



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

February 14, 2020

Kathleen Murphy
Superintendent of Schools

By email: kmurphy@sau90.org

Re: Complaint No. 01-19-1290
Hampton School District / SAU 90

Dear Superintendent Murphy:

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 Hampton School District / SAU 90 (District). The Complainants alleged that the District discriminated against their daughter (Student A) on the basis of race. Specifically, the complaint alleged that the District failed to respond in a reasonable, timely, and effective manner to racial harassment of Student A, of which the District had notice during the 2018-2019 school year. As explained further below, before OCR completed its investigation, the District expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement (Agreement).

OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. Section 2000d *et seq.*, 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. Because the District receives federal financial assistance from the Department OCR has jurisdiction over it pursuant to Title VI.

Because OCR determined that it has jurisdiction and that the complaint was timely filed, OCR opened the following legal issue for investigation:

Whether the District failed to respond in a reasonable, timely, and effective manner to racial harassment of Student A, of which the District had notice during the 2018-2019 school year, in violation of 34 C.F.R. Section 100.3(a) and (b).

During its investigation, OCR reviewed documents provided by the Complainants and the District, spoke with the Superintendent, and interviewed the Principal of the XXXXXXXX School (School). Before OCR completed its investigation, the District expressed a willingness to resolve the complaint.

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 type's programs, activities, or services. Whether a hostile environment exists depends on a totality of the circumstances, including the context, nature, scope and frequency of incidents. Harassment must consist of more than casual, isolated incidents to constitute a hostile environment. Once a recipient has notice of a racially hostile environment, the recipient has a legal duty to take reasonable steps to eliminate it. Thus, if OCR finds that the recipient took responsive action, OCR will evaluate the appropriateness of the responsive action by examining reasonableness, timeliness, and effectiveness.

Analysis

OCR's investigation to date shows that the District promptly responded in some form to both incidents involving Student A, by conducting informal and formal investigations under the District's Bullying Policy JICK, "Pupil Safety and Violence Prevention – Bullying," and assigning consequences for Student C as it would for other conduct-related issues. However, OCR is concerned that the District's response may have focused on bullying, to the exclusion of considering whether racial harassment had occurred, and if so, whether Student A had been subjected to a hostile environment based on race. Specifically, the information gathered to date indicates that the District may not have considered whether these incidents constituted racial harassment, nor investigated the impact of Student C's comments on Student A or any other students, focusing instead on what disciplinary action and counseling and support were necessary for Student C. Additionally, the investigations of these incidents may not have included some relevant witnesses, including Student A, although the District had information indicating that she was struggling with her friendships with Student B and Student C. It also appears that the District did not inform the Complainants of the XXXXXXXX incident, and did not timely share with the Complainants whether either alleged incident had been substantiated, nor any remedial measures the District was taking in response, including any measures to remedy the effect of the harassment on Student A.

OCR acknowledges that District staff have had extensive training on general bullying, as well as training on race and equity, but notes that the trainings do not appear to have included how to investigate and address harassment based on race. OCR is concerned that the District's documentation and tracking of these incidents were insufficient with regard to the racial nature of the conduct, which could hamper the District's ability to track incidents based on race, and to assess whether such incidents create a hostile environment.

Prior to the conclusion of OCR's investigation and pursuant to Section 302 of OCR's *Case Processing Manual*, the District expressed an interest in resolving this complaint and OCR determined that a voluntary resolution would be appropriate. Subsequent discussions between OCR and the District resulted in the District signing the enclosed Agreement which, when fully implemented, will address the concerns that OCR has identified. OCR will monitor the District's implementation of the Agreement.

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 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.

Sincerely,

/s/

Meighan A.F. McCrea w/p EK
Compliance Team Leader

Enclosure

cc: Diane Gorrow, Esq.