



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION III
DELAWARE
KENTUCKY
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WEST VIRGINIA

September 11, 2023

VIA EMAIL ONLY

Mr. Kyle Estes, Superintendent
Russellville Independent Schools
355 S. Summer Street
Russellville, KY 42276

Re: OCR Complaint No. 03-22-1372

Dear Mr. Estes:

This letter is to notify you of the disposition of the above-referenced complaint that the U.S. Department of Education, Office for Civil Rights (OCR), received on August 17, 2022. The Complainant is the parent of a Student who attends Russellville [Redacted content] (the School). The Complainant alleges that the District discriminated against the Student on the bases of race and color when it failed to respond appropriately to her [Redacted content] report of racial harassment by the Student's teacher.

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. Because the District receives Federal financial assistance from the Department, OCR has jurisdiction over it pursuant to Title VI.

Summary of OCR's Investigation

OCR's investigation included: a) a review of documents provided by the Complainant, b) an interview with the Complainant, and c) a review of documents provided by the District, including the District's Non-Discrimination and Harassment/Discrimination Policy 3.162 and Reporting Form, the investigative file regarding the [Redacted content] racial harassment report, the Student's [Redacted content] records, the teacher's [Redacted content], the District's investigation report, and witness interviews from [Redacted content] students.

Prior to the conclusion of OCR's investigation and interviews of relevant School staff, the District expressed a willingness to voluntarily resolve the complaint allegation. OCR determined that it is appropriate to resolve the allegation through a voluntary resolution agreement under Section 302 of OCR's Case Processing Manual (CPM) because OCR identified several concerns regarding the District's response to the alleged racial harassment.

Legal Standards

The regulation implementing Title VI, at 34 C.F.R. § 100.3, provides that no person shall, on the basis of race, color, or national origin, be excluded from participation in, be denied the benefits

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

of, or otherwise be subjected to discrimination under any program to which Title VI applies. The existence of a hostile environment that is created, encouraged, accepted, tolerated or left uncorrected by a recipient constitutes discrimination on the basis of race in violation of Title VI.

To establish a violation of Title VI under the hostile environment theory, OCR must find that: (1) a hostile environment based on race existed; (2) the recipient had actual or constructive notice of a hostile environment based on race; and (3) the recipient failed to take prompt and effective steps reasonably calculated to (i) end the harassment, (ii) eliminate any hostile environment and its effects, and (iii) prevent the harassment from recurring.

Harassment creates a hostile environment when the conduct is sufficiently severe, persistent, or pervasive so as to interfere with or limit an individual's ability to participate in or benefit from a recipient's program. Harassing acts need not be targeted at the complainant in order to create a hostile environment. The acts may be directed at anyone, and the harassment need not be based on the complainant's or victim's race so long as it is motivated by race (e.g., it might be based on the race of a friend or associate of the victim). The harassment must in most cases consist of more than casual or isolated incidents to establish a Title VI violation. Whether harassing conduct creates a hostile environment must be determined from the totality of the circumstances. OCR will examine the context, nature, scope, frequency, duration, and location of the race-based harassment, as well as the identity, number, age, and relationships of the persons involved. If OCR determines that the harassment was sufficiently severe that it would have adversely affected a reasonable person, of the same age and race as the victim, under similar circumstances, from participating in or enjoying some aspect of the recipient's education program or activity, OCR will find that a hostile environment existed.

Once a recipient has notice of a hostile environment, the recipient has a legal duty to take reasonable steps to eliminate it. OCR evaluates the appropriateness of the responsive action by assessing whether it was reasonable, timely, and effective. The appropriate response to a hostile environment based on race must be tailored to redress fully the specific problems experienced as a result of the harassment.

Facts

Below is a summary of the facts OCR found to date based on its investigation of the complaint, including how the District's Harassment/Discrimination Policy applied to the [Redacted content] incident, how the District responded to the Complainant's complaint about the incident, and whether the District's response failed to investigate and respond adequately to the complaint.

A. The District's Harassment/Discrimination Policy and Reporting Form

The Policy in effect at the time of the incident was the District's Harassment/Discrimination Policy 3.162 (the Policy). The Policy addresses behavior based on race, color, national origin, age, religion, disability, and sex. The Policy explains that harassment/discrimination is prohibited at all times on school property and off-school grounds during school-sponsored activities.

The Policy states that District staff shall provide for a prompt and equitable resolution of complaints concerning harassment/discrimination and includes guidelines for the resolution of such complaints. The Policy states that the Superintendent must provide a process to identify and implement, within five school days of the submission of the written investigative report, methods to correct and prevent recurrence of the harassment/discrimination. If corrective action is not required, an explanation shall be included. The Policy notes that any party may appeal in writing any part of the findings and corrective action to the Superintendent.

The District also has forms it uses in investigating complaints of harassment/discrimination under the Policy. These include “Notice to Individuals Complaining of Harassment/Discrimination;” “Harassment/Discrimination Reporting Form;” “Harassment/Discrimination Investigation and Appeals;” “Witness Disclosure Form;” and “Resolution Response.” The “Resolution Response” form notes that it shall be provided to both the complainant and the accused party and will include notice of the outcome and the type of resolution implemented by the District. The possible resolutions listed are personnel action, measures to protect the complainant, action against a visitor, and action against a student offender.

B. The [Redacted content] Incident

[Redacted paragraph]

[Redacted content] The Complainant told OCR that the following day she asked the Principal to remove the Student from the teacher’s class, but that he told her the school was short-staffed. The same day, she made the same request during a call with the Superintendent, and her request was granted.

