



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
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REGION III
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KENTUCKY
MARYLAND
PENNSYLVANIA
WEST VIRGINIA

May 6, 2014

IN RESPONSE, PLEASE REFER TO: 03-13-1014

Dr. Dorothy Linn
Superintendent
Colonial School District
318 E. Basin Rd.
New Castle, DE 19720

Dear Dr. Linn:

This is to advise you that we have completed our investigation and have reached a determination in the above-referenced complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against the Colonial School District (the District). The Complainant alleged that the District discriminated against the Student and other students on the basis of race. Specifically, the Complainant alleged that the District:

1. discriminated against African American students at XXXXXXXXXXXXXXXXXXXX (the School) by disciplining them differently than white students for dress code violations during the 2011-2012 school year; and
2. discriminated against the Student on the basis of XXX race by failing to respond appropriately to XXX complaints of race discrimination.

During the course of investigation, OCR also determined that the Complainant's concerns included an additional allegation, which we also investigated. Specifically, that the District:

3. discriminated against the Student on the basis of XXX race (African American) by disciplining XXX for a dress code violation but not disciplining similarly situated white students for dress code violations during the 2011-2012 school year.

OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d, and its implementing regulation, 34 C.F.R. Part 100. Title VI prohibits discrimination on the basis of race, color or national origin by recipients of Federal financial assistance. The District is a recipient of Federal financial assistance from the Department, and a public entity, and is therefore subject to the requirements of Title VI and its implementing regulations.

OCR applies a preponderance of the evidence standard to determine whether the evidence is sufficient to support a particular conclusion. Specifically, OCR examines the evidence in support of and against a particular conclusion to determine whether the greater weight of the evidence supports the conclusion or whether the evidence is insufficient to support the conclusion.

In reaching a determination in this complaint, OCR reviewed documentation provided by the Complainant and the District. OCR also interviewed the Complainant, the Student, and District staff. The bases for our determinations with regard to the allegations raised in this complaint are summarized below.

Allegation 1

In accordance with OCR's procedures, complaints filed by more than one person that raise substantially identical allegations against the same recipient may be treated as one complaint and assigned one case number or, if received later, incorporated into an existing complaint. The issue raised in this allegation is currently being investigated in OCR complaint 03-08-1158. Specifically, that complaint is investigating whether or not the District discriminates against African American students by disciplining them more frequently and more harshly on the basis of race than similarly situated white students. Therefore, we are incorporating this allegation into existing OCR complaint 03-08-1158.

Allegation 2

Under OCR procedures, a complaint may be resolved before the conclusion of an investigation if a recipient asks to resolve the complaint by signing a voluntary resolution agreement. The provisions of the agreement must be aligned with the information obtained during the investigation and be consistent with applicable regulations. Such a request does not constitute an admission of liability on the part of a recipient, nor does it constitute a determination by OCR of any violation of our regulations.

Consistent with OCR's procedures, the District requested to resolve this allegation, through a voluntary resolution agreement (the Agreement), which was executed on April 28, 2014. Accordingly, OCR is concluding its investigation of this allegation. A copy of the signed Agreement is enclosed. As is our standard practice, OCR will monitor the District's implementation of the Agreement.

Allegation 3

Legal Standard

The Title VI regulation at 34 C.F.R. § 100.3(b)(ii) prohibits a recipient of federal financial assistance from providing a service, financial aid or other benefit to an individual, which is

disrupt the educational process or endanger the health and safety of themselves or others as outlined in established school guidelines.

While the Code contains a section which provides definitions of violations and what penalties are required and optional for first and subsequent offenses of each violation, a dress code violation is not listed or mentioned.

OCR also reviewed the 2012-13 version of the Code and found that it contains virtually the same language in each of the above-noted sections.

