



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION IV

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September 19, 2018

**By U.S. Mail**

Mr. Alberto Carvalho  
Superintendent  
Miami Dade County Public Schools  
1450 N.E. Second Avenue  
Suite 912  
Miami, Florida 33132

**Re: OCR Complaint # 04-14-1607**

Dear Mr. Carvalho:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed against the Miami Dade County Public Schools (District). The Complainant alleged that the District failed to respond appropriately when Student 1, who is Hispanic, was harassed and bullied by Student 2, a black student, during a classroom incident at Barbara Goleman High School (School) and thereafter was harassed through social media.

OCR investigated this complaint pursuant to 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. The District is a recipient of Federal financial assistance. Therefore, the District is subject to the requirements of Title VI and OCR has jurisdiction over this complaint.

Based on the complaint allegations, OCR investigated whether the District discriminated against Student 1 on the basis of race by failing to provide an appropriate response to complaints of race-based peer harassment, thereby subjecting Student 1 to a racially hostile environment, in violation of the Title VI implementing regulation at 34 C.F.R. § 100.3.

OCR's investigation included a review and analysis of the documents submitted by the Complainant and the District, including correspondence between the Complainant and District staff as well as the Florida Department of Education, social media postings, statements by student and staff witnesses, the Student Code of Conduct, discipline records for Student 1 and other student discipline records. OCR also conducted interviews of the Complainant and a District administrator.

OCR evaluates evidence obtained during an investigation under a preponderance of the evidence standard to determine whether the greater weight of the evidence is sufficient to support a

conclusion that the recipient (District) failed to comply with a law or regulation enforced by OCR or whether the evidence is insufficient to support such a conclusion. After a thorough review of the evidence, OCR has determined that there is sufficient evidence to support a finding of noncompliance with Title VI, as alleged. The factual and legal bases for OCR's determination are set forth below.

### **Applicable Legal Standards**

The Title VI implementing regulation at 34 C.F.R. § 100.3(a) provides that no person in the United States 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 any educational program or activity to which the regulation applies. Pursuant to 34 C.F.R. §100.3(b)(i)-(iv), a recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on ground of race, color, or national origin: (i) deny an individual any service, financial aid, or other benefit provided under the program; (ii) provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program; (iii) subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program; or (iv) restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program. The existence of a racially hostile environment that is created, encouraged, accepted, tolerated, or left uncorrected by a recipient also constitutes different treatment on the basis of race in violation of Title VI.

A hostile environment based on race is created when harassing conduct, whether physical, verbal, graphic, or written, is sufficiently severe, persistent, or pervasive to interfere with or limit a student's ability to participate in or benefit from the services, activities or privileges provided by a recipient. To establish a violation of Title VI under a hostile environment theory, OCR must find that: (1) a hostile environment based upon race existed; (2) the recipient had actual or constructive notice of the hostile environment; and (3) the recipient failed to respond adequately to redress the racially hostile environment.

To determine whether a racially hostile environment exists, OCR examines the context, nature, scope, frequency, duration, and location of racial incidents, as well as the identity, number, and relationships of the persons involved. Generally, the severity of the incidents needed to establish a hostile environment under Title VI varies inversely with their pervasiveness or persistence. To determine severity, the nature of the incidents must be considered, such as whether the conduct was verbal or physical and the extent of hostility characteristic of the incident. Racial acts need not be targeted at the student alleging a hostile environment in order to create a racially hostile environment.

Though the recipient may not be responsible directly for all harassing conduct, the recipient does have a responsibility to provide a nondiscriminatory educational environment. If discriminatory conduct causes a racially hostile environment to develop that affects the enjoyment of the educational program for the student(s) being harassed, and if the recipient has actual or constructive notice of the hostile environment, the recipient is required to take appropriate

responsive action. This is the case regardless of the identity of the person(s) committing the harassment and regardless of how the recipient received notice. So long as an agent or responsible employee of the recipient received notice, that notice will be imputed to the recipient.

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 ensure that participants are not restricted in their participation or benefits as a result of a racially hostile environment created by students or nonemployees. Examples of possible elements of appropriate responsive action include among others, imposition of disciplinary measures, implementation of racial awareness training, and provision of counseling for the victims of racial harassment.

