



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

March 11, 2021

Thomas M. Conrad
Superintendent of Schools
Nauset Public Schools
By email: conradt@nausetschools.org

Re: Complaint No. 01-19-1320
Nauset Public Schools

Dear Superintendent Conrad:

This letter is to advise you of the outcome of the complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR) against the Nauset Public Schools (District) on September 5, 2019. The Complainant alleges that the District failed to respond appropriately to numerous instances of XXXXXXXXXXXX oral, written, and/or physical harassment of her daughter (the Student) by peers and by a teacher that occurred from fall XXXX through summer XXXX.

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.

OCR opened the following legal issue for investigation:

- Whether the District failed to provide an appropriate response to XXXXXXXXXXXX XXX harassment of the Student based on her actual or perceived shared ancestry or ethnic characteristics during the XXXX-XXXX school year, in violation of 34 C.F.R. Section 100.3(a) and (b).

Before OCR completed its investigation and made a compliance determination, the District entered into a Resolution Agreement with OCR to resolve the concerns that OCR had identified.

Legal Standard

Title VI prohibits discrimination on the basis of national origin, which includes shared ancestry. A recipient's failure to address such harassment that creates a hostile environment can violate Title VI.

Summary of Preliminary Investigation

During its investigation to date, OCR reviewed documents provided by the Complainant and the District, and OCR interviewed the Complainant. The District described its investigation and findings to OCR in the form of written representations. The District advised OCR that it did not create or maintain any contemporaneous written investigative materials (such as interview notes or written conclusions) at the time it responded to the events at issue.¹

Fall XXXX Alleged Incidents of Harassment by Peers

On or around XXXXXXXX XX, XXXX, the Student, who was in the XXXXX grade, reported to a teacher that someone was “airdropping” photos of XXXXXXX and XXXXXXXXXXXXXXX XXXXX onto her cell phone, and that one or two Post-It notes with XXXXXXXX drawings had been placed on her backpack. The District informed OCR that the teacher brought the Student to the School XXXXXXXX XXXXXXXX to report what had happened, and the School XXXXXXXX XXXXXXXX notified the Assistant Principal. According to the District, the Assistant Principal notified the Complainant that the District was attempting to locate the source of the airdropped messages and Post-It notes.

According to the District, the Assistant Principal – in his role as the high school’s “investigatory designee” – contacted the high school’s Information Technology (IT) Department and the District’s Director of XXXXXXXXXXXX to try to trace the airdropped messages. The Assistant Principal also interviewed the Student and contacted the School XXXXXXXXXXXX XXXXXXXXXXXX to gather additional information. The IT Department concluded that the airdropped messages came from an anonymous iPhone and recommended that the Student change her username/password and temporarily turn off the airdrop feature. As to the Post-It notes, the Assistant Principal and the School XXXXXXXX XXXXXXXX reviewed campus security cameras but did not see anyone put notes on the Student’s backpack. The District also represented that the Assistant Principal and the School XXXXXXXX XXXXXXXX searched the garbage bins where the Student reportedly threw the notes away, but did not find them. The District informed OCR that it could not take any further action on these allegations due to the inconclusive results of the investigation.

The District provided information indicating that it provided the Student regular check-ins with the School XXXXXXXXXXXX XXXXXXXX to support the Student. According to the District, the School XXXXXXXXXXXX XXXXXXXX met with the Student four times during the Fall XXXX.²

The District and the Complainant dispute whether the District notified the family whether the allegations were substantiated: The District represented that the Assistant Principal informed the family of the findings and asked to be notified if the Student received any additional messages;

¹ The District has a Discrimination and Harassment Complaint Procedure (Procedure) that states that the District will keep a record of the investigation and will provide written notice of the results of any investigation to both parties.

² The District’s data also indicated that the School XXXXXXXXXXXX XXXXXXXX met with the Student on several occasions in May XXXX.

however, the Complainant stated that the family did not receive any information about whether the allegations had been substantiated, other than the fact that the District reviewed videotapes and did not see anything.

Fall XXXX Alleged Incidents of Harassment by the Teacher

The Complainant told OCR that in late October XXXX, and again in January XXXX,³ she and her husband reported concerns to the District that one of the Student’s teachers (the Teacher) had singled her out as “XXX XXXX XXX” in the class, and made comments such as, “X---sentence redacted--X”; and, after a XXXXXXXXXXXX shooting in XXXXXXXX XXXX, pressured the Student to read a passage out loud because she was XXXXXXXX and could “relate to the incident.” The Complainant also expressed concern that the Teacher mentioned multiple times during First Amendment discussions that he owned a confederate flag and a flag with a XXXXXXXX. According to the Complainant, the Teacher apologized to the Student sometime afterwards for hurting her feelings.

The District did not provide any information or materials to OCR related to the District’s notice of or response to these alleged incidents involving the Teacher, including the Teacher’s apology.

March XXXX Alleged Incident of Harassment

On XXXXX XX, XXXX, the Student’s parents contacted the Assistant Principal to allege that the Student had received two XXXXXXXXXXXXX emails on her school account several days earlier, which included an XXXX XXXXXXXX meme and statements like “X---sentence redacted--X” and “X---sentence redacted--X.” The District represented to OCR that in response to this concern, the Assistant Principal contacted the Director of XXXXXXXXXXXX, who worked with the IT Department to trace the emails. However, the IT Department did not find that any emails were sent to the Student’s school account during this timeframe. The Director of XXXXXXXXXXXX then asked the family for any saved or printed copies of the emails, but the Student indicated that she had erased them. According to the Complainant, the District called the Complainant on March 28 to convey that the IT Department “had looked into it but was attending a conference and didn’t have time to dig in.” The Complainant states that she never heard anything further from the District.

