



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

THE WANAMAKER BUILDING, SUITE 515  
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PHILADELPHIA, PA 19107-3323

REGION III  
DELAWARE  
KENTUCKY  
MARYLAND  
PENNSYLVANIA  
WEST VIRGINIA

***January 2, 2019***

Dr. Donna Dunar  
Superintendent  
East Pennsboro Area School District  
890 Valley Street  
Enola, Pennsylvania 17025

Re: OCR Complaint 03-14-1117

Dear Dr. Dunar:

This is to advise you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), has resolved the above-referenced complaint filed against the East Pennsboro Area School District (the District). The Complainant alleged that the District discriminated against XXXXXX (Student A), and XXXXXX (Student B), on the basis of race (XXXXXX). Specifically, XXXXXX alleged that the District:

1. XXXXXX; and
2. XXXXXX.

OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulations, at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin by recipients of Federal financial assistance. Title VI also prohibits retaliation. As a recipient of Federal financial assistance from the Department, the District is subject to Title VI and its implementing regulation.

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.

OCR's investigation included a review of information gathered through written documentation provided by the Complainant and the District, as well as interviews conducted with District personnel and the Complainant. During its investigation of Allegation #1, OCR identified Title VI compliance concerns. On August 15, 2018, the District entered into a resolution agreement (the Agreement) to address these matters. OCR found insufficient evidence of a violation with

Dr. Donna Dunar

respect to Allegations #2a and 2c. Pursuant to OCR's Case Processing Manual (CPM), OCR dismissed Allegation #2b.

### **Allegation #1 – Racially Hostile Environment**

#### **Legal Standard**

The regulation implementing Title VI, at 34 C.F.R. Section 100.3 (a), (b)(1)(ii), (iii), (iv) and (vi), states that no person in the United States shall, on the ground of race, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program to which this part applies. Furthermore, a recipient may not subject an individual to segregation or separate treatment in any matter related to his receipt of any service under the program, restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, or deny an individual an opportunity to participate in the program through the provision of services or otherwise afford him an opportunity to do so which is different from that afforded others under the program.

A violation of Title VI may be found if a recipient has created or is responsible for a racially hostile environment, i.e., harassing conduct that is sufficiently severe, pervasive, or persistent so as to interfere with or limit the ability of an individual to participate in or benefit from the services, activities, or privileges provided by a recipient. A recipient has subjected an individual to different treatment on the basis of race if it has effectively caused, encouraged, accepted, tolerated, or failed to correct a racially hostile environment of which it has actual or constructive notice.

To establish a violation of Title VI under the hostile environment theory, OCR must find that: (1) a racially hostile environment existed; (2) the recipient had actual or constructive notice of the racially hostile environment; and (3) the recipient failed to respond adequately to redress the racially hostile environment. Once a recipient has notice of a racially hostile environment, the recipient has a legal duty to take reasonable steps to eliminate it. The responsive action must be reasonably calculated to prevent recurrence and ensure that participants are not restricted in the participation or benefits as a result of a racially hostile environment.

In addressing harassment allegations, OCR has recognized that the fact that a particular expression is offensive, standing alone, is not a legally sufficient basis to establish a hostile environment under the statutes enforced by OCR. OCR enforces the requirements of Title VI consistent with the requirements of the First Amendment to the U.S. Constitution, and all actions taken by OCR must comport with First Amendment principles. No OCR regulation should be interpreted to impinge upon rights protected under the First Amendment.

#### **Background Information**

XX – paragraph redacted – XX

*Anti-harassment policies and grievance procedures*

OCR reviewed the District's policies and procedures that pertain to addressing racial harassment. School Board Policy 103 (*Affirmative Action Program for School and Classroom Practice*) sets forth the District's obligation to provide an equal opportunity for all children and states that the District does not discriminate based on race, color, sex, age, national origin, culture, or disability. The District also has a specific policy (School Board Policy 248) which prohibits all forms of unlawful harassment of students and third parties by all District students and staff, contracted individuals, vendors, volunteers, and third parties in the schools. Prohibited harassment includes: conduct of a sexual nature or regarding race, color, national origin/ethnicity, sexual orientation, religion, gender, age, or disability as defined by the policy.

