence to conclude that XXXX XX XXXX was a result of race or national origin discrimination, in violation of Title VI.

Conclusion

For the reasons above, OCR has voluntarily resolved Allegation 1 (disability discrimination) before making a compliance determination, and has found insufficient evidence of a violation for Allegation 2 (race/national origin discrimination).

This concludes OCR’s investigation of the complaint. 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 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.

Please be advised that the District may 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. In the event that OCR receives such a request, it 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.

OCR wishes to thank you, and especially Attorneys Tobin and Leach, for your cooperation in this matter. If you have any questions, you may contact Ramzi Ajami at (617) 289-0086 or by e-mail at Ramzi.Ajami@ed.gov.

Sincerely,

/s/

Melissa Kirby
Acting Compliance Team Leader

Enclosure