



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION III
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May 22, 2015

IN RESPONSE, PLEASE REFER TO: 03141206

Frank T. Gallagher
Superintendent
Souderton Area School District
7601 Lower Road
Souderton, PA 18964-2311

Dear Mr. Gallagher:

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 Souderton Area School District (the District). The Complainant alleged that the District discriminated against her XXXXXX (the Student) on the bases of race (African American) and disability. The Complainant also alleged that the District retaliated against the Student XXXXXX.

Specifically, the Complainant alleged that:

1. The District allowed a racially hostile environment to exist XXXXXX;
2. The District failed to provide the Student with XXXXXX; and
3. The District retaliated against the Complainant and the Student when it failed to provide the Student with XXXXXX.

Legal Standards

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. 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.

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.

School districts are responsible under Title VI for providing students with a nondiscriminatory educational environment. A racially hostile environment that violates Title VI is found to exist when there is (1) racially 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, (2) actual or constructive notice of the racially hostile environment to the recipient, and (3) failure by the recipient to respond adequately to redress the racially hostile environment. Harassment based on race, if sufficiently severe, denies or limits a student's ability to participate in or benefit from the school program. When a school has notice of racial harassment, it must take immediate and appropriate steps to stop the harassment and prevent it from happening again. The judgment and common sense of teachers and administrators are important elements of any response. The school is responsible for taking all reasonable steps to ensure a safe learning environment.

In considering allegations of discrimination that involve issues of speech or expression, OCR must consider the protections of the First Amendment of the U. S. Constitution, and that OCR's enforcement of regulations must be consistent with the requirements of the First Amendment. The offensiveness of a particular expression, standing alone, is not a legally sufficient basis to establish a hostile environment. A racially hostile environment may be created by oral, written, graphic or physical conduct related to an individual's race, color and/or national origin that is sufficiently severe, persistent or pervasive so as to interfere with or limit the ability of an individual to participate in or benefit from the recipient's programs or activities. Because OCR's responsibility is protecting students from discrimination, not regulating the content of speech or curriculum, OCR is sensitive to First Amendment concerns that may arise in the course of addressing harassment complaints and takes special care to avoid actions that would impair First Amendment rights. However, school districts have significant latitude in controlling the school environment and may address racially harassing and abusive conduct that creates a hostile environment.

OCR considers a racially hostile environment to be one in which there are acts of a racial nature that are sufficiently severe, pervasive, or persistent to create an intimidating, abusive, threatening or offensive educational environment. Acts of a racial nature may include verbal statements and physical conduct imposed on the basis of an individual's or group's race, color, or national origin. To determine whether a hostile environment existed, OCR considers the totality of the circumstances, including factors such as the context, nature, scope, frequency, duration and the location of the alleged incident, as well as the number, identity and relationship of the individuals involved. OCR evaluates the severity, pervasiveness and persistence of the alleged incident in light of the age and impressionability of the students.

OCR evaluates the appropriateness of the responsive action by assessing whether it was prompt, thorough and effective. If harassment is found, it should take reasonable timely, age-appropriate, and effective corrective action, including steps tailored to the specific situation. The response must be designed to stop the harassment, eliminate the hostile environment if one has been created and remedy the effects of the harassment on the student who was harassed. The recipient must also take steps to prevent the harassment from recurring including disciplining the harasser where appropriate.

Although Title VI does not require a recipient to have specific anti-discrimination or anti-harassment policies, in evaluating a recipient's response to a racially hostile environment, OCR will examine disciplinary policies, grievance policies, and any applicable anti-harassment policies. OCR also will determine whether the responsive action was consistent with any established institutional policies or with responsive action taken with respect to similar incidents.

The regulation implementing Section 504 at 34 C.F.R. § 104.33 requires public school districts to provide a free and appropriate education (FAPE) to all students with disabilities in their jurisdictions. An appropriate education is defined as regular or special education and related aids and services that are designed to meet the individual needs of a student with disabilities as adequately as the need of non-disabled students are met, and that are developed in accordance with the procedural requirements of subsections 104.34-104.36 pertaining to educational setting, evaluation and placement and due process protections. Implementation of an individualized education program developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one mean of meeting these requirements. OCR interprets the Title II regulations at 28 C.F.R. §§ 35.103(a) and 35.130(b)(1)(ii) and (iii) to require districts to provide a FAPE at least to the same extent required under the Section 504 regulations. If a student's plan calls for extended school year services, failure to provide those services violates Section 504 and Title II and their implementing regulations.

The regulation implementing Title VI, at 34 C.F.R. Section 100.7(e) prohibit retaliation against individuals who assert or defend a right or privilege secured under Title VI, or participate in an OCR proceeding. When investigating a complaint of retaliation, OCR determines whether: (1) the complainant engaged in a protected activity; (2) the recipient had notice of the protected activity; (3) the recipient took a materially adverse action against the complainant; and (4) there was a causal connection between the protected activity and the adverse action. If one of the above elements cannot be established, then OCR finds insufficient evidence of a violation. If these four elements are present, then a prima facie case of retaliation is established, and OCR next considers whether the recipient has identified a legitimate, nondiscriminatory reason for taking the adverse action. If so, OCR then considers whether the reason asserted is a pretext for discrimination.

In order for an activity to be considered "protected," the complainant must have either opposed conduct prohibited by one of the laws that OCR enforces or participated in an investigation conducted under the laws that OCR enforces. Notice of the protected activity to the recipient, and not necessarily to the alleged individual retaliator(s), is sufficient to establish the notice requirement. In determining whether an action taken by a recipient is adverse, OCR considers whether the alleged adverse action caused lasting and tangible harm, or had a deterrent effect. Merely unpleasant or transient incidents usually are not considered adverse. OCR follows the general principle that as the time period between the protected activity and the materially adverse action increases, the likelihood

that there is a causal link between these two activities decreases. Other evidence of a causal connection may include the recipient's treatment of the complainant compared to other similarly situated individuals, the recipient's deviation from established policies or practices, and changes to the treatment of the complainant after the protected activity occurred.

Under OCR procedures, a complaint or an allegation may be resolved before the conclusion of an investigation if a recipient asks to resolve the complaint by signing a resolution agreement. The provisions of the resolution agreement must be aligned with the complaint allegations and be consistent with applicable regulations. Such a request does not constitute an admission of a violation on the part of the District, 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 Resolution Agreement. On May 22, 2015, the District signed this Agreement. As is our standard practice, OCR will monitor the District's implementation of the Agreement, a copy of which is enclosed. Accordingly, OCR is concluding its investigation of this complaint effective the date of this letter.

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 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.

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.

Page 5 – Mr. Frank Gallagher

Thank you for your cooperation in this matter. If you have any questions, please feel free to contact Jacques Toliver, Team Attorney, at (215) 656-8512.

Sincerely,

/s/

Melissa M. Corbin
Team Leader

Enclosure