

September 22, 2016

Annette Speach
Superintendent
North Syracuse Central School District
5355 West Taft Road
North Syracuse, New York 13212

Re: Case No. 02-16-1219
North Syracuse Central School District

Dear Ms. Speach:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR) with respect to the above-referenced complaint filed against the North Syracuse Central School District. The complainant alleged that the District failed to respond appropriately to a complaint she made to a supervisor in the District's transportation department in December 2015, that a student harassed her daughter (the Student), on the basis of her race, by making a derogatory comment towards her on the bus (Allegation 1). The complainant also alleged that the District discriminated on the basis of race, by subjecting students at the XXXXXXXXXXXXXXXXXXXX School (the school), XXXXXXXXXXXXXXXXXXXX, to a racially hostile environment, by allowing a game involving "slaves" and a "slave master" to be played in gym class on or about XXXXXXXXXXXX 2016 (Allegation 2); and, by failing to respond appropriately to complaints XXXXXXXXXXXXXXXXXXXX regarding the game to the school principal and District Superintendent in February and March 2016 (Allegation 3).

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.

Racial harassment is a form of discrimination prohibited by Title VI and its implementing regulation. Harassing conduct can include verbal, written, graphic, physical or other conduct by an employee, a student, or a third party; as well as conduct that is physically threatening, harmful or humiliating. Harassment can create a hostile environment if it is sufficiently serious to interfere with or deny a student's participation in, or receipt of benefits, services or

opportunities in, the recipient’s program. If OCR determines that a student was subjected to harassing conduct, OCR will examine additional factors to make a determination as to whether a hostile environment existed and whether the District took prompt and effective action that was reasonably calculated to stop the harassment, prevent its recurrence, and as appropriate, remedy its effects.

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

With respect to Allegation 1, the complainant alleged that the District failed to respond appropriately to a complaint she made to a supervisor in the District’s transportation department in December 2015, that another student harassed the Student, on the basis of her race, by making a derogatory comment towards her on the bus. Specifically, the complainant alleged that she reported to a supervisor (supervisor 1) that a XXXXXX student (student A) said to the Student “XXXXXXXX XXXXX XXXXXXXX XXXXXXXX XXX XXXXX.” The complainant alleged that supervisor 1 indicated that she would investigate the matter, but the complainant never heard back from anyone regarding the matter. The complainant did not identify any witnesses or provide any documentation to corroborate that she made such a report.

The District asserted that it had no record of a complaint made by the complainant regarding any harassment of the Student on the bus; and the director, supervisor 1, another supervisor in the transportation department (supervisor 2) and the driver of the Student’s bus all denied ever receiving any such complaint from the complainant.¹ Additionally, supervisor 1 informed OCR that she was not familiar with the complainant and could not recall ever speaking to the complainant on any occasion. Supervisor 2 informed OCR that she spoke with the complainant in XXXXXXXX 2015, but only to address a request the complainant made that the Student and XXX XXXXX (student B) be permitted to sit together on the bus.²

OCR must often weigh conflicting evidence in light of the facts and circumstances of each case and determine whether the preponderance of the evidence substantiates the allegation. Here, OCR did not find that the complainant’s assertion that she complained to supervisor 1, or any other District staff member, that student A harassed the Student on the basis of her race and/or made a derogatory comment towards her on the bus, was supported by a preponderance of the evidence. Therefore, OCR determined that there was insufficient evidence to substantiate the complainant’s allegation that the District failed to respond appropriately to a complaint she made to supervisor 1 in December 2015 that student A harassed the Student, on the basis of her race, by making a derogatory comment towards her on the bus. Accordingly, OCR will take no further action with respect to Allegation 1.

With respect to Allegations 2 and 3, the complainant alleged that the District discriminated on the basis of race, by subjecting students at the school, XXXXXXXXXXXXXXXXXXXXXXX, to a racially hostile environment, by allowing a game involving “slaves” and a “slave master” to be played in gym class on or about XXXXXX XX, 2016; and, by failing to respond appropriately to

¹ The standard practice of staff in the District’s transportation department is to document all complaints.

² Student seating on the bus is typically arranged by grade level, and the Student and student B are in different grades; XXX.

complaints XXXXXXXXXXXXXXXXXXXX regarding the game to the principal and District Superintendent in February and March 2016.