The District's public website provides a viewable/downloadable copy of the Code and also a document entitled, *Colonial Expectations for Student Dress*, which outlines expectations in support of the Student Dress section of the Code. This document expanded upon the information provided in the Code by noting that, "Dress and grooming that interferes with the educational process by drawing excessive attention will not be permitted" and notes more specifically the types of dress that would violate the policy, including:

- Mesh shirts, through which you can easily see, tank top shirts, tube tops, bare backs or midriffs, and short shorts are not appropriate.
- Headwear, (hats, scarves, bandanas, caps, etc.) and sunglasses must not be worn in school.
- Decals, slogans or sayings on clothing that contain reference to illegal or immoral behaviors or any type of profanity and/or racial slurs are not to be worn.
- Appropriate safe shoes are to be worn at all times for appropriate school activities. Slippers and "Heelys" shoes are not permitted. When attending a grade level school where recess is scheduled, appropriate shoes include sneakers or low heeled, not high heeled, platform shoes or open toe shoes.
- Shorts, skirts and dresses are to be of fingertip length and shirts are to have at least one-inch wide straps, no "spaghetti strap" shirts are permitted. Cleavage should be covered. Pants are to be worn around the waist.

OCR also reviewed the XXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXX *Student Handbook 2011-2012* (the Handbook). The Handbook specifically states that "Information contained in the Colonial School District Code of Conduct supersedes all information contained in this handbook." The Handbook, however, goes on to further elaborate on the type of dress that is not permitted. Specifically:

- Shoulders, bellies, and cleavage must be completely covered. NO racer backs.
- Skirts, dresses and shorts must be no shorter than three inches above the knee. Spandex, leggings, and tights may be worn with a skirt or dress that meets the 3-inch requirement.
- Pants with rips cannot show skin above the knee.
- Jackets/coats, backpacks, sling bags, and messenger bags must remain in lockers. Purses that are large enough to hold books are not permitted.

The Handbook also states, “Students in violation of these guidelines may be requested to call home for appropriate clothes and may be subject to removal from class. If inappropriate dress continues, students will be considered defiant.”

In interviews with OCR, School administrators asserted that students who are in violation of the dress code are first afforded the opportunity to self-correct or, if needed, change their clothing. If a change of clothing is not available, a call is made to the home to see if a parent/guardian can bring a change of clothes to the school. The student may be placed in either the office or the ISS room while waiting for the clothing to arrive. Once the student has changed clothing, he/she is allowed to return back to class. If a student refuses to change clothing or no change of clothing is available, the student will be sent to the ISS room for the remainder of the school day. School administrators noted that, as a general practice, any dress code violation in which the student changes clothes without issue is typically not entered into the District’s electronic database, nor are incidents in which the student is sent to ISS temporarily or for the remainder of a school day because a change of clothes is unavailable. A dress code violation that is part of an ongoing pattern of dress code violations or includes an act of defiance of school authority, and for which the student is assigned one or more days of ISS or OSS should be entered into the electronic database. Such incidents, however, are not common. School staff acknowledged to OCR that it is difficult to identify all violations of the dress code and that, sometimes, teachers may not refer a student because they would rather the student not miss class time.

Interviews with School staff revealed that, during the 2011-12 school year, the Principal implemented a dress code rule interpretation concerning jeans that was substantially different from that of other middle schools in the District. This rule prohibited wearing jeans with holes, without regard to the location of the holes or whether or not a student was wearing leggings underneath to cover exposed skin. Although staff asserted that this rule was communicated to students during morning announcements, they acknowledged that it was not mentioned in the Code or the Handbook. Staff noted that many parents and students were not happy with the rule. Some teachers felt that it was too stringent. In its response to our request for data, the District included minutes from a March 13, 2012 staff meeting which notes concerns expressed by School staff regarding the ripped jeans rule, including “students losing an entire day of instruction,” and “jeans that are ripped below the knees are not in violation of the District’s code of conduct.”

School staff asserted to OCR that the modified jeans rule was developed and implemented without regard to race. In an interview with OCR, the Principal acknowledged that teachers were not happy with the rule, but she explained that the School administrative team developed the rule interpretation based on their experiences and knowledge of middle school students. She also acknowledged that it was possible that students could feel that they were treated differently because it is difficult to identify all violations of the dress code; some go unintentionally unnoticed. In addition, School administrators rely on teachers or other staff members to report/refer all violations of the dress code.

After the 2011-12 school year, the Principal was reassigned to an XXXXXXXXXXXXXXXX school within the District. In an interview with OCR, the Assistant Principal stated that policy was relaxed after the Principal left because of the complaints raised by parents about the cost of replacement clothing. Currently, if a student has jeans with a rip or hole, it must be below fingertip length and leggings must be worn underneath to cover exposed skin.

