



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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NEW YORK, NEW YORK 10005

TIMOTHY C. J. BLANCHARD
DIRECTOR
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August 20, 2020

Sent via email only to: kgraham@lvcsd.k12.ny.us

Dr. Kenneth Graham
Superintendent of Schools
Locust Valley Central School District
22 Horse Hollow Road
Locust Valley, New York 11560

Re: Case No. 02-20-1181
Locust Valley Central School District

Dear Dr. Graham:

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 Locust Valley Central School District (the District). The Complainant alleged that the District discriminated against her daughter (the Student), on the bases of her race and color (XXXX), by failing to respond to a complaint of peer-to-peer racial/color-based harassment that she made on XXXX, 2020 (Allegation 1). The Complainant also alleged that the District discriminated against the Student on the bases of her race and color, or in the alternative retaliated for her complaints of racial and color-based harassment, by suspending the Student from XXXX from XXXX, 2020 (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.

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 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.

In its investigation, OCR reviewed documentation that the Complainant and the District submitted. OCR also interviewed the Complainant and District staff.

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www.ed.gov

With respect to Allegation 1, the Complainant alleged that the District discriminated against the Student, on the bases of her race and color, by failing to respond to a complaint of peer-to-peer racial/color-based harassment that she made on XXXX, 2020. The Complainant stated that the Student is XXXX. The Complainant asserted that during a telephone call with the XXXXX (the XXXXXXXX) on XXXX, 2020, she reported that another student (Student A) XXXX (Incident 1). The Complainant asserted that she asked the XXXXXXXX whether it was “XXXXXXX.” The Complainant informed OCR that District staff were aware that students at the School had called the Student “XXXX,” “XXXX,” “XXXX,” and the “XXXX” XXXX; and singled out the Student because she XXXX. The Complainant asserted that the Student also was subjected to racial/color-based harassment during school year 2018-2019.

The regulation implementing Title VI, at 34 C.F.R. § 100.3(a), states that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program to which the regulation applies. Harassment on the basis of race or color that creates a hostile environment 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 so as 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 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.

OCR determined that, during school year 2019-2020, the Student attended the District’s Ann MacArthur Primary School (the School). On XXXX, 2020, the School’s XXXX called the Complainant to inform her that there had been an incident involving the Student and Student A on the playground; namely, Incident 1. That same day, the Complainant visited the School to discuss Incident 1. The XXXXXXXXXX was not available at the time and scheduled an appointment to meet with the Complainant on XXXX, 2020.¹

On XXXX, 2020, the Complainant spoke with the XXXXXXXXXX and advised him that she was concerned about the way an administrator, with whom she was unfamiliar, handled Incident 1. The XXXXXXXXXX stated that the Complainant also provided him with background regarding issues the Student had had with her former teacher, noting that the Student had been recently switched to a different class section. OCR determined that, during the meeting, the Complainant asked whether Student A had XXXX.” The Complainant further stated that she was concerned about bullying in the Student’s new classroom; other students had called the Student XXX, XXXX, and had disrespected her, since the Student had been enrolled at the School; and the District had “swept everything under the rug” and she did not want it to continue during school year 2019-2020.

¹ The XXXXXXXXXX informed OCR that he was supposed to meet with the Complainant in person, but because she was unable to do so, they spoke via telephone on XXXX, 2020.

OCR determined that the District has both a policy and a regulation entitled, “Student Harassment and Bullying Prevention and Intervention,” which were revised on September 25, 2013 (the Policy),² and adopted on September 25, 2013 (the Regulation).³ The Policy sets forth the District’s prohibition against all forms of harassment on the basis of race, color, and national origin, among other bases; the designation of a DASA Coordinator; and the District’s procedure for responding to incidents, including providing an equitable and thorough investigation of all complaints. The Policy states that all complaints will be documented, tracked, and handled in accordance with the District’s Code of Conduct or the appropriate applicable District regulation; e.g., Equal Opportunity and Nondiscrimination, Sexual Harassment. The Policy provides that when an investigation verifies that harassment, bullying, and/or discrimination has occurred, the DASA Coordinator will take prompt action to end the harassment, bullying, and/or discrimination; eliminate any hostile environment; create a more positive school culture and climate; prevent the recurrence of the behavior; ensure the safety of students involved; and impose disciplinary consequences in accordance with the code of conduct, where appropriate. The District’s website includes a webpage for DASA, including links for the District’s Code of Conduct,⁴ DASA Coordinator contact information,⁵ and the District’s DASA reporting form.⁶

