



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

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ATLANTA, GA 30303-8927

REGION IV  
ALABAMA  
FLORIDA  
GEORGIA  
TENNESSEE

June 11, 2015

Mr. E. Wayne Gent  
Superintendent  
Palm Beach County School District  
3300 Forest Hill Boulevard  
West Palm Beach, Florida 33406

**Re: Complaint #04-14-1678**

Dear Mr. Gent:

The above-referenced complaint, which was received by the U.S. Department of Education (Department), Office for Civil Rights (OCR), on July 28, 2014, was filed against the Palm Beach County School District (District) alleging discrimination on the bases of race and national origin. Specifically, the Complainant alleged that a teacher (Teacher) in the District's Adult Educational Program (Program) created a hostile environment for him and other Black, Haitian students enrolled in an English as a second language (ESL) course by allegedly making disparaging remarks. The Complainant alleges that on June 4, 2014, he notified the administration of the harassment and that the issue was neither investigated nor resolved.

OCR is responsible for enforcing Title VI and its implementing regulation, 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color or national origin. As a recipient of Federal financial assistance from the Department, the District is subject to the provisions of Title VI.

OCR initiated an investigation of the following legal issue:

Whether the Complainant was subjected to a hostile environment on the bases of race and national origin as a result of harassment by the Teacher and whether the District failed to respond by taking action reasonably calculated to stop the harassment and remedy the effects of the harassment, in noncompliance with the Title VI implementing regulation at 34 C.F.R. §100.3.

During the course of its investigation, OCR reviewed the District's policies regarding non-discrimination and the District's grievance procedures. OCR identified areas of noncompliance in several elements of the District's grievance procedures. Further, OCR's investigation determined that the District did not conduct any investigation of the allegations raised against the

Teacher. Prior to the conclusion of OCR's investigation, the District offered to enter into a resolution agreement (Agreement) to resolve the complaint. Pursuant to Section 302 of OCR's Case Processing Manual, OCR agreed. Based on OCR's investigation, the District entered into the Agreement pursuant to which it will change certain aspects of its policies and procedures as well as conduct its own investigation into the Complainant's allegations to determine whether or not a hostile environment existed at the School.

### **Applicable Legal Standards**

The regulation implementing Title VI 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. 34 C.F.R. § 100.3(a)

Further, a recipient under any program to which the implementing regulation applies may not, directly or through contractual or other arrangements, on the 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. 34 C.F.R. §100.3(b)

Conduct that has such an effect and that consists of different treatment of students on the basis of race by recipients' agents or employees, acting within the scope of their official duties, violates Title VI. In addition, 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.

### **Hostile Environment**

Harassment of a student on the basis of race or national origin creates a hostile environment if the conduct is sufficiently severe, pervasive or persistent so as to interfere with or limit a student's ability to participate in or benefit from the services, activities or privileges provided by a recipient. OCR considers a variety of related factors to determine if a racially hostile environment has been created and also considers the conduct in question from both an objective and subjective perspective. OCR's standards require that the conduct be evaluated from the perspective of a reasonable person of the same race and age as the victim under similar circumstances. Factors examined include the type of harassment; the frequency and severity of the misconduct; the setting and context in which the harassment occurred; and other relevant factors.

Racial acts need not be targeted at the reporting student to create a racially hostile environment; they may be directed at anyone. The harassment need not be based on the ground of the victim's

or complainant's race, so long as it is racially motivated. Additionally, the harassment need not result in tangible injury or detriment to the victims of the harassment.

### Notice

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 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 (actual or constructive). So long as an agent or responsible employee of the recipient received notice, that notice will be imputed to the recipient. A recipient can receive notice in many different ways, including grievances, complaints made by a student to a teacher, or contact with appropriate personnel made by a student, parent or other individual.

### Recipient's Response

Once a recipient has notice of a racially hostile environment, the recipient has a legal duty to take reasonable steps to eliminate it. OCR evaluates the appropriateness of a recipient's 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 non-employees.

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.

Examples of possible elements of appropriate responsive action include imposition of disciplinary measures, development and dissemination of a policy prohibiting racial harassment, provision of grievance or complaint procedures, implementation of racial awareness training, and provision of counseling for the victims of racial harassment.