OCR determined that XXX XXXXXXX XXX XXXXXXX in XXXXX XXXXXXX XXXXXXX during school year 2015-2016. On XXXXXX XX, 2016, XXXXX and XXXX grade classes at the school participated in an activity during gym as part of the District’s Black History Month observance; the District asserted that it has had students participate in this activity as part of Black History Month for at least the past fifteen years.³ The activity, which the District referred to as an “Underground Railroad activity” (the activity), consisted of two parts: (1) a reading and discussion, wherein two gym teachers (teachers 1 and 2) read “Barefoot: Escape on the Underground Railroad” (the book)⁴ to students under a large tent in a dimly lit room, and facilitated a discussion of the book; and, (2) a physical component designed to incorporate elements of the book. During the reading portion, teacher 1 read the book while teacher 2 made whistling sounds outside the tent at certain times to represent the heron referenced in the book, and tapped the floor with a stick at certain times to represent “Heavy Boots.” During the physical component, students navigated an obstacle course in order to reach a “safe house.” Students were to freeze when they heard teacher 1 tap the stick on the floor, which was again intended to represent the sound of “Heavy Boots.” Students could then proceed when they heard a whistling sound, intended to represent the heron. Students who did not freeze, or who knocked over any piece of the obstacle course equipment, had to go to the middle of the gym for a minute or two, and then could re-enter the activity. Once the students reached the “safe house,” made of gym mats, they colored pictures of quilts to learn about how individuals marked houses as safe havens on the Underground Railroad. Class concluded with a brief discussion of the Underground Railroad and local historical sites such as the Harriet Tubman house.

The complainant asserted that during the physical component, students were instructed that when running through the obstacle course, they should avoid being “caught” by the “slave master”; and that if the “slave master” caught a student, the student had to sit in the middle of the gym. Both teachers 1 and 2 denied ever referring to themselves as slave masters or to students as slaves, and denied that catching students was a component of the activity; however, the District acknowledged that during the reading portion, “[a] majority of the students identified ‘Barefoot’ as a slave and the ‘Heavy Boots’ as a slave owner.” The complainant further asserted that during the activity, teacher 1 said to the students “there will not be a second chance for the slaves, they will have corporal punishment.” Both teachers 1 and 2 denied that any such statement was made. Teacher 1 acknowledged saying “slaves did not get another chance” but indicated that the statement was made in the context of explaining the courage it took for slaves to attempt escape.

³ The complainant XXX XXX XXXXXXX asserted that teachers 1 and 2 did not explain the significance of the game in relation to Black History Month. The District denied this assertion.

⁴ School Library Journal described the book, which is available as a Scholastic book, as follows: “The Barefoot is an escaping slave whose flight is aided by the wild animals of forest and swamp. The frog’s croak guides him to water, while a nesting squirrel leads him to cover himself with leaves. When the Heavy Boots slave catchers draw near, mosquitoes swarm heavily around them and a deer leads them away into the forest. Fireflies light the Barefoot’s way to a house on the Underground Railroad and safety while the animals are still alert for another Barefoot.” <https://www.amazon.com/Barefoot-Underground-Pamela-Duncan-Edwards/dp/0064435199>.

The complainant XXX XXX XXXXXXXX informed OCR that XXX XXXXXXXX, who is XXXXXXXX XXXX XXXXX XXXXX and XXXX XXXX X XXXXX XXXX XXX, was upset by the activity and felt “ill, scared and nervous” about returning to school following the activity; she XXXXXXXXXX XXXXXXX XXXX XXXX XXXXXXX XXX XXXXXXX XXXX. On Friday, February 26, 2016, the complainant called the principal to complain about the activity. According to the complainant, the principal stated that the activity was conducted in honor of Black History Month to “explain slavery,” “because of the lack of diversity at the school.” The complainant alleged that the principal did not take her concerns seriously, did not indicate that he would investigate her complaint, and did not offer to discontinue the activity. According to the District, the principal informed the complainant that the activity was intended to teach students about the Underground Railroad and that he would discuss the activity with teachers 1 and 2 and get back to the complainant the following week. The principal denied not taking the complainant’s concerns seriously or attributing the activity to an alleged lack of diversity at the school.

On or about XXXXXXXX, 2016, XXX XXXXXXXXXXXXX contacted the local media regarding the activity; and on XXXXXXXX, 2016, a reporter contacted the Superintendent regarding the activity. OCR determined that the Superintendent promptly looked into the matter and then sent a letter home to parents of school students on March 2, 2016, regarding the activity. In the letter, the Superintendent stated that “[t]he intent of the activity was to provide students with a creative and active learning exercise about an important historical topic,” but that “matters of race are too sensitive for such an approach” and that “[a]fter reviewing the situation on the day [she] learned of it, [she] determined that the activity was inappropriate and insensitive, and it has been discontinued.”

By electronic mail message (email) to the Superintendent dated March 3, 2016, the complainant again complained about the activity and its effect on XXX XXXXXXXX.⁵ Additionally, by letter dated March 4, 2016, another parent (parent 2) complained to the Superintendent that the activity was “offensive,” that “discontinuing this game is too little too late,” and that more corrective action should be taken by the District. In response, the Superintendent authorized an investigation of the two complaints by outside counsel acting as the investigator.

The investigator interviewed the complainant, XXXXXXXXXXXXX and parent 2 in mid- to late March 2016, and also interviewed teachers 1 and 2, the principal and other current and former district staff members. The investigator also reviewed documentation including the written complaints of the complainant and parent 2, other correspondence from the complainant, documentation and correspondence of District staff regarding the educational value of the activity, and media coverage.