The XXXXXXXXX stated that he investigated Incident 1 by speaking with the School XXXX to learn more about the incident and what had been done. The XXXXXXXXX stated that the XXXX informed him that he had spoken with the Student and Student A; and Student A had admitted to XXXX. The XXXXXXXXXX stated that the XXXX informed him that he used Incident 1 as a teaching moment about why that type of behavior is inappropriate. The XXXXXXXXXX stated that the XXXX told him that Student A had apologized to the Student during their conversation.

With respect to Allegation 2, the Complainant alleged that the District discriminated against the Student on the bases of her race and color, or in the alternative retaliated for her DASA complaint, by suspending the Student XXXX from XXXX, 2020. The Complainant stated that the District suspended the Student XXXX for allegedly making inappropriate comments, but that the District routinely failed to discipline other students who had engaged in misconduct, including racial/color-based harassment. The Complainant also asserted that the District failed to follow its normal discipline protocol in suspending the Student XXXXXX because it did not give the Student a warning prior to imposing a suspension.

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

² https://www.boardpolicyonline.com/?b=locust_valley&s=343462 (site last visited on August 19, 2020).

³ https://www.boardpolicyonline.com/?b=locust_valley&s=343462 (site last visited on August 19, 2020).

⁴ http://www.lvcasd.k12.ny.us/Assets/DASA/Locust_Valley_CSD_CODE_OF_CONDUCT_UPDATED_SEPT_2019.pdf?t=637044857153830000 (site last visited on August 19, 2020).

⁵ http://www.lvcasd.k12.ny.us/Assets/DASA/Coordinators_2019-20.pdf?t=637026839025170000 (site last visited on August 19, 2020).

⁶ http://www.lvcasd.k12.ny.us/Assets/DASA/19-20_District_Reporting_Form.pdf?t=637026839024370000 (site last visited on August 19, 2020).

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.

OCR determined that the Complainant engaged in protected activities when she complained to the District that the Student had been subjected to racial/color-based harassment, on XXXX, 2020. OCR determined that the District was aware of the Complainant's protected activity.

On XXXX, 2020, the Student's XXXX reported an incident that occurred involving the Student on the XXXX that afternoon (Incident 2). Specifically, the XXXX and XXXX stated that they observed the Student XXXX; XXXX; XXXX; XXXX; and XXXX. The District stated that the Student had engaged in this behavior in the presence of XXXX and XXXX grade students, and that her behavior had jeopardized her safety and the safety of other students and staff members XXXX. The District stated that, based on her conduct during Incident 2, it suspended the Student XXXX, from XXXX, 2020, through XXXX, 2020.

On August 14, 2020, the District signed the attached resolution agreement (Agreement) to voluntarily resolve Allegations 1 and 2 without further investigation, pursuant to Section 302 of OCR's *Case Processing Manual*. OCR will monitor the implementation of the Agreement. Upon the District's satisfaction of the commitments made under the Agreement, OCR will close this case.

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 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. 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 Stacy L. Bobbitt, Compliance Team Investigator, at (646) 428-3823 or stacy.bobbitt@ed.gov; Jocelyn Panicali, Compliance Team Attorney, at (646) 428-3796 or jocelyn.panicali@ed.gov; or Nadja Allen Gill, Compliance Team Leader, at (646) 428-3801 or nadja.r.allen.gill@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

Attachment

cc: Lisa Hutchinson, Esq.