



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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KENTUCKY
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September 12, 2014

IN RESPONSE, PLEASE REFER TO: 03141103

Mr. Kenneth A. Berlin
Superintendent
Wattsburg Area School District
10782 Wattsburg Road
Erie, PA 16509

Dear Mr. Berlin:

This is to notify you of the resolution of the complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against the Wattsburg Area School District (the District). The Complainant, XXXXXXXXXXXXXXXXXXXX, alleged that the District discriminated against XXX on the basis of national origin. The Complainant also alleged that the District discriminated against members of the Fairview High School girls' varsity basketball team and her on the basis of sex. Specifically, the Complainant alleged that the District:

- 1) permitted XXX when District students XXX; and,
- 2) permitted a sexually hostile environment when District XXX her during the XXX.

OCR enforces:

- Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, and its implementing regulation, 34 C.F.R. Part 106. Title IX prohibits discrimination on the basis of sex by recipients of Federal financial assistance.
- Title VI of the Civil Rights Act of 1964 (Title VI), §§ 2000d et seq., 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.

Because the District receives Federal financial assistance from the Department, the District is subject to these laws.

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.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

During our investigation, we reviewed documents submitted by the Complainant and the District. OCR finds insufficient evidence to support allegation #1. With regard to allegation #2, the District has resolved the allegation by signing a voluntary resolution agreement.

Allegation 1 – Legal Standards

The Title VI implementing regulation, 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 34 C.F.R. §100.3(b)(1), a recipient may not, on the ground of race, color, or national origin, restrict or deny an individual any service or benefit or provide any service or benefit to an individual which is different, or is provided in a different manner from that provided to others.

Under Title VI and its implementing regulation, a recipient is responsible for addressing harassment incidents about which it knows or reasonably should have known. If a student or third party is harassed by an employee or another student on the basis of race or national origin, the recipient must take immediate and appropriate action to investigate or otherwise determine what occurred. Racial harassment that creates a hostile environment is a form of discrimination prohibited by Title VI. Harassment creates a hostile environment when the conduct is sufficiently severe, persistent or pervasive so as to interfere with or limit a student or third party's ability to participate in or benefit from the services, activities, or opportunities offered by a recipient. To establish a violation of Title VI under the hostile environment theory, OCR must find that: (1) a XXX environment existed; (2) the recipient had actual or constructive notice of the XXX; and (3) the recipient failed to respond adequately to redress the racially hostile environment. Whether conduct constitutes a XXX must be determined from the totality of the circumstances.

OCR will examine the context, nature, scope, frequency, duration, and location of XXX, as well as the identity, number, and relationships of the persons involved. The harassment must in most cases consist of more than casual or isolated XXX to establish a Title VI violation. Generally, the severity of the incidents needed to establish XXX under Title VI varies inversely with their pervasiveness or persistence.

In addressing harassment allegations, OCR has recognized that the offensiveness of a particular expression, standing alone, is not a legally sufficient basis to establish a hostile environment under the statutes enforced by OCR. In order to establish a hostile environment, harassment must be sufficiently serious (i.e., severe, persistent or pervasive) as to limit or deny a student's ability to participate in or benefit from an educational program. In regulating the conduct of students and faculty to prevent or redress discrimination, schools must formulate, interpret, and apply their rules in a manner that respects the legal rights of students and faculty, including those court precedents interpreting the concept of free speech. OCR's regulations and policies do not require or prescribe speech, conduct or harassment codes that impair the exercise of rights protected under the First Amendment.

Facts regarding Allegation 1:

XXX the Complainant XXX. The Complainant alleges that XXX, she discovered that some XXX. The Complainant confirmed to OCR that the students XXX the Complainant on the basis of XXX. The Complainant alleges that the students XXX.

Analysis – Allegation 1

To establish a violation of Title VI under the hostile environment theory, OCR must find that: (1) a XXX environment existed; (2) the recipient had actual or constructive notice of the XXX; and (3) the recipient failed to respond adequately to redress the XXX. Whether conduct constitutes a hostile environment must be determined from the totality of the circumstances.

The evidence supports that XXX. However, there is no evidence XXX to or about the Complainant XXX, which limited the Complainant's participation as XXX. Moreover, there is no evidence that the XXX. Thus, XXX. Therefore, OCR finds that the alleged conduct is not a sufficiently severe incident to create a XXX hostile environment at the District.

Accordingly, OCR has determined that there is insufficient evidence to support a conclusion of noncompliance with Title VI with regard to the Complainant's allegation of XXX.

Allegation #2

Regarding 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 complaint allegations or 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 the complaint through a Voluntary Resolution Agreement (the Agreement), which was executed by the District and received in our office on September 11, 2014. A copy of the signed Agreement is enclosed. As is our standard practice, OCR will monitor the District's implementation of the Agreement.

Accordingly, OCR is concluding its investigation of this allegation.

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. This letter is not intended nor should it be construed to cover any other issues regarding the District's compliance with Title IX, which may exist and are not discussed herein. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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. 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.

Thank you for your cooperation in this matter. If you have any questions, please feel free to contact Equal Opportunity Specialist Beth Cavallucci, or by email at elizabeth.cavallucci@ed.gov or Team Attorney Jacques Toliver, at (215) 656-8512, or by email at jacques.toliver@ed.gov.

Sincerely,

/s/

Melissa M. Corbin
Team Leader

Enclosures