The Complainant said that she reported the incident to the School’s Principal on [Redacted content], and subsequently followed up with the Superintendent on the same day, who informed her that he would investigate the incident. Later that day, the Superintendent called the Complainant to report that he had investigated the incident and confirmed that it had occurred as reported by the Complainant. The Complainant told OCR that no additional information was provided during this call.

The District told OCR that on [Redacted content], the Principal and Assistant Principal initiated the investigation and concluded on that same date that the teacher made the racially insensitive comment. They reported this to the Superintendent who determined the disciplinary action for the teacher. [Redacted content] The District reported that it has had no further issues with the teacher.

Documentation provided by the District to OCR gave no indication that the District evaluated whether the incident created a racially hostile environment for the Student or other students in the classroom, or that it considered whether any remedies for the Student or other students were appropriate. In particular, the District provided a copy of its [Redacted content] “Investigative Preliminary Report,” which contains written statements from the teacher and [Redacted content] students, [Redacted content] of whom confirmed the Complainant’s description of what occurred. None of the written statements were from the Student, nor does it appear that the

District interviewed the Student as part of its investigation. There is no indication in the investigative report that information from students was evaluated to consider the impact of the incident on the Student or other students. Further, the report incorrectly cites to the portion of the District's Harassment/Discrimination Policy 3.162 addressing sex discrimination and sexual harassment. Specifically, the report explains how an individual might make a report of sex discrimination, including sex harassment. This discussion appears to be an error, as the Complainant clearly raised issues of discrimination based on race/color, and the policy itself addresses behavior based on race, color, national origin, age, religion, or disability (in addition to sex).

The documents provided to OCR also did not include information to indicate that the Complainant was given notice of the outcome of the investigation, including the type of resolution implemented by the District. The documents did not include a "Resolution Response" form or notice to Complainant of her right to appeal the resolution, both of which are required by the District's Policy.

With regard to other complaints of racial harassment reported in the [Redacted content] school years, the District said this incident was the only one it received.

Legal Analysis

Prior to conducting interviews of District witnesses, the District requested to resolve the complaint through a voluntary resolution agreement pursuant to Section 302 of the CPM. OCR determined that it is appropriate to resolve the allegation through a voluntary resolution agreement because OCR identified several concerns regarding the District's response to the [Redacted content] report of racial harassment.

Specifically, while OCR's investigation shows that the Principal conducted a prompt investigation into the incident reported by the Complainant and found that it occurred as alleged, the documentation the District provided to OCR to date does not show that the District gave notice of the outcome, including the type of resolution implemented, and appeal rights to the Complainant. Further, [Redacted content] the District's data submission does not show whether it found that the teacher's comment created a racially hostile environment for the Student or other students. The only corrective action taken by the District appears to be [Redacted content]; there is no evidence that the District considered whether additional remedies were required for the Student other than to remove him from the teacher's classroom.

Conclusion

As discussed above, during OCR's investigation, the District agreed to voluntarily address OCR's concerns regarding the sufficiency of its investigation and the lack of clarity in the application of its Harassment/Discrimination Policy 3.162. The enclosed Resolution Agreement requires the District to re-open its investigation into the [Redacted content] incident to determine whether it created a racially hostile environment for the Student, and if so, to offer appropriate corrective action and remedies. The Resolution Agreement also requires the District to provide the Complainant with written notice of the outcome of its investigation, including notice of any applicable appeal rights. In addition, the Resolution Agreement requires the District to ensure that it provides training to all current School staff about the District's Harassment/Discrimination

Policy and the District's procedures for reporting and investigating incident of harassment or discrimination on the basis of race or color. Lastly, the Resolution Agreement requires the District to gather information from students and parents concerning race-based harassment at the School through a follow-up climate survey, if necessary, following OCR's review of the District's November 2022 Culture and Climate Assessment Report.

The Agreement, when fully implemented, will fully resolve the compliance concerns in this case consistent with the requirements of Title VI and its implementing regulations. The provisions of the Agreement are aligned with the allegations and issues raised by the Complainant and the information that was obtained during OCR's investigation to date and are consistent with applicable laws and regulations. OCR will monitor the District's implementation of the Agreement through period compliance reports about the status of its terms. OCR will provide the District with written notice of any deficiencies regarding its implementation of the terms of the Agreement and will require prompt actions to address such deficiencies. OCR will provide the Complainant with a copy of its final monitoring letter. If the District fails to implement the Agreement, OCR will take appropriate action, as described in the Agreement.

The case is now in the monitoring phase. The monitoring phase of this case will be completed when OCR determines that the District has fulfilled the term of the Agreement and is in compliance with the statutory and regulatory obligations at issue in this case. When the monitoring phase of this case is complete, OCR will close this case and send a letter to the District, stating that this case is closed.

This concludes OCR's investigation of the complaint. This letter 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, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act (FOIA), 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 personally identifiable information, to the extent provided by law, that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released.

We thank you for your cooperation during the resolution of this complaint. If you have any questions, please contact Andrea DelMonte, the OCR attorney assigned to this complaint, at 215-656-8554 or andrea.delmonte@ed.gov.

Sincerely,

/s/

Melissa M. Corbin
Program Manager
Philadelphia Office
Office for Civil Rights

Enclosure

cc: Michael A. Owsley, Esquire (via email only)