



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION II

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December 3, 2013

Suzanne E. McLeod, Ph.D.
Superintendent of Schools
Union-Endicott Central School District
1100 East Main Street
Endicott, New York 13760

Re: Case No. 02-13-1228
Union-Endicott Central School District

Dear Superintendent McLeod:

This letter is to notify you of the determination made by the U.S. Department of Education, New York Office for Civil Rights (OCR) with respect to the above-referenced complaint filed against the Union-Endicott Central School District. The complainant alleged that the District discriminated against her son (the Student), on the basis of his race, by disciplining him more severely than white students on several occasions between February and May 2013 (Allegation 1). The complainant also alleged that the principal of the Ann G. McGuinness Elementary School (the School) retaliated for her advocacy on the Student's behalf, by falsely accusing the Student of physically assaulting him on or about XXXXXX, 2013 (Allegation 2). The complainant further alleged that the District discriminated on the basis of race by asking the police to remove her and her husband from the School on or about XXXXXX, 2013 (Allegation 3). In addition, the complainant alleged that the District discriminated against the Student, on the basis of his disability, by failing to provide him with any educational instruction from XXXXXXXX, 2013, through June 2013 (Allegation 4).

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 and national origin in programs and activities receiving financial assistance from the U.S. Department of Education (the Department). OCR is also responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities receiving financial assistance from the Department. OCR also is responsible for enforcing Title II of the Americans with

Disabilities Act of 1990 (the ADA), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35. Under the ADA, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The District is a recipient of financial assistance from the Department and is a public elementary and secondary education system. Therefore, OCR has jurisdictional authority to investigate this complaint under Title VI, Section 504 and the ADA.

The regulation implementing Section 504, at 34 C.F.R. § 104.61, incorporates by reference 34 C.F.R. § 100.7(e) of the regulation implementing Title VI which provides that:

No recipient or other person shall intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by regulations enforced by OCR or because one has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding or hearing held in connection with a complaint.

The regulation implementing the ADA contains a similar provision at 28 C.F.R. § 35.134.

In its investigation, OCR reviewed documentation that the complainant and the District submitted. OCR also interviewed the complainant, the Student and District staff. OCR made the following determinations.

OCR determined that the Student is XXXXXXXXXXXXXXXXXXXX, and was in the XXXXXXXXXXXXX at the School during school year 2012-2013. OCR further determined that the Student was diagnosed with Attention Deficit Hyperactivity Disorder and Oppositional Defiant Disorder, and had a Section 504 Accommodation Plan for school year 2012-2013. On July 1, 2013, the District classified the Student as Other Health Impaired, and created an Individualized Education Plan (IEP) for the Student.

With respect to Allegation 1, the complainant alleged that the District discriminated against the Student, on the basis of his race, by disciplining him more severely than white students on several occasions between February and May 2013. In support of her allegation, the complainant cited two incidents: the Student was accused of “shaking his XXXXXXXX XXXXX” at a white student and not letting him exit from the restroom after the white student rushed by the Student and knocked his arm down (Incident 1); and, a white student disrupted a kickball game and other students were yelling at him, but only the Student was disciplined for yelling (Incident 2).

With respect to Incident 1, OCR determined that on or about XXXXXXXXXXXX, 2013, a white student (Student 2) complained to the School’s principal that the Student blocked the exit of the boys’ restroom, preventing him from exiting; raised his fist against him; and made a “XXXXXX XXXXXXXX” by thrusting his XXXX forward and moving his hands towards his XXXXX. OCR determined that a student witness observed the entire incident and corroborated Student 2’s account. The principal stated that the Student initially admitted to the actions; but during a subsequent meeting with the principal and his father, denied engaging in the conduct. OCR determined that the Student received a one-day, in-school detention for his conduct. OCR determined that this sanction was consistent with the District’s Code of Conduct. The

complainant did not provide, nor did OCR find any evidence to corroborate that other students who engaged in similar conduct on other occasions were not disciplined, or were disciplined less severely. OCR determined that there was no allegation that Student 2 had engaged in any inappropriate conduct during Incident 1.

With respect to Incident 2, District staff informed OCR that on XXXXXX, 2013, the Student and a white student (Student 3) were yelling and screaming during a kickball game; and an aide and monitors called both students over and separated them from the group of students. OCR determined that contrary to the complainant's allegation, the Student was not disciplined for his conduct during the kickball game. Rather, OCR determined that immediately after Incident 2 occurred, the Student threatened another student with a XXX XXXX around his XXXXXXXX; and when the principal was called to the playground to assist and approached the Student, the Student ran into the school building and shut himself into a XXXXXXXX XXXXXXXX. The principal advised OCR that when he entered to speak with the Student, the Student shoved the principal twice in exiting the XXXXXXXX. OCR determined that in accordance with the District's Code of Conduct, the Student received a five-day, out-of-school suspension and was referred to a Superintendent's hearing. The Code of Conduct provides for suspension as a sanction for students who are "insubordinate, disorderly, violent, or disruptive, or whose conduct otherwise endangers the safety, morals, health, or welfare of others."