The Complainant acknowledged to OCR that she read the school handbook and dress code provisions and was aware that announcements were made in school that jeans with rips or holes were not permitted; however, she asserted that the School's dress code policy had no specific prohibition against "stressed" jeans. It was her understanding that "stressed" jeans would be permitted, so long as a student wore leggings underneath them to cover any exposed skin. The Complainant asserts that the Student wore leggings underneath her jeans on the day that she was sent to the ISS room. The Complainant also acknowledged that the dress code was relaxed after the 2011-12 school year.

The Student acknowledged to OCR that announcements were made at the beginning of the school year informing students that jeans with rips or holes were not permitted to be worn in school. She asserted that she was wearing leggings on the day that she was sent to ISS. Specifically, she asserted that, during lunch period, the Assistant Principal called her up and told her that she could not wear jeans with rips or tears. The Student asserts that she told the Assistant Principal that she had leggings on underneath. The Assistant Principal did not accept this justification, and directed the Student to the ISS room, where the Student continued to eat her lunch. The Student did not recall calling the Complainant. She believes that the Assistant Principal called the Complainant. While in ISS, the Student was required to write the rules of the ISS room on a piece of paper, and then worked on classwork that her teachers sent to her. At the end of the school day, the Complainant arrived with a change of clothes. The Student stated that she did not change her clothes because, by the time the Complainant arrived, it was time for school dismissal.

OCR asked the Student about the white student the Complainant asserts the Student witnessed on March 21, 2012 and March 28, 2012 wearing jeans XXXX XXXXXXXX, but was not punished. The Student provided the XXXXX XXXXXXXX XXXXXXX XXXXXXX XXX XXXXXXXXXXXX XXXXXXX XXXX XXXX XX XXX XX XXX XXXXXXXXXXXX XXXX XXX XXXX XX XXXX XXXXXXX XXXX XXXXXXX.

OCR reviewed the 2011-12 disciplinary records (electronic and paper records) for the students identified by the Complainant and found that none of the four students had incurred any dress code violations. Two of the four students were disciplined for other violations of the Code.

The District provided disciplinary record documentation for other School students referred during the 2011-12 school year for jeans-related dress code violations. Several are non-African American; of these, one self-corrected (changed clothes), one was assigned one day of ISS, and another was assigned one day of OSS.

Legal Analysis

The evidence establishes that the Student was placed in ISS during the school day due to a dress code violation until the Complainant arrived to pick her up from school. The Student's disciplinary record (electronic and paper format) does not reflect a specific ISS assignment. This is consistent with the School's stated practice of placing a student who violated the dress code temporarily in ISS until the student self-corrected or a change of clothes was provided. The Complainant acknowledged that she had the opportunity to bring a change of clothes for the Student when she picked her up from school and the Student confirmed that the Complainant brought a change of clothes when she was picked up. The absence of a specific ISS assignment in the Student's disciplinary record is also consistent with the School's stated practice of not assigning a student to ISS unless that student exhibits a pattern of dress code violations, which the Student did not.

All District staff interviewed by OCR denied observing selective enforcement of the dress code on the basis of race. Some staff interviewees recalled white students who were disciplined for wearing ripped jeans, and the evidence collected in this investigation demonstrates that some non-African American students were, in fact, disciplined for dress code violations such as ripped jeans. Others may have had no disciplinary consequences assigned for such a violation, but this is consistent with the District's position that students are given an opportunity to change clothes. These students may have to remain in the ISS room while they wait for a change of clothes to be brought to school, which is what happened in the Student's case. OCR cannot find, based on these facts, that the Student was treated differently from similarly situated students of another race. Therefore, based on a preponderance of the evidence, OCR finds insufficient evidence that the District discriminated against the Student as alleged in allegation three.

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. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

This letter is a letter of findings issued by OCR to address an individual OCR case. Letters of findings contain fact-specific investigative findings and dispositions of individual cases. Letters of findings are not formal statements of OCR policy and they 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.

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.

Page 8 – Dr. Dorothy Linn, Superintendent

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, we 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.

Thank you for your cooperation in this matter. If you have any questions, please feel free to contact Michael Wesley, of our staff, at (215) 656-6908, or by email at: Michael.Wesley@ed.gov.

Sincerely,

/s/

Melissa Corbin
Team Leader

Enclosure