### **Complainant's Allegations**

Student 1 was a 15 year old student at the School during the relevant time frame. Complainant alleged that Student 2, who is African American, assaulted Student 1 at the School on May 6, 2014. The Complainant alleged that Student 2 stole Student 1's candy from his desk and approached Student 1 to taunt him about it. She alleged that Student 1 stood up and asked for the candy back. Student 2 pushed Student 1, who then grabbed Student 2's shirt and asked again for the candy. Student 2 then punched Student 1, breaking his glasses, cutting his eyebrow, and breaking his nose. The Complainant stated that the incident had been planned by Student 2, and was recorded and uploaded by Student 2 to social media, including Vine, Twitter, and YouTube. On the social media postings, Student 2 bragged about punching the "nerd."

The Complainant felt that the incident was an incident of bullying/harassment based on race because of remarks made on social media stating "that's what happens to a white boy messing with a 'N.'" She believes that Student 1 was a victim and should not have been punished. The Complainant also alleged that the incident was not properly investigated as evidenced by an inaccurate report by the School Resource Officer. Finally, she asserted that Student 2 was not disciplined with regard to the social media posting.

### **Factual Findings**

#### *Student Code of Conduct*

The District's Student Code of Conduct (Code) in effect during the relevant time frame prohibited bullying and harassment. The Code defined bullying as systematically and chronically inflicting physical hurt or psychological distress on one or more students or school employees. It was further defined as a pattern of unwanted and repeated written, verbal, or physical behavior, including any threatening, insulting, dehumanizing gesture by an adult or student, that is severe or pervasive enough to create an intimidating, hostile, or offensive

educational environment; cause discomfort or humiliation; or “unreasonably interferes with the individual’s school performance or participation that includes a noted power differential.”

Harassment was defined as threatening, insulting or dehumanizing conduct in various forms, which “places a student or school employee in reasonable fear of harm to his or her person or damage to his or her property; substantially interferes with a student’s educational performance, opportunities or benefits; or substantially disrupts the orderly operation of a school.”

The Code stated that racial harassment can constitute bullying. The Code also included cyberstalking and cyberbullying within the definition of bullying. The Code defines cyberbullying as the willful and repeated harassment and intimidation of an individual through the use of electronic mail or electronic communication with the intent to coerce, intimidate, harass, or cause substantial emotional distress to a person.

#### *Classroom Incident and Subsequent Media Postings*

On May 6, 2014, Student 1 and Student 2 were involved in an incident in a classroom. Student 1 approached Student 2 and accused Student 2 of taking candy from Student 1. During the incident, Student 1 grabbed the shirt of Student 2 and poked or tapped Student 2 on the head. Student 2 responded by punching Student 1, breaking his glasses and injuring his nose.

After the incident, students made comments on social media regarding the incident. One social media site contained a video of the incident; it was entitled “[b]lack boy splacks (sic) white nerd.” Comments on the social media site frequently used the word “nigga” or “nigger.” One user appearing to refer to Student 1, asked “wats tht niggas [account name] i wanna (sic) go rip on him.” Another user stated “white boys don’t bully black people black people beat the sh-- out of white people.” Other comments were directed at Student 2, including “Stupid nigger... [h]ave fun being expelled with charges pressed... can’t buy a lawyer with food stamps,” and “a nigga punched his glasses off.” Other comments questioned why race was an issue. Another comment stated that if a white student had hit a black student like that, the commenters on the video would be out to get him. One person commented that “white people are stupid and hypocritical, go back to the Czech Republic or Slovakia you cave dwellers.” The posts also included the comment, “I’d beat that boys [sic] a--“ - “cheap shot sh--,” apparently directed at Student 2, as well as an exchange apparently directed at Student 1, in which one poster said “[nickname] make a vid [sic] of dude who got slapped” and the response was “ASAP – He not in school right now when he gets back.”

#### *Notice to District*

The May 6, 2014 fight was reported to the Principal and a police officer assigned to the School. The officer obtained descriptions of the incident from student witnesses. The witnesses reported that Student 1 accused Student 2 of stealing his candy, grabbed Student 2’s shirt, and then poked or tapped Student 2 multiple times on his head. Student 2 then hit Student 1 in the face. In statements to school administrators, witnesses to the incident did not describe any comments or actions which were apparently race-based.

In a May 14, 2014 letter to the District from the Complainant’s attorney, the classroom incident

was characterized as an assault of Student 1 and the District was notified that a video of the incident had been posted online. In a May 14, 2014 email complaint to the Florida Department of Education (FLDOE), the Complainant reported bullying of Student 1 through social media. FLDOE in turn provided notice and copies of the social media postings to the District.

### *District's Response to the Harassment*

The District investigated the classroom incident, including by taking statements from student witnesses and the classroom teacher of the classroom where the incident took place. Based on the actions taken by Student 1 prior to Student 2 hitting him, the District classified the incident as a mutual fight and both students were disciplined. After the Complainant met with the Principal the sanction for both students was reduced.