In the meantime, XXXXXXXXXXXXX XXXXXXXX to XXXXXX on XXXXXX XX, 2016. The complainant and XXXXXXXXXXXXX asserted that XXXX XXX XXXXXXX, four XXXXXXX students talked to her about the activity at the bus stop. XXXXXXXXXXXXX asserted that one of the students blamed XXXX for “shutting the game down” and said she really wanted to play it; another student said he wanted his little brother to one day play the game; and all four students

⁵ The complainant alleged that she also spoke to the Superintendent, who was “annoyed” that the complainant had XXXXXXXXXX XXX XXXXX before speaking to her. The District did not have any record of this communication.

said that they one day hoped to serve in the slave master’s role. On or about XXXXXX XX, 2016, the complainant informed the District that she would XXXXXXXXXXXX XXXXXXXXXXXX and XXXXXXXX, because they no longer felt comfortable XXXXXXXXXXXX XXX XXXXXXXX. The complainant and XXXXXXXX informed OCR and the investigator that XXXXXXXXXXXX felt uncomfortable in part because teachers 1 and 2 paid more attention to XXXXXXXXXXXX following the activity and the complainant’s complaints. For example, teacher 2 gave XXXXXXXXXXXX a “high five” one day when XXXX got off the bus, but did not do this for any other student; and teacher 1 smiled at XXXXXXXXXXXX when she XXXXXXXX XX XXXXXXXX even though he had never done so before. According to the investigator’s report, the complainant XXX XXXXXXXXXXXX did not report the alleged comments of the students on March 8, 2016, to the investigator; rather, “[w]hen asked if either of the physical education teachers or any of the other students did or said anything else to make her feel uncomfortable XXXXXXXXXXXX [XXX XXXXXXXX], [XXXXXXXXXXXX] said no.” The complainant did not assert to OCR that she notified the District about the comments allegedly made to XXXXXXXX on March 8, 2016.

The investigator concluded her investigation on April 8, 2016. The investigator noted that teachers 1 and 2 reported that no students appeared upset or scared by the activity;⁶ however, the investigator did not interview any students who participated in the activity other than the Student, and according to the complainant, the investigator did not ask or explore how the Student was faring in light of the activity. The investigator determined that “the students’ participation in the Underground Railroad activity did not constitute harassment in violation of [the Dignity for All Students Act (DASA)], Title VI or any Board policy,” because the investigation “revealed no evidence of any racial comments being made by the physical education teachers or any other teachers or students during or immediately following the Underground Railroad activity” and there was “no evidence to suggest that students were treated differently during the activity based on their race.” Nevertheless, the investigator agreed with the Superintendent’s conclusion that the activity could be viewed as inappropriate and insensitive, and supported the decision to discontinue the activity.⁷ By letters dated April 22, 2016, the Superintendent notified the complainant and parent 2 of the outcome of the investigation, and her decision to maintain her earlier decision to discontinue the activity from the District’s curriculum.⁸ By letter dated May 10, 2016, the Superintendent notified the District’s physical education teachers that the activity had been permanently discontinued.

⁶ According to the investigator’s report, teachers 1 and 2 reported that the students were “energetic and excited about the activity,” although “maybe a little apprehensive at first because the class was so different from their typical gym class.” Teachers 1 and 2 further reported that “they never witnessed a student who appeared to be upset or scared by the lesson in any way.” The investigator noted that “[w]hile one XXXXXX grade student who was interviewed stated that the students were yelling and crying when they first heard the sound of the stick pounding on the gym floor (and that she even thought it was a school shooting), this was denied by all of the teachers and not reported by anyone else”; and, that teacher 2 stated that “the students were caught off guard by the sound of the stick at first but they seemed to be filled with excitement, not fear.”

⁷ The investigator noted that there was debate among District parents and students regarding the Underground Railroad activity; debate nationally regarding the academic value of role-playing to recreate historical events; and debate among professionals regarding whether such role-playing activities, particularly those relating to race, oversimplify history and cause conflict for some students. The investigator also noted that such activities could increase the possibility that students might engage in conduct that would amount to racial harassment.

⁸ The superintendent also granted a request the complainant made on or about XXXXXX, 2016, to allow XXXXXXXXXXXX and XXXXXXXXXXXX XX XXXXXXXX XX X XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXX for

On September 19, 2016, the District entered into the enclosed agreement with OCR to resolve Allegations 2 and 3 without further investigation. OCR will monitor the implementation of the agreement.

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 that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions about OCR's determinations, please contact Janet Pfeffer, Equal Opportunity Specialist, at (646) 428-3833 or janet.pfeffer@ed.gov; or Bernard Dufresne, Compliance Team Attorney, at (646) 428-3802 or bernard.dufresne@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

cc: XXXXXXXX XXXXXXXX, Esq.

XXXXXXXX XXXX XXXXXXXXXXXX. The complainant later requested that XXXX XXXXXXXX XX XXXXXXX XXXX XXXX XXXX XXX XXXXXXX XXXX XXXXXXXXXXXX, and the superintendent granted the request.