



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

THE WANAMAKER BUILDING, SUITE 515  
100 PENN SQUARE EAST  
PHILADELPHIA, PA 19107-3323

REGION III  
DELAWARE  
KENTUCKY  
MARYLAND  
PENNSYLVANIA  
WEST VIRGINIA

**May 15, 2017**

**IN RESPONSE, PLEASE REFER TO: 03171053**

Mr. William A. Smith  
Superintendent  
Cabell County Schools  
2850 5th Avenue  
Huntington, WV 25702

Dear Mr. Smith:

This is to notify you of the resolution of the above-referenced complaint with the U.S. Department of Education (the Department), Office for Civil Rights (OCR), against the Cabell County Schools (the District). XXXXXX (the Complainant) alleged that the District discriminated against XXXXXX (the Student), on the basis of race. Specifically, the Complainant alleged that the District failed to XXXXXX.

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

### **Legal Standards**

Under the Title VI regulation at 34 C.F.R. § 100.3(a), no individual may be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination on the ground of race, color, or national origin under any program or activity that receives Federal funds. The Title VI regulation at 34 C.F.R. § 100.3(b)(1)(i)-(iv) and (vi) specifically provides that a recipient shall not, on the basis of race, color, or national origin deny an individual any service; provide any service to an individual which is different or is provided in a different manner from that provided to others; subject an individual to segregation or separate treatment in any matter related to the receipt of service; restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others; or deny an individual an opportunity to participate in the program or afford an opportunity to do so which is different from that afforded to others under the program.

Racial harassment is a form of discrimination prohibited by Title VI. 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. Whether conduct constitutes a hostile environment must be determined from the totality of the circumstances. Once a recipient has notice of a racially hostile environment, the recipient has a legal duty to take reasonable steps to eliminate it. Thus, if OCR finds that the recipient took responsive action, OCR will evaluate the appropriateness of the responsive action by examining reasonableness, timeliness, and effectiveness. The appropriate response to a racially hostile environment must be tailored to redress fully the specific problems experienced at the institution as a result of the harassment. In addition, the responsive action must be reasonably calculated to prevent recurrence and to ensure that participants in the educational program are not restricted in their participation or benefits as a result of a racially hostile environment created by students or non-employees.

To determine whether a racially hostile environment exists, it must be determined if the racial harassment is severe, pervasive, or persistent. OCR will examine the context, nature, scope, frequency, duration, and location of racial comments, acts and incidents, as well as the identity, number, and relationships of the persons involved. In most cases, the harassment must consist of more than casual or isolated racial comments or slurs in order to establish a Title VI violation. OCR looks at a sliding scale of the combination of the severity of the incidents and the pervasiveness or persistence of the events. A single highly charged incident could be given the same weight as more pervasive or persistent conduct that is less severe. OCR notes that it is also important to consider the number of harassers involved and their relationships to the victim.

To determine severity, OCR considers the nature and location of the incidents and the size of the educational institution. Incidents of lesser severity or a smaller number of incidents can create a racially hostile environment in a smaller locality, as opposed to the larger environment of a university campus. An event that occurs in a public place on campus will be received differently than the same event in a private, local place. It does not matter whether the instances of harassment are directed at the Student, and behavior directed at others is considered in determining whether a hostile environment exists.

To determine whether harassment is severe enough to adversely affect the enjoyment of some aspect of an educational program, OCR considers whether the environment would affect a reasonable person of the same age and race as the victim. OCR requires that the offending conduct at issue in a complaint be judged from the perspective of a person of the same race as the victim. OCR does not require the harassment to result in a tangible injury to the subject of the harassment. It only requires that the harassment negatively affect the enjoyment of an educational program offered by the recipient.

## **Factual Background**

The Complainant XXXXXX.

XXX -- paragraphs redacted -- XXX

## **Conclusion**

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 resolution agreement. The provisions of the resolution agreement must be aligned with the complaint allegations, the information obtained during the investigation, 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 Voluntary Resolution Agreement (the Agreement). On May 5, 2017, the District signed an Agreement to address the allegations in this complaint. 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 the allegation as of the date of this letter.

This letter is not intended nor should it be construed to cover any other issues regarding the District's compliance with Title VI, 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. If OCR receives such a request, we will seek to protect, to the extent provided by law, personal information that, if released, could constitute an unwarranted invasion of privacy.

Please be advised that Federal regulations prohibit recipients of Federal financial assistance from taking actions that intimidate, threaten, coerce, interfere, or discriminate against any individuals who exercise their statutory rights under the laws that OCR enforces, including filing a complaint with our office or taking part in the complaint resolution process.

If you have any questions, please contact Josh Galiotto, investigator, at (215) 656-8587 or by email at [joshua.galiotto@ed.gov](mailto:joshua.galiotto@ed.gov).

Sincerely,

/s/

Nancy E. Potter  
Team Leader

Enclosure