After receiving notice of the FLDOE complaint and copies of the social media postings, the District sent a social worker to Student 1's home to meet with Student 1 and Complainant. The District also interviewed Student 2 and determined that he was one of the individuals who posted comments on the social media site. Although other posts, including two posts about videotaping Student 1, appeared to have been made by students other than Student 2, no other witnesses were interviewed with regard to the social media postings nor were any other students counseled or disciplined. The District determined that the complaint was "founded," charged Student 2 with harassment and disciplined him.

The District's remedy for Student 1 consisted of sending a social worker to his home, sending work home for him to complete for the remainder of the 2013-2014 school year and permitting him to transfer to a new school.

### *Environment for Student 1 and at the School Following District's Response*

In light of the comments posted on social media following the incident in which Student 1 was injured by Student 2, the Complainant had concerns regarding Student 1's safety at the School. Although Student 1 was scheduled to return to the School on May 13, 2014, he stayed at home for the approximately 17 school days remaining in the school year after his suspension was served. The School sent the Student's work and assignments home for him to complete for the remainder of the school year. Student 1 then enrolled in a different school for the 2014-2015 school year. The District did not assess the school environment for other students in the wake of the media postings, which used racially hostile or demeaning language directed toward Student 2 and more generally, toward white students.

### **Analysis**

The District had notice of the classroom incident involving Student 1 and Student 2. However, the witness statements regarding the incident did not provide a basis for the District to conclude that the incident may have been based on race.<sup>1</sup> The District subsequently received notice from

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<sup>1</sup> While the Complainant contends that Student 2 planned the incident, the student witnesses consistently stated that Student 2 hit Student 1 only after Student 1 tugged on Student 2's shirt and either tapped or poked him on the head.

FLDOE of harassing comments stemming from the incident posted on social media. Some of those comments were race-based, including threatening remarks related to Student 1, demeaning remarks directed toward Student 2, comments about black people beating white people, and negative comments about white people. Based upon the correspondence from the Complainant and her attorney, the District also had actual notice that the postings had impacted the School environment for Student 1.

After receiving information about the Complainant's complaint to FLDOE and the social media postings, the District questioned only one student, determined that he was one of the posters of the harassing comments and disciplined him. However, although some of the comments appeared to have been made by students other than the interviewed student, the District did not investigate whether other students were involved in making and commenting on the social media postings. Further, the District did not investigate whether any of the statements made in the postings had been expressed on campus or otherwise impacted the School environment, and did not examine whether a racially hostile environment had been created at the School for Student 2 or for other students. Finally, the remedies provided to Student 1 were limited to sending a social worker to his home, sending work to him at home for the duration of the school year, and permitting him to attend a different school.

## **Conclusion**

Based upon the foregoing, OCR finds that the District had notice of a possible racially hostile environment created for Student 1, Student 2 and other students. While the District questioned and disciplined one student with regard to a posting, it did not conduct an appropriate investigation to determine the extent of student involvement in the postings or the impact of the postings upon the environment for students at the School. Accordingly, the District's response was inadequate. Moreover, the District did not address the environment that existed for Student 1 at the School and because of safety concerns, the Student never returned to the School after his suspension was served.

Accordingly, based upon the preponderance of the evidence, OCR determined that there was sufficient evidence to conclude that the School was in non-compliance with Title VI as alleged. On July 18, 2018 the District agreed to the enclosed Resolution Agreement (Agreement). The District has agreed to take the following steps, among others: provide racial harassment training to administrators and staff at the School; provide students reminders of the prohibition of racial and national origin harassment; develop a system for tracking complaints of race-based harassment at the School; assess the climate at the School; and, revise the definition of racial harassment in the student code to include harassment that is sufficiently severe, pervasive or persistent to interfere with or limit a student's ability to participate in or benefit from the services, activities or privileges provided by the District. When fully implemented, the Agreement entered into by the District will resolve the issues of non-compliance. OCR will monitor the District's implementation of this Agreement to ensure that it is fully implemented.

The Complainant may have a 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 we receive such a request, we will seek

to protect, to the extent possible, any personally identifiable information, the release of which could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Intimidation or retaliation against complainants by recipients of Federal financial assistance is prohibited. No recipient may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws OCR enforces, or because one has made a complaint, or participated in any manner in an investigation in connection with a complaint.

If you have any questions about this complaint, please contact Cassandra Williams, at 404-974-9393 or me, the undersigned at 404-974-9408.

Sincerely,

April England-Albright  
Supervisory General Attorney

Enclosure