Based on the foregoing, OCR determined that the evidence failed to substantiate that the Student was disciplined for Incident 2, as alleged. OCR further determined that the principal provided a legitimate, non-discriminatory reason for disciplining the Student but not Student 2 for Incident 1; namely, that the Student was engaging in disruptive behavior, while Student 2 was not similarly misbehaving. OCR determined that this reason was not pretextual, as a student witness reported that he had observed the Student engaging in the misconduct; the discipline imposed was consistent with the discipline code; and there was no evidence that any similarly situated student of a different race who engaged in similar conduct received a different disciplinary sanction. Therefore, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the District discriminated against the Student, on the basis of his race, by disciplining the Student more severely than white students on several occasions between February and May 2013. Accordingly, OCR will take no further action with respect to Allegation 1.

With respect to Allegation 2, the complainant alleged that the principal retaliated for her advocacy on the Student's behalf, by falsely accusing the Student of physically assaulting him, on or about XXXXXX, 2013. The complainant alleged that the principal blocked the Student in the XXXXXXXX XXXXXXXX; and when the Student tried to exit, the principal "XXXXXX" the Student's xxxxxxxx into the door and accused the Student of pushing him.

In analyzing whether retaliation occurred, OCR must determine: (1) whether the complainant engaged in a protected activity; (2) whether the recipient was aware of the complainant's protected activity; (3) whether the complainant/injured party suffered an adverse action contemporaneous with, or subsequent to, the recipient's learning of the complainant's involvement in the protected activity; and (4) whether there is a causal connection between the protected activity and the adverse action from which a retaliatory motivation reasonably may be

inferred. When there is evidence of all four elements, OCR then determines whether the recipient has a legitimate, non-retaliatory reason for the challenged action or whether the reason adduced by the recipient is a pretext to hide its retaliatory motivation.

OCR determined that the complainant engaged in protected activity during school year 2012-2013, when she alleged that the Student's suspensions from school were discriminatory on the basis of his race and that the District discriminated against the Student on the basis of disability by not providing educational instruction during the suspensions. OCR further determined that the District was aware of the complainant's protected activity.

The principal denied the complainant's account of the incident at issue. The principal stated that he approached the Student to discuss the Student's conduct, namely that District staff had reported that the Student had threatened another student with a XXX XXXX around his XXXXXXXX. The principal stated that the Student ran away from him and into the XXXXXXXX XXXXX. The principal denied pushing the Student and "xxxxxx" his xxxxxxxx on the XXXXXXX door, as alleged; rather, the principal stated that the Student "charged" at the principal and shoved him twice. The principal further stated that there were no witnesses to the incident, as he was the only District staff member who attempted to speak with the Student and all the other students were in their classrooms.

The complainant did not provide, and OCR did not find any witnesses or other evidence to substantiate the complainant's allegation that the principal falsely accused the Student of misconduct. Absent an adverse action, OCR will not proceed further with retaliation analysis. Accordingly, OCR will take no further action with respect to Allegation 2.

With respect to Allegation 3, the complainant alleged that the District discriminated on the basis of his race by asking the police to remove her and her husband from the School on or about XXXXXX, 2013. The complainant alleged that at a meeting on that date, she questioned the principal about his behavior with the Student; and the principal became angry, stormed out of the meeting, and called the police. The complainant stated that the police arrived and asked her and her husband to leave school property. The complainant asserted that they are XXX of XXXX XXX XXXXXXX XXXXXXXX in the District, and that the police would have never been called had they been a white family.

OCR determined that on XXXXXX, 2013, a Committee on Special Education (CSE) convened a meeting to review the Student's behavior and educational program, as recommended at a Superintendent's hearing held on XXXXXX, 2013. The meeting was held at a conference room at the District's regional office; and was attended by the complainant, her husband, the Student, the CSE chairperson (the Chairperson), the principal, the Student's classroom teacher, and the school psychologist. The principal stated that at the meeting, when he responded to a question, the complainant and her husband began yelling and screaming at him and using profanity including the "f word." The principal stated that he then left the meeting and spoke with the Director of Pupil Services (the Director) to discuss whether the other staff members in the meeting were safe. The Director stated that she and the principal approached the conference room, where there was audible yelling. The Director stated that shortly after, she called the police and requested assistance. The Director stated that she did so based on the yelling she

heard inside the conference room, the principal's heightened level of concern, and the principal's statements that they needed to call the police immediately.

The District staff members who attended the meeting corroborated that the complainant yelled at the principal during the meeting and used profanity towards the principal. The staff members informed OCR that they did not feel threatened because the complainant's conduct was directed solely at the principal; and when the two police officers arrived and asked whether they were comfortable proceeding with the meeting, all of the staff members confirmed that they were. The Chairperson stated that she informed the police officers that the meeting would conclude soon and requested that they leave the conference room. Thereafter, the CSE continued their discussion with the complainant and her husband present.

The complainant alleged that the police informed her and her husband that they had been banned from the School. OCR determined that the complainant and her husband attempted to enter the building immediately after the meeting, and the police told by them that they were not permitted to enter by request of the principal. The District acknowledged that the principal advised the police that the complainant and her husband were not permitted to re-enter the School on the XXXXXX, 2013, but denied that anyone at the District banned the complainant or her husband from the School thereafter. OCR found no evidence to indicate that the complainant or her husband were restricted from accessing the School on any subsequent occasion.

