

August 22, 2018

Michael C. Dicken  
Superintendent  
Gloucester County Vocational School District  
1360 Tanyard Road  
Sewell, New Jersey 08080

Re: Case No. 02-18-1146  
Gloucester County Vocational School District

Dear Mr. Dicken:

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 Gloucester County Vocational School District (the District). The complainant alleged that on January 8, 2018, the District treated African-American students differently, on the basis of their race, with respect to alleged dress code violations at the Gloucester County Institute of Technology (the Institute) (Allegation 1). The complainant also alleged that the District discriminated against African-American students, on the basis of their race, by failing to respond appropriately to notice of a racially hostile environment at the Institute (Allegation 2).

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.

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

OCR determined that the Institute is the only school in the District. According to the most recent available New Jersey School Performance Report, 1,299 students were enrolled at the Institute during school year 2016-2017, of whom 80.4% were white and 5.4% were African-American.

With respect to Allegation 1, the complainant alleged that on January 8, 2018, the District treated African-American students differently, on the basis of their race, with respect to alleged dress code violations at the Institute. In support of Allegation 1, the complainant asserted that on January 8, 2018, the Institute prohibited African-American students from wearing t-shirts featuring an image of the African continent because the t-shirts allegedly violated the Institute's dress code, but the Institute did not prohibit white students from wearing t-shirts featuring the Confederate flag, which they alleged also violated the Institute's dress code.

The regulation implementing Title VI, at 34 C.F.R. § 100.3(a), provides that no person shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program operated by a recipient. Further, the regulation implementing Title VI, at 34 C.F.R. § 100.3(b)(1)(iii) and (iv), provides that a recipient may not, on the ground of race, color, or national origin, subject an individual to separate treatment in any matter related to his receipt of any service or other benefit of the program or restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service or other benefit under the program.

OCR determined that the District's Dress and Grooming Policy (policy 1) prohibits "dress or grooming practices which materially interfere with school work, create disorder, or disrupt the educational program."

OCR determined that on November 2, 2017, several white students wore clothing depicting the Confederate flag.<sup>1</sup> Several students and staff members raised concerns to Institute administrators regarding the clothing featuring the Confederate flag. District administrators concluded on this occasion that the clothing featuring the Confederate flag violated policy 1, because it materially interfered with school work, created disorder, and/or disrupted the educational program at the Institute. Accordingly, District administrators directed students wearing clothing featuring the Confederate flag to change clothes, turn shirts inside out or go home.<sup>2</sup> The principal informed OCR that following the incident on November 2, 2017, no Institute student wore clothing featuring the Confederate flag in school.

On January 8, 2018, prior to receiving approval, an Institute vocational technology program offered for sale, online, a t-shirt with the words "Back the Blue" (t-shirt 1), in support of local law enforcement's participation in an appreciation day at the Institute. The District removed t-shirt 1 from the website because it had not been approved.<sup>3</sup>

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<sup>1</sup> OCR determined that these students wore clothing depicting the Confederate flag in response to students wearing black clothing for America Day, for which students were encouraged to wear red, white and blue.

<sup>2</sup> All of the students except xxx elected to remove clothing featuring the Confederate flag; xxxx opted to go home. The Superintendent informed OCR that students mistakenly believed that another student was permitted to wear a Confederate flag xxxx all day. The Superintendent explained this student was not at the Institute during the first half of the day when students were initially directed to change clothing or go home; however, the student was instructed to remove the Confederate flag xxxx after he arrived at the Institute that day, and he did so.

<sup>3</sup> The principal informed OCR that pursuant to Institute policy and practice, members of Institute clubs or programs must submit proposals for club/program-sponsored apparel to him for approval, so that he can confirm that the apparel comports with policy 1.

In response to the appearance of t-shirt 1 on the website, on January 9, 2018, several members of the Institute's African-American Culture Club (the club) wore t-shirts that bore an outline of the African continent on the back and a black raised fist on the front (t-shirt 2), which had not been approved.<sup>4</sup>

An Assistant Principal at the Institute (assistant principal 1) asked club members to remove t-shirt 2, and informed them that the District had removed t-shirt 1 from the website because it had not been approved. The club members wearing t-shirt 2 removed the shirts.

In or around February 2018, the club, in collaboration with the principal, modified the design of t-shirt 2, by adding the word "unity" (t-shirt 3). The principal approved the modified design, and shirts with the new design were printed at no additional expense to the club for students to wear in school.

Based on the foregoing, OCR determined there was insufficient evidence to substantiate the complainant's allegation that on January 8, 2018, the District treated African-American students differently, on the basis of their race, with respect to alleged dress code violations at the Institute. Rather, OCR determined that the District also prohibited white Institute students from wearing clothing that violated policy 1. To the extent that the District prohibited African-American students from wearing t-shirt 2, OCR determined that the District had legitimate, nondiscriminatory reasons for doing so; namely, the principal had not approved the design of the shirt, and the principal wanted to redesign it to ensure it comported with policy 1, following a disruption caused by its design. OCR determined that these proffered reasons were not a pretext for discrimination, because the principal acted in accordance with Institute policy and procedure; subsequently approved the design of t-shirt 3, after which students were permitted to wear t-shirt 3 in school; and, the Institute similarly required another group of white students to obtain prior approval of a program-sponsored t-shirt design before distributing and wearing the t-shirts. Therefore, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that on January 8, 2018, the District treated African-American students differently, on the basis of their race, with respect to alleged dress code violations at the Institute. Accordingly, OCR will take no further action with respect to Allegation 1.

