



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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DIRECTOR
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September 27, 2023

Sent by email only to jdiszler@cranburyschool.org

Jennifer Diszler, Ed.D.
Superintendent/Principal
Cranbury Township School District
23 North Main Street
Cranbury, New Jersey 08512

Re: Case No. 02-18-1358
Cranbury Township School District

Dear Dr. Diszler:

This letter is to notify you of the determination made by the U.S. Department of Education (the Department), Office for Civil Rights (OCR) regarding a complaint filed against the Cranbury Township School District. The Complainant alleged that District staff failed to respond appropriately to a complaint of racial harassment she and her daughter (the Student) made on [redacted content] (Allegation 1). The Complainant also alleged that District staff retaliated against her for her prior complaints of race discrimination by falsely reporting to the police on [redacted content], that [redacted content] that day (Allegation 2).

As discussed below, OCR's investigation determined that there was insufficient evidence to substantiate Allegation 1. With respect to Allegation 2, OCR has a concern that the District may have reported the Complainant to the police on [redacted content], because she previously complained of race discrimination. Therefore, OCR determined that resolution of Allegation 2 under Section 302 of OCR's *Case Processing Manual (CPM)* is appropriate.¹ On September 20, 2023, the District signed the enclosed Resolution Agreement to address this concern. The reasons for OCR's determinations are explained below.

OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI), as amended, 42 U.S.C. §§ 2000d-2000d-7, and its implementing regulations at 34 C.F.R. Part 100, which prohibit discrimination on the bases of race, color, and national origin in programs and activities receiving financial assistance from the Department. The regulation implementing Title VI, at 34 C.F.R. § 100.7(e), provides that no recipient or other person shall intimidate, threaten, coerce, or discriminate against any

¹ See *CPM* (July 18, 2022), at <https://www2.ed.gov/about/offices/list/ocr/docs/ocrepm.pdf>.

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. As a recipient of federal financial assistance from the Department, the District is subject to Title VI and its implementing regulations.

I. Applicable Legal Standards

The regulation implementing Title VI, at 34 C.F.R. § 100.3, provides that no person shall, on the basis of race, color, or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program to which Title VI applies. The regulations implementing Title VI, at 34 C.F.R. § 100.3(b)(1)(i), (ii), and (iv), state that a recipient may not, directly or through contractual or other arrangements, on ground of race, color, or national origin, deny an individual any service, aid, or benefit provided under the program; provide any service or benefit to an individual that is different, or is provided in a different manner, from that provided to others under the program; or restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit under the program.

The existence of a hostile environment that is created, encouraged, accepted, tolerated, or left uncorrected by a recipient constitutes discrimination on the basis of race, color, or national origin in violation of Title VI. To establish a violation of Title VI under the hostile environment theory, OCR must find that: (1) a hostile environment based on race, color, or national origin existed; (2) the recipient had actual or constructive notice of a hostile environment based on race, color, or national origin; and (3) the recipient failed to respond adequately to redress the hostile environment based on race, color, or national origin.

Once a recipient has notice of a hostile environment, the recipient has a legal duty to take reasonable steps to eliminate it. OCR evaluates the appropriateness of the responsive action by assessing whether it was reasonable, timely, and effective. The appropriate response to a hostile environment based on race, color, or national origin must be tailored to redress fully the specific problems experienced as a result of the harassment.

The following three elements must be satisfied to establish a *prima facie* case of retaliation: (1) an individual engaged in a protected activity; (2) an individual experienced an adverse action caused by the recipient; and (3) there is some evidence of a causal connection between the adverse action and the protected activity. When a *prima facie* case of retaliation has been established, OCR then determines whether there is a facially legitimate, non-retaliatory reason for the adverse action; and if so, whether the facially legitimate, non-retaliatory reason is a pretext for retaliation.

II. Investigative Findings and Legal Analysis

In its investigation, OCR interviewed the Complainant and District staff. OCR also reviewed documentation that the District provided. OCR made the following determinations.

During school year 2017-2018, the Student was in the [redacted content] grade at the Cranbury School (the School). The Complainant informed OCR that the Student is [redacted content].