### Background

The Complainant alleged that the Teacher made statements disparaging of the Complainant and other students that shared his national origin. Specifically, the Complainant alleged that the Teacher cursed at Black, Haitian students during a class on two separate occasions. In addition, the Complainant alleged that the Teacher refused to allow him to take a test with the class and made statements that the Complainant understood to mean that he would not pass the test because he is Haitian. The Complainant further alleged that he notified a principal of the statements and that the principal took no steps to investigate the alleged harassment. Although

OCR did not conclude its investigation of the Complainant's allegations, since the District agreed to enter into an Agreement to resolve this matter, OCR's investigation did show that the District neither took any steps to conduct an investigation of the allegations raised by the Complainant nor addressed the allegations in any manner.

### **Review of District's Policies and Procedures**

OCR reviewed the District's policies regarding nondiscrimination and harassment and the District's grievance procedures. OCR found that the District's nondiscrimination statement did not include an Age Act Coordinator as required by the Age Discrimination Act of 1975. Certain aspects of the District's grievance procedures were also deficient, as described below.

#### **Nondiscrimination Statement**

The District's Nondiscrimination Statement states: The School Board of Palm Beach County, Florida, prohibits discrimination in admission to or access to, or employment in its programs and activities, on the basis of race, color, national origin, sex or sexual orientation, marital status, age, religion, disability, genetic information, gender identity, or expression, or any other characteristic prohibited by law. The School board provides equal access to the Boy Scouts and other designated youth groups. The statement also includes the name and contact information for all designated coordinators with the exception of an Age Act Coordinator.

#### **Harassment Procedures**

The Harassment Procedures prohibit the harassment or discrimination against any of its students or applicants for admission for any reason including, but not limited to, gender expression and/or gender identity, race, color, religion, national origin, age, disability, marital status, ancestry, ethnicity, gender, linguistic preference, political beliefs, sexual orientation, or social/family background in its education programs or admissions to education programs and therefore prohibits such discrimination against, or harassment of, any student by any Board member, District employee, consultant, contractor, agent, visitor, volunteer, student, or other person in the school or outside the school at school-sponsored events, on school buses, and at training facilities or training programs sponsored by the District.<sup>1</sup>

#### **Grievance Procedures**

The deficiencies in the District's procedures include: (i) use of an inaccurate standard that requires that for the harassing conduct at issue to be actionable it must "unreasonably" interfere with a student's performance or a student's ability to benefit from his/her education; (ii) use of language that suggests that a complaint must be in writing for an investigation to be initiated; (iii) no explicit statement that conduct by third parties (e.g., school visitors) may require a response by the District when the District receives notice of alleged harassment by a third party;

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<sup>1</sup> The District has a separate sexual harassment policy, which is not the subject of this investigation.

and (iv) no assurance that the District will take steps to prevent recurrence or remedy discriminatory effects on the complainant and others including potential discipline for the harasser. Pursuant to the Agreement, the District will address each of these deficiencies.

### **Conclusion**

OCR has determined that the District is in noncompliance with respect to its grievance procedures, which apply to multiple bases, including harassment on the basis of sex and disability, because the procedures do not fully comply with OCR's standards. The District will remedy the deficiencies of their grievance procedures pursuant to the terms of the attached Agreement.

As previously stated, prior to the completion of OCR's investigation, the District offered to resolve this complaint through a voluntary resolution agreement. Pursuant to Section 302 of OCR's Case Processing Manual, a complaint may be resolved when, before the conclusion of an investigation, the recipient requests to resolve the complaint. OCR accepted the District's request to resolve the complaint and the District entered into the enclosed Agreement, which when fully implemented, will resolve the issue in this complaint as well as the concerns regarding the grievance procedures addressed above. OCR will monitor the District's implementation of the Agreement to ensure that it is fully implemented and that the District is in compliance with the statutes and regulations at issue in this complaint.

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 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.

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This concludes OCR's consideration of this complaint. If you have any questions about this letter, please contact Colleen Grogan, Investigator/Attorney at (404) 974-9395, or Wendy Gatlin, Compliance Team Leader, at (404) 974-9356.

Sincerely,

/s/

Melanie Velez  
Regional Director