With respect to Allegation 2, the complainant alleged that the District discriminated against African-American students, on the basis of their race, by failing to respond appropriately to notice of a racially hostile environment at the Institute. In support of Allegation 2, the complainant alleged that the District had notice of numerous incidents of alleged racial harassment during school year 2017-2018, but took no action or took inadequate action in response. The complainant identified the following incidents of alleged racial harassment: (i) in October 2017, a history teacher (teacher 1) "angrily" told an African-American student to stand and not disrespect the American flag during the Pledge of Allegiance, but did not tell two

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<sup>4</sup> Previously, in December 2017, several club members wore t-shirt 2, which was purchased with funds raised by the club. The principal informed OCR that students and staff made complaints to the District Superintendent regarding t-shirt 2, because they believed the fist symbolized segregation as opposed to unity. The principal asked the club members to remove t-shirt 2 because he had not pre-approved the design; and, promised to work with club members to create a revised t-shirt. All students removed the shirts.

similarly situated white students to stand or not disrespect the flag (incident 1); (ii) in October 2017, a teacher (teacher 2) told students that club members would be at fault if Spirit Week were cancelled (incident 2); (iii) on November 2, 2017, a history teacher (teacher 3) observed white students cheering for the Ku Klux Klan during class and did nothing (incident 3); (iv) on November 3, 2017, administrators were notified that white students xxxxxx xxxxxx xxxxxx xxxxxx xxxxxxxx in the locker room to xxxxxxxx xxxxxx (incident 4); (v) in November 2017, teacher 3 overheard a white student tell an African-American student that she should “xxxx xxxxx xxxxx” to xxxxxx xxxx xxxxxx xxxxxxxx, and did nothing (incident 5); (vi) on December 5, 2017, teacher 3 overheard a white student yelling “xxxxxx xxxxxx” in class and did nothing (incident 6); (vi) on December 12, 2017, a teacher (teacher 4) reported to administrators that she observed a white student purposefully xxxxx xxxx an African-American student in the hall, and administrators took no responsive action (incident 7); and, (viii) on January 24, 2018, an African-American student reported to a history teacher (teacher 5) that a white student referred to him as “xxxxxx xxxxx,” and teacher 5 did nothing (incident 8).

Racial harassment that creates a hostile environment is a form of discrimination prohibited by Title VI and its implementing regulation. Harassing conduct can include oral, 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 harassing conduct occurred and that the recipient had actual or constructive notice of the harassment, OCR will examine additional factors to make a determination as to whether a hostile environment existed and whether the recipient took prompt and effective action that was reasonably calculated to stop the harassment, prevent its recurrence and, as appropriate, remedy its effects.

The District acknowledged that it received complaints regarding incidents 1-7.<sup>5</sup> The District provided documentation to OCR indicating that it also received numerous other reports of incidents of alleged racial harassment during school year 2017-2018. The District provided documentation to OCR indicating that it conducted investigations of some of the alleged incidents of racial harassment and made determinations that some of the incidents violated the Harassment, Intimidation and Bullying policy or District’s Code of Conduct. Interview notes from investigations the District conducted indicated that students raised additional concerns regarding alleged racial harassment during interviews. To date, the District has not provided documentation and/or information to OCR sufficient to show that following notice of the numerous alleged incidents of racial harassment during school year 2017-2018, the District took sufficient action to determine whether all of the alleged harassing conduct occurred and whether a racially hostile environment existed; and if so, that the District took prompt and effective action reasonably calculated to stop the harassment, prevent its recurrence, and as appropriate, remedy its effects.<sup>6</sup>

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<sup>5</sup> Institute administrators denied knowledge of incident 8, and OCR did not interview teacher 5 before the District expressed interest in voluntarily resolving Allegation 2.

<sup>6</sup> The District informed OCR of its involvement in the following efforts to improve the campus climate since January 2018: (a) appointment to the Gloucester County Tolerance Project, in collaboration with the Gloucester County Freeholders; (b) membership in the New Jersey Consortia for Excellence Through Equity; (c) collaboration with the Anti-Defamation League (ADL) to set goals for establishing the “No Place For Hate Program” and to

On August 15, 2018, the District signed the enclosed agreement to resolve Allegation 2 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 individual may file a 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, please contact Lauren Numeroff, Compliance Team Attorney, at (646) 428-3895 or [lauren.numeroff@ed.gov](mailto:lauren.numeroff@ed.gov); or Bernard Dufresne, Compliance Team Attorney, at (646) 428-3802 or [bernard.dufresne@ed.gov](mailto:bernard.dufresne@ed.gov).

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

cc: Susan S. Hodges, Esq.

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provide professional development training for staff in spring 2018; (d) collaboration with the Center for Access, Success, and Equity at Rowan University; (e) establishment of an Equity Task Force; (f) investigation into the "60 Seconds of Social Justice Program" developed at Rowan University; (g) administration attendance at the "Justice for All, Reflecting on Equity" presentation at Camden County College in February 2018; (h) membership in the National Alliance for Partnerships in equity and attendance at its national conference in April 2018; (i) performance by the Institute's choir at the Williamstown Historical Society to celebrate Black History Month in February 2018; and, (j) hosting the Institute's annual Multicultural Festival in March 2018.