According to information available in the New Jersey School Performance Report, the School enrolled 480 students during school year 2017-2018. Of these, 63.6% were White, 8.1% were Hispanic, 3.7% were Black or African American, 20.6% were Asian, and 4% were two or more races.²

A. The District's Policy Prohibiting Discrimination and Harassment of Students

The District's Harassment, Intimidation, and Bullying (HIB) Policy, Policy No. 5512 (the Policy)³ prohibits acts of harassment, intimidation, and bullying of students motivated by any actual or perceived characteristic, including race and color; and prohibits retaliation against "any other person who has reliable information about an act of [HIB] or who reports an act of [HIB]."⁴ The Policy sets forth the District's procedure for conducting thorough and prompt investigations of HIB reports.

B. The Complainant's and Student's Reports and the District's Responses

1. Allegation 1

The Complainant alleged that District staff failed to respond appropriately to a complaint of racial harassment she and the Student made on [redacted content]. OCR determined that during a meeting with the then-Principal⁵ on [redacted content], the Student and Complainant orally reported that other students had harassed the Student based on her race and described the following incidents:

- During gym class on [redacted content], some classmates prevented the Student from participating in a game by continuously jumping in front of her so she could not hit a balloon in the air (Incident 1); and another student (Student A) told the Student that while Student A was drinking at the water fountain during gym class, two other students (Student B and Student C) said, "I don't like the [redacted content], I don't want to be part of her group because of [redacted content]" (Incident 2);
- During the week of [redacted content], the Student heard students say similar things about her [redacted content] while she was at the water fountain (Incident 3);
- During a Spanish class on [redacted content], a student (Student D) grabbed a pencil out of the Student's hands while the Student was writing her name on a piece of paper (Incident 4); and
- During recess on [redacted content], the Student asked some classmates to play with her, but they refused, stating, "Why do you always wear [redacted content]? You are [redacted content]," referring to the Student's ability to perform a [redacted content] (Incident 5).

The Student told the Principal that on [redacted content], she informed the [redacted content], the [redacted content], her [redacted content], and the [redacted content] about the incidents that

² See [District Performance Report \(windows.net\)](#) (last visited September 22, 2023).

³ See [ELANOnline District Policies \(straussesmay.com\)](#) (last visited September 22, 2023).

⁴ *Ibid.*

⁵ The Principal and [redacted content] retired effective September 1, 2022, prior to the start of school year 2022-2023.

occurred that day in her gym and Spanish classes. The Principal stated that upon hearing the Student's complaints, she informed the Complainant and the Student that she would initiate a HIB investigation. OCR determined that the Principal and [redacted content] investigated Incidents 1-4, but were unable to investigate Incident 5, as explained below.

OCR determined that between [redacted content] and [redacted content], the Principal and [redacted content] investigated Incidents 1-4 by reviewing the information the Complainant and Student reported; interviewing the [redacted content], the [redacted content] (who was present in both the gym and Spanish classes when the alleged incidents occurred), the [redacted content], and Students A, B, C, and D; and obtaining written statements from the Student's teacher and the [redacted content]. The [redacted content] also reviewed video camera footage recorded during the Student's gym class on [redacted content]. The Student reported the names of the individual students allegedly involved in Incidents 1-4 but did not provide the names of any additional witnesses to the Principal.

With respect to Incident 1, the [redacted content] stated that the video camera footage did not show that students had interfered with the Student's participating in a game during gym class on [redacted content], as she alleged. Based on the video footage and witness interviews, the District determined that no one had jumped in front of the Student to prevent her from being able to hit the balloon or otherwise interfered with her participation in the game.

With respect to Incidents 2 and 3, the District stated that during their interview with Student A, the Principal and [redacted content] asked Student A to describe what occurred at the water fountain and whether she had ever heard anyone make comments about the Student's [redacted content], [redacted content], and [redacted content]. Student A stated that the Student approached her while she was at the water fountain and told her that she did not believe that Students B and C liked her (the Student). Student A stated that she told the Student that she believed that Students B and C did like her. According to Student A, the Student responded that she did not think so because they did not play with her in gym. During the interview, Student A denied hearing Students B and C making any comments about the Student's [redacted content], or [redacted content] on [redacted content], or at any other time and stated that she had only heard them say nice things about the Student. Student A also stated that on [redacted content], she saw the Student speaking to the [redacted content] but did not know what she said. Students B and C denied making any comments about the Student's [redacted content], or [redacted content]. The [redacted content] and [redacted content] also denied ever hearing or being made aware of any comments regarding the Student's appearance. The Student's teacher reported that she was unaware of the alleged comments or any issues between the Student and any of her classmates. The Student's teacher also stated that she had not received any complaints about issues between the Student and other students.