The District informed OCR that it did not take further action because the District could not substantiate the reported harassment, but that the District continued to offer support to the Student and to encourage her and her parents to report any additional concerns.

The next week, on April 2-3, XXXX, high school administrators and counselors led a discussion in every math class about culture, inclusion, and peer influences, and actions that students can take to promote inclusion. The District represented that it took these school-wide steps to address climate and culture even though they were unable to substantiate the allegations of harassment in this case. The Complainant told OCR that these sessions did not address XXXXXXXXXXXXXXXX.

May XXXX Alleged Incidents by Peers and the Teacher

³ It is unclear when or to whom the Complainant and her husband reported these alleged comments.

On XXX XX, XXXX, the Student alleged to the Principal and/or Assistant Principal that a classmate XXX XXX XXXXXX and called her a “XXXXX XXX” while in class. The District represented that it immediately conducted an investigation and updated the family about its progress the next day, May 18. According to the District, the Assistant Principal conducted interviews with the XXXXX, the classmate, and the Teacher. The XXXXX reported that the Student had come to her office to report a headache and to request a meeting with the Assistant Principal, but did not mention anyone attempting to XXXX XXX XXXXXX. The classmate denied the Student’s allegations and stated that he sits across the room from the Student. The Teacher reported that he did not hear any slurs and that it was unlikely the classmate could have XXXXXX the Student because they sit on opposite sides of the class, and there were no out-of-seat activities that day. Based on this information, the District reported to OCR that the Assistant Principal was unable to substantiate the Student’s allegation. According to the Complainant, the District did not notify the family whether the allegations had been substantiated.

On May 20, XXXX, the Assistant Principal and the Principal met with the Student and her father to discuss the District’s investigation. At this meeting, the family shared their frustration about this incident and other alleged incidents from earlier that school year. Also, at this meeting, the Student and her father reported that on May 15, the Teacher had placed a XXXXXXXX XX X XXXXXXXX on his head, which the Student felt was disrespectful to the XXXXXXX XXXXX. According to the Complainant, the Teacher made a XXXXXXXX with playdough, placed it on XXX XXXX like a XXXXXXXX, and told her, “XXXX XX XXXXXXXX.”⁴ The District indicated that they would investigate.

The next day, the family notified the District that the Student would not be XXXXXXXXXXXX to the District. The Complainant explained to OCR that they did so out of fear of continued harassment. The Complainant also told OCR that there were other incidents involving peers and the Teacher during the XXXX-XXXX school year that they did not raise to the District because they were frustrated by the lack of response to earlier incidents.

The District informed OCR that in response to the allegation shared at the May 20, XXXX meeting, the Assistant Principal met with the Teacher to determine what occurred and to gather information about the lesson plan that day. According to the District’s representation, the Teacher explained that the XXXXXXXX XXXXXXXX was part of a project regarding various XXXXXXXX XXXXXXXX and expressed regret that the Student was impacted. The District also represented that the Teacher denied that he mentioned XXXXXXXX or that his actions were directed at any particular student. The District told OCR that based on its investigation, it could not conclude that the Teacher’s reported conduct constituted harassment. The District also reported to OCR that the Teacher is XX XXXXXXX XXXXXXXX at the District, but did not explain why.

September 1, XXXX Alleged Incident and the District’s Response

On XXXXXXXXXXXX X, XXXX, the Complainant emailed the Superintendent, stating that the Student – who at the time had X---part of sentence redacted---X – had received a social media

⁴ The Complainant also told OCR that another student stood up to the Teacher during this incident.

message with a photo of a young woman with a XXXXXXXXX on her forehead from a District student. On September 3, District administrators responded by email, stating that they were contacting the police department to investigate because the XXXX-XXXX school year had not yet commenced. The Principal and the Assistant Principal also reportedly contacted the XXXXXXXXXXXXXXXXXXX XXXXXXX to discuss the incident and next steps.

Preliminary Analysis

OCR has identified concerns that would require further investigation if OCR were to make a compliance determination. Specifically, OCR is concerned that the District produced no contemporaneous reports of the responsive action that it purports to have taken, including notice of outcomes to the Complainant, even though the District's Discrimination and Harassment Complaint Procedure states that the District will keep a record of investigations and provide written notice when investigations are completed. The extent to which the District's response deviated from its own policies or procedures may be relevant in assessing whether the District's response to alleged Title VI harassment was reasonable under the circumstances, including whether the District focused appropriately on tracking incidents based on race and/or shared ancestry and repeat offenders to assess whether such incidents created a hostile environment.

OCR also is concerned that the District may not have conducted investigations designed to ascertain whether harassment occurred (e.g., identification of witnesses for the XXXXXXXX incident).

As noted above, the District expressed an interest in resolving this complaint pursuant to Section 302 of OCR's *Case Processing Manual* prior to OCR completing its investigation and making a compliance determination, and OCR determined that a voluntary resolution would be appropriate to address the issues it had identified.

Conclusion/Resolution

The enclosed Resolution Agreement (Agreement) will address the concerns that OCR has identified, and OCR will monitor the District's implementation of the Agreement to ensure that its terms and obligations are implemented. OCR may conduct additional visits and may request additional information if necessary to determine whether the District has fulfilled the terms of the Agreement. Once the District has satisfied the commitments under the Agreement, OCR will close the case. As stated in the Agreement, if the District fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10) or judicial proceedings, including to enforce the Agreement, OCR shall give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

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.

Sincerely,

/s/

Abra Francois
Compliance Team Leader

Enclosure

cc: Paige Tobin, Esq.