OCR determined that school officials are required to notify local law enforcement whenever parents/guardians or any other persons engage in behavior that is violent, threatening or may endanger the safety of other students and staff members. The District informed OCR that during school years 2011-2012 and 2012-2013, there were no other occasions when the District contacted the police regarding parents who engaged in inappropriate behavior at the elementary school or the District's Office. OCR determined that during school year 2012-2013, the assistant principal at the District's middle school contacted the police with regard to XXXXXXXXXXXXXXXXXXXX parents who engaged in conduct similar to that of the complainant.

Based on the above, OCR determined that the District proffered a legitimate, nondiscriminatory reason for calling the police; namely, that the complainant and her spouse were yelling loudly and using profanity during a meeting. OCR determined that the proffered reason was not a pretext for discrimination, because witnesses confirmed the behavior of the complainant and her husband; it was consistent with the District's practice to call the police in such a circumstance; and another parent of a different race who engaged in similar behavior was treated similarly. Moreover, OCR did not find any evidence to corroborate that the District banned the complainant or her husband from the school. Therefore, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the principal discriminated against her and her husband on the basis of race, by calling the police to remove her and her husband from the School on or about XXXXXX, 2013. Accordingly, OCR will take no further action with respect to Allegation 3.

With respect to Allegation 4, the complainant alleged that the District discriminated against the Student, on the basis of his disability, by failing to provide him with any educational instruction

from XXXXXXXX, 2013, through June 2013. The complainant asserted that the District provided the Student with classwork on only one occasion, at the end of May 2013.

OCR determined that the Student was suspended out-of-school for three days from XXXXXXXX through XX, 2013; and for five days from XXXXXXXX through XXXXXX, 2013. The Student returned to school on XXXXXX, 2013, and received another five-day, out-of-school suspension. OCR determined that the Student did not thereafter return to school for the remainder of school year 2012-2013, following the CSE's determination on XXXXXX, 2013, that the Student's conduct leading to these suspensions was a manifestation of his disability and that he required a XXXXXXXXXXXXXXXX.

The District informed OCR that it provides home tutoring for students who are suspended in accordance with the applicable state regulations.¹ The District informed OCR that pursuant to these regulations, the District is required to provide home instruction services for five hours per week to elementary-level students.

District staff asserted that it offered to provide the Student with tutoring during the Student's suspensions; however, the complainant and her husband refused. The complainant denied that the District ever offered to send a tutor to her home. The complainant stated that District staff advised her that it could provide a tutor for the Student at the library, but did not so inform her until after the Student had been out of school for a month. The complainant advised OCR that she refused tutoring at that time, because she believed that the Student was due to return to school. She stated that she was otherwise willing to have the District provide tutoring to the Student, but the District never offered it again.

The District asserted that the Student's teacher compiled assignments and that the District sent assignments home to the Student via his XXXXXX three times from May 14 through May 30, 2013. The complainant stated that the District never discussed sending home work with the Student's XXXXXX, and she and the Student's XXXXXX denied receiving any assignments. Additionally, the District asserted that on May 22, 2013, the complainant's husband picked up work for the Student from the school, which the complainant acknowledged. OCR determined that the Student completed the assignment that the complainant's husband picked up from school, and the complainant's husband returned it to the school in late May 2013. The District stated that the District's XXXXXXXXXXXX XXXXXXXX delivered additional assignments to the Student's home on May 31, 2013.

The District stated that the CSE placed the Student at XXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXX on XXXXXXXX, 2013; however, the Student's parents declined to accept the proposed placement on XXXXXXXX, 2013. The District asserted that the XXXXXXXXXXXX XXXXXXXX then attempted to deliver the final assignments for the school year to the complainant's home on three occasions, June 12, 13 and 17, 2013, but was unable to make contact with the complainant or her husband. The District asserted that on June 17, 2013, the XXXXXXXXXXXX XXXXXXXX left the work hanging in a bag from the front door handle.

¹ See 200.6 and 175.21 of the Regulations of the Commissioner of Education of the State of New York.

The complainant denied receiving any work that the XXXXXXXXXXXX XXXXXXXX delivered. The District provided to OCR logs and correspondence from the XXXXXXXXXXXX XXXXXXXX documenting her attempts to deliver the work to the Student's home, beginning on May 31, 2013.

On December 3, 2013, the District agreed to implement the enclosed resolution agreement, which addresses the compliance concerns identified in this letter. OCR will monitor the implementation of the resolution agreement. If the District fails to implement the terms of the resolution agreement, OCR will resume its 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, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the complainant may file another complaint alleging such treatment.

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.

If you have any questions about OCR's determination, please contact Diane Castro, Equal Opportunity Specialist at (646) 428-3808, or diane.castro@ed.gov; or Emma Kim, Senior Compliance Team Attorney, at (617) 289-0159 or emma.kim@ed.gov.

Sincerely,

Timothy C. J. Blanchard

Encl.