With respect to Incident 4, the District stated that during class on [redacted content], the [redacted content] asked Student D to collect the pencils from the class. Student D admitted that she tried to take a pencil from the Student's hand when the Student would not give it to her. The Student reported the incident to the [redacted content] in her next class. The District stated that the [redacted content] resolved the issue that day by speaking with Student D about having ripped the pencil out of the Student's hand and discussing better approaches Student D could use in the future.

The Complainant and the Student did not identify to the District or to OCR anything about the interaction to indicate that Student D's conduct was racially motivated.

With respect to Incident 5, the District stated that neither the Complainant nor the Student identified the specific students who allegedly made comments about the Student's [redacted content] during recess on [redacted content], and the Student stated that she did not report the incident to anyone when it allegedly occurred. Additionally, the District did not learn any information in its investigation of Incidents 1-4 that would substantiate the Student's claim that other students made comments about her [redacted content] during recess on [redacted content]. As stated above, during the District's investigation of Incidents 1-4, the [redacted content] and [redacted content] denied ever hearing or being made aware of any comments regarding the Student's appearance, including her [redacted content]; the Student's teacher was unaware of any comments directed at the Student or any issues between the Student and other students; Students B and C denied making any comments about the Student's [redacted content] on [redacted content], or at any other time; and Student A stated that she only heard other students say nice things about the Student.

Consistent with the Policy, the [redacted content] reported the results of the HIB investigation to the Principal on [redacted content], and the Principal reported the results to the District's Board of Education (the Board) at the next regularly scheduled meeting on [redacted content]. The Board voted to affirm the results at the following meeting on [redacted content]. By letter dated [redacted content],⁶ the Principal notified the Complainant that she had concluded her investigation and determined that the District did not find evidence that the Student was the target of the alleged acts of harassment, intimidation, or bullying. Also on [redacted content], the Principal sent letters to the parents of Students B and C, informing them of the investigation results. The District stated to OCR that it did not find any evidence indicating that any student engaged in conduct toward the Student because of or motivated by the Student's race with respect to Incidents 1, 2, 3, 4 or 5.

OCR evaluates the appropriateness of the responsive action by assessing whether it was reasonable, timely, and effective. Based on the above, OCR determined that the District responded in a timely, reasonable, and effective manner to the racial harassment complaint that the Complainant and Student made regarding Incidents 1, 2, 3, and 4 on [redacted content]. OCR further determined that there was insufficient evidence to establish that student peers subjected the Student to racial harassment with respect to Incidents 1, 2, 3, 4 or 5. 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 her race by failing to respond appropriately to the complaint of racial harassment that she and the Student made on [redacted content]. Accordingly, OCR is closing Allegation 1.

2. Allegation 2

The Complainant alleged that District staff retaliated against her for her prior complaints of race discrimination by falsely reporting to the police on [redacted content], [redacted content]. The Complainant stated that on [redacted content], a police officer came to her home and advised her

⁶ The District stated that the letter sent to the Complainant via regular mail was returned as undeliverable so the District sent a copy of the letter to the Complainant by email on [redacted content].

that the District had reported to the local police department that the Complainant's children had been [redacted content]. The Complainant further stated that the police officer observed that she was home with her children and left without issuing any citations to her. The Complainant alleged that the Principal made the false report because the Complainant had complained to the School on [redacted content], that the Student was being subjected to racial harassment and had informed the Principal of her intention to disenroll the Student and her other children from the District.

OCR determined that the Complainant engaged in a protected activity on [redacted content], when she made a complaint of racial harassment on behalf of the Student during a meeting with the Principal. OCR determined that the District was aware of the Complainant's protected activity.