The two policies contain grievance procedures by which reports of discrimination and harassment may be made. The procedures are identical and indicate that complaints or reports of harassment should be made to the building principal and complaints will be investigated within 15 days. The investigation will involve interviews with witnesses and evidence gathering. Both parties will receive notice of the investigative outcome and notice of appeal rights and appeal procedures. Both policies note that if the complaint is substantiated, the District will take prompt corrective action to ensure that the conduct ceases and does not recur.

**Alleged incidents of racial harassment**

XX – paragraphs redacted – XX

**Conclusion**

Prior to the completion of its investigation regarding Allegation #1, OCR had concerns regarding inconsistencies with respect to the manner in which staff coded referrals of incidents of alleged harassment, incomplete documentation regarding investigations involving alleged harassment, and missing information pertaining to discipline referrals made in conjunction with alleged harassment. The District has entered into the attached Agreement to address these concerns.

**Allegation #2 – Individual Different Treatment in School Discipline**

**Legal Standard(s)**

The Title VI regulation at 34 C.F.R. § 100.3(b)(1)(i), (ii), and (v) prohibits recipients from, on the basis of race, color or national origin, denying students any service or benefit provided under the program; providing services or benefits that are different from or provided in a different manner from services or benefits provided to other students; and restricting students in the enjoyment of any privilege or advantage enjoyed by others.

**Alleged different treatment in discipline**

***District's Code of Student Conduct***

School Board Policy 218 (Student Discipline) outlines the District's responsibility to establish fair, reasonable, and nondiscriminatory rules and regulations regarding the conduct of all students and to adopt a Code of Student Conduct (the Code). The Code applies to all students at each school level and outlines the expectations for student conduct and the disciplinary responses for violations of the Code. Discipline is categorized into four levels of severity with a range of corresponding consequence options.

Under the Code, any staff member can refer a student for discipline. While the majority of disciplinary referrals are made by classroom teachers, assignment of disciplinary consequences is, however, limited to the administrative team in each school which, in some cases, is a single individual (such as a principal or assistant principal). Each student is required to sign and confirm that they have received a copy of the Code. Parents are encouraged, but not required, to sign confirmation.

The Code includes four levels of behavior; Level I involves the least severe behavior; Level IV involves the most severe behavior. For example, conduct classified as insubordination, defiance or use of obscene language is considered to be Level III violations, which can warrant either suspension or expulsion.

**Allegation 2a – XXXXXX**

XX – paragraphs redacted – XX

**Conclusion - Allegation 2a**

As noted above, with regard to allegations of different treatment, OCR examines whether there is evidence that an individual was treated differently than students of other races under similar circumstances. XXXXXX. Thus, OCR finds insufficient evidence of a violation of Title VI, as alleged.

**Allegation 2b – XXXXXX**

XX – paragraph redacted – XX

**Conclusion - Allegation 2b**

Pursuant to OCR's Case Processing Manual, OCR dismissed Allegation #2b because its ability to complete an investigation was substantially impaired by its inability to contact the complainant in order to obtain information that was necessary for the investigation of the complaint allegation.

**Allegation 2c – XXXXXX**

XX – paragraphs redacted – XX

Legal Analysis & Conclusion - Allegation 2c

XXXXXX. Based on our analysis of the information gathered during our investigation, we conclude that there is insufficient evidence that the District treated Student B differently on the basis of his race in the administration of discipline, as alleged.

\* \* \*

OCR will monitor the District's implementation of the attached Resolution Agreement. Once the Agreement is fully implemented, OCR will deem the District to have addressed the identified compliance concerns. The District has agreed to provide data and other information in a timely manner in accordance with the reporting requirements of the Agreement.

This concludes OCR's investigation of this complaint. This letter is not intended, nor should it be construed, to cover any other issue regarding the District's compliance with Title VI that may exist and is not discussed herein. 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.

The Complainant has a right to appeal OCR's determination within 60 calendar days of the date indicated on this letter. In the appeal, the Complainant must explain why the factual information was incomplete, inaccurate, 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 District. The District has the option to submit to OCR a response to the appeal. The District must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the District.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because she has filed a complaint or participated in the complaint resolution process. If this happens, the Complainant may file another 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, 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.

If you have any questions or concerns, please contact Michael Wesley, the investigator assigned to this case, by telephone at (215) 656-6908 or by email at: [michael.wesley@ed.gov](mailto:michael.wesley@ed.gov).

Sincerely,

/s/

Melissa M. Corbin  
Team Leader  
Philadelphia Office

Enclosure (Agreement)