



**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
32 OLD SLIP, 26TH FLOOR
NEW YORK, NEW YORK 10005**

TIMOTHY C.J. BLANCHARD
DIRECTOR
NEW YORK OFFICE

May 21, 2012

Mark D. LaRoach
Superintendent
Vestal Central School District
201 Main Street
Vestal, New York 13850

Re: Case No. 02-11-1270
Vestal Central School District

Dear Superintendent LaRoach:

This letter is to notify you of the determination made by the U.S. Department of Education, New York Office for Civil Rights (OCR) regarding the above-referenced complaint filed against the Vestal Central School District. The complainant alleged that from approximately September 2006 to June 2011, the District failed to respond appropriately to complaints that students at the Vestal Middle and High Schools (collectively referred to as “the Schools”) subjected a student (Student 1) to harassment because of his national origin (Jewish ancestry/ethnicity).

OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964 (Title VI), as amended, 42 U.S.C. § 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 programs and activities receiving financial assistance from the U.S. Department of Education (the Department). The District is a recipient of financial assistance from the Department. Therefore, OCR has jurisdictional authority to investigate this complaint under Title VI.¹

Harassment of students based on national origin (which can include verbal, written, graphic, physical or other conduct by an employee, a student, or a third party) is a form of discrimination prohibited by Title VI and its implementing regulation. Harassment can create a hostile environment if it is sufficiently severe, persistent, or pervasive to limit a student’s ability to participate in or receive benefits, services or opportunities, in the institution’s program. If a recipient has actual or constructive notice of the harassment,

¹ While Title VI does not cover discrimination based solely on religion, discrimination on the basis of actual or perceived shared ancestry or ethnic characteristics is protected under Title VI. Thus, harassment against students who are members of any religious group triggers a school’s Title VI responsibilities when the harassment is based on the group’s actual or perceived shared ancestry or ethnic characteristics.

the recipient is required to take prompt and effective action to stop the harassment, prevent its recurrence, and as appropriate, remedy its effects.

OCR interviewed the complainant, Student 1, and Student 1's father. OCR also reviewed documentation the complainant and the District submitted.

The complainant alleged that from approximately September 2006 to June 2011, the District failed to respond appropriately to complaints that students at the Schools subjected Student 1 to harassment because of his national origin (Jewish ancestry/ethnicity). Student 1 informed OCR that the alleged harassment began when he attended middle school in the District, and continued after he began attending high school. OCR determined that Student 1 attended middle school during school years 2007-2008², 2008-2009, and 2009-2010. Student 1 attended the High School during school year 2010-2011.

OCR determined that the District's Code of Conduct prohibits harassment, which includes "a sufficiently severe action or a persistent, pervasive pattern of actions or statements directed at an identifiable individual or group which are intended to be or which a reasonable person would perceive as ridiculing or demeaning." Further, the Code of Conduct prohibits intimidation, which includes engaging in actions or statements that put an individual in fear of bodily harm. The Code of Conduct includes a list of factors to be considered in assigning consequences and remedial responses, which range from an oral warning to long-term suspension or expulsion. The Code of Conduct further states that District students are expected to promptly report violations to an appropriate staff member such as a teacher, school counselor, or the building principal or designee; and, District staff who are not authorized to impose sanctions are similarly expected to promptly report violations to their supervisor.

OCR determined that the Schools maintain logs and/or notes with entries made by school staff when students are involved in incidents. OCR's review of the Schools' logs from school years 2007-2008, 2008-2009, 2009-2010, and 2010-2011 revealed a number of incidents involving Student 1 and other students that could have constituted harassment on the basis of Jewish ancestry/ethnicity, including name calling such as "cheapie" and chanting "Heil Hitler" and "Nazi." OCR determined that during one particular incident that occurred on or around December 1, 2010, numerous Jewish students were targeted. During this incident, known as "Kick a Jew Day" (which was publicized on Facebook and other social media), students bullied and intimidated Jewish students at the High School³ by kicking them and making anti-Semitic remarks and gestures, including Nazi salutes/symbols.

² Although the complaint asserts that Student 1 was a student at the middle school during school year 2006-2007, the District informed OCR that Student 1 did not enroll in the District until October 15, 2007.

³ OCR determined that during school year 2010-2011, there were approximately 30 Jewish students who attended Vestal High School.

As noted above, OCR's review of the School's logs and/or notes revealed incidents of alleged harassment based on Jewish ancestry/ethnicity for numerous school years. For some but not all of the instances, OCR obtained information concerning action taken by the District. For example, concerning the incident on December 1, 2010, the District conducted an investigation by interviewing approximately 32 students (several of whom admitted to the alleged conduct) and 11 staff members. The District contacted the parents of involved students and held conferences with staff. OCR determined that approximately 10 students received out-of-school suspensions, ranging from three to five days. OCR further determined that the school counselor was consulted, and at least one student was directed to attend sensitivity training and to participate in a lesson covering New York State's Dignity for All Students Act. Additionally, the District formed an advisory team of staff members and teachers to meet with the Principal to discuss ways to refine educational efforts and programs at the High School to address the "Kick a Jew Day" incident in particular and bullying in general; and, the District's Superintendent and Assistant Superintendent, as well as the High School's Principal, met with local clergy members and representatives of the Jewish community to discuss the District's response to the incident. The District also formed a broad-based committee of students to meet with the Principal about incidents of harassment occurring at the High School; and provided counseling and educational workshops for students.

Prior to the completion of OCR's investigation, the District voluntarily agreed to take further action as set forth in the enclosed resolution agreement. The desired outcome from implementation of the resolution agreement is to stop the harassment, prevent its recurrence, and as appropriate, remedy its effects. OCR will monitor implementation of the resolution agreement. Should the District fail to fully implement the Agreement, OCR will take appropriate action to ensure the District's compliance with Title VI, including possibly initiating 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 to enforce this Agreement, OCR shall give the District written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

This letter is not intended, nor should it be construed, to cover any issues regarding the District's compliance with Title VI that may exist, but are not discussed herein. 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 a right to file a private suit in federal court whether or not OCR finds a violation. It is unlawful to harass or intimidate an individual who has filed a complaint or participated in actions to secure protected rights.

Under the Freedom of Information Act, 5 U.S.C. § 552, it may be necessary to release this letter 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 that if released, could constitute an unwarranted invasion of personal privacy.

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If you have any questions regarding OCR's determination, please contact Ronald L. Scott, Compliance Team Attorney, at (646) 428-3820 or Ronald.Scott@ed.gov; or Tracey Beers, Senior Compliance Team Attorney, at (646) 428-3804 or Tracey.Beers@ed.gov; or Félice Bowen, Compliance Team Leader, at (646) 428-3806 or [Félice.Bowen@ed.gov](mailto:Felice.Bowen@ed.gov).

Very truly yours,

/s/

Timothy C. J. Blanchard

Encl.

cc: XXXXX XXXXX, Esq.