OCR determined that during the meeting on [redacted content], the Complainant advised the Principal that she no longer wanted the Student or any of her other children enrolled in the District because of the alleged racial discrimination and said that she planned to withdraw her children from school and look for a new place to live. The Principal stated to OCR that during the meeting the Complainant requested copies of her children's official student records to enroll them at another school and the Principal denied the request. The Principal stated that she denied the request because New Jersey state law prohibited her from handing the records directly to the Complainant. The Principal stated that she advised the Complainant that she would have to officially withdraw her children from the school, register at a new school, and the District would then send the children's student records to the new school. After the meeting that same day, the [redacted content] (the [redacted content]) left a voicemail message at the Complainant's cell phone number, stating that the withdrawal paperwork that the Complainant requested was ready for her to pick up at the School. In the message, the [redacted content] also asked that the Complainant return her call to let her know what time to expect her at the School so that she could inform the Principal.

The Principal stated that District staff take attendance in the morning after the homeroom period. The District's attendance policy requires parents/guardians to leave a message on the District's attendance telephone line prior to 8:45 a.m. to inform School staff whenever their child(ren) will be absent or late. The School [redacted content] (the [redacted content]) [redacted content] matters for the School. If parents/guardians fail to inform the School that their child(ren) will not be in school for whatever reason, [redacted content]. The attendance policy states that for up to four cumulative unexcused absences, the Principal may, among other actions, proceed in accordance with New Jersey state regulations if it seems that there is potentially a situation involving a missing or abused child, and cooperate with law enforcement and other authorities and agencies, as appropriate.

The Principal informed OCR that for students who are absent from school but whose parents/guardians do not leave a message on the attendance telephone line, the District's procedure is for the [redacted content] to contact the family to see if the children are ill and to make sure they are with an adult. The District informed OCR that the [redacted content] sends an email to District staff with a list of absent students. The District has a memorandum of understanding (MOU) with the Cranbury Township Police Department (CPD), which states that the sheriff and all police officers and constables are required to assist school attendance officers in the performance of their duties, including accompanying attendance officers to the homes of students where attendance

officers have concerns about a student's safety. The District told OCR that since the District does not have an attendance officer, the CPD fulfills the role of an attendance officer and under certain circumstances conducts [redacted content] on behalf of the District. The CPD assigns an officer to the District to provide the necessary assistance. The District did not specify the circumstances under which the District will engage with the police department to conduct a [redacted content].

The Principal stated that on [redacted content], [redacted content] of the Complainant's children were absent from school and the Complainant had not left a message about her children's absences on the School's attendance telephone line. Pursuant to the attendance policy, the [redacted content] called the Complainant at some time between 8:45 a.m. and 9:57 a.m. to verify the children's absence, but the Complainant did not answer. The [redacted content] included the children's absences on the list of absent students that she sent to School staff at 9:57 a.m. The Principal stated that at approximately 10:00 a.m., she called the local police chief to request a [redacted content] for the Complainant's children because the Complainant had failed to notify the School of the students' absences in accordance with District attendance procedures.⁷ OCR determined that the Complainant did not call the absence line and the [redacted content] stated that she was unable to reach the Complainant. OCR further found that the Complainant left a voicemail for the Assistant at 10:23 a.m., and the Assistant thereafter spoke with the Complainant at 11:47 a.m. and made arrangements for the Complainant to visit the School to pick up withdrawal paperwork and meet with the Principal later that day.

According to an incident report OCR obtained from the CPD, a police officer visited the Complainant's home at approximately 12:05 p.m., which was after the Complainant left a voicemail for the Assistant at 10:23 a.m. and the Assistant spoke with the Complainant at 11:47 a.m. The CPD incident report stated that the officer was responding to a report from the School of a [redacted content]. The CPD incident report stated that the officer [redacted content]. The Complainant stated that the police officer then [redacted content] while waiting for the Complainant to open the door. When the Complainant opened the door, the police officer advised her that District staff had reported to the CPD that the [redacted content]. After seeing that the Complainant was home with her children, the officer left without issuing a citation or initiating charges. Thereafter, the Complainant went to the police station to file a complaint against the Principal for harassment and for falsely reporting that [redacted content]. The Complainant called the Principal while the Complainant was at the police station, but the Principal was not available. A police detective told the Complainant that she could not file charges against the Principal but that she could file a police report for the [redacted content], which she did.

OCR determined that at 1:50 p.m., the Principal returned the Complainant's phone call. The Principal stated that the Complainant asked her why she had called the police and reported that [redacted content]. The Principal stated that she informed the Complainant that she had requested a [redacted content] because [redacted content] of the Complainant's children were not in school. Contemporaneous phone call logs the District provided stated that the Principal told the Complainant that she requested the [redacted content] because the Complainant had told them that her children would not be attending school, and they are unexcused absences since the children were not sick. The Complainant questioned the Principal's explanation because on the prior day,

⁷ The District stated that the Principal contacted the police chief directly because the officer assigned to the School was out of the building on a call.

[redacted content], she had informed the Principal that her children were not going to return to the School and that she was going to withdraw them. The Principal denied telling the CPD that the Complainant's children were [redacted content], but rather that she contacted the CPD because if students are not in school, they are considered truant.

The Principal informed OCR that the Complainant's statement the day before that she was pulling all of her children out of school with no plan for their education was enough to raise concerns about the well-being of her children. The District asserted to OCR that the Principal requested a [redacted content] for a variety of reasons, including an "[redacted content] case." The Principal did not mention an open [redacted content] case in her interview with OCR and the District was unable to provide OCR with any specific information to support that there was an open [redacted content] case at the time that the Principal requested the [redacted content] on [redacted content]. The only documentation the District produced in support of this assertion was a request from [redacted content], faxed to the District the day after the Principal called the CPD. The request was sent at 4:33 p.m. on [redacted content] requesting information "[redacted content]."

Additionally, although the District stated that it was the District's regular practice to call the police to conduct [redacted content] in circumstances in which District staff had concerns about the welfare of a child, OCR determined that the only time during school year [redacted content] that the Principal requested a [redacted content] was with respect to the Complainant on [redacted content]. The [redacted content] was following the School's protocol when she called the Complainant's home between 8:45 a.m. and 9:57 a.m., to find out why the [redacted content] children were not in school and to confirm that they were home with her safely. The Complainant did not call the [redacted content] back or reference the [redacted content]'s call when she called the [redacted content] at 10:23 a.m. and left a voicemail about picking up the withdrawal papers or when she spoke to the [redacted content] at 11:47 a.m., approximately 15 minutes before the police arrived to do the [redacted content]. Nonetheless, OCR has a concern about the Principal's contacting the police to request a [redacted content] at 10:00 a.m. when both the Principal and staff in her office were aware that the Complainant had taken steps towards withdrawing her children from the District, including requesting the children's education records to facilitate their enrollment elsewhere, and had stated that she did not intend to send her children to school in the District going forward. The District agreed to enter into a resolution agreement to address OCR's concern about Allegation 2, under Section 302 of OCR's *CPM*. Pursuant to the Agreement, the District will train all District administrators regarding Title VI's prohibitions against retaliation.

III. Conclusion

OCR will monitor the District's implementation of the Agreement. Upon the District's compliance with the terms of the Agreement, Title VI, and its implementing regulations at 34 C.F.R Part 100, which were at issue in this case, OCR will close the case.

This concludes OCR's investigation of the complaint and 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 the individual 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. If 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.

The Complainant has a right to appeal OCR's determination regarding Allegation 1 within 60 calendar days of the date indicated on this letter. In the appeal, the Complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect, or the appropriate legal standard was not applied; and, how correction of any error(s) would change the outcome of the case. Failure to do so may result in dismissal of the appeal. If the Complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit, to OCR, a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

If you have any questions, please contact Stacy Bobbitt, Compliance Team Investigator, at (646) 428-3823 or stacy.bobbitt@ed.gov; Grace D. Kim, Compliance Team Attorney, at (646) 428-3977 or grace.d.kim@ed.gov; or Jocelyn Panicali, Compliance Team Leader, at (646) 428-3796 or jocelyn.panicali@ed.gov.

Sincerely,

/s/

Rachel Pomerantz

cc: Athina Cornell, Esq.