



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

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November 11, 2018

Dr. Elisabeth Davis
Superintendent
Eufaula City Schools
333 State Docks Road
Eufaula, Alabama 36027

Sent via email to: Elisabeth.davis@ecsk12.org; Bob.Meadows@chlaw.com

Re: OCR Complaint # 04-18-1052

Dear Dr. Davis:

On October 26, 2017, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint alleging discrimination on the basis of race by Eufaula City Schools (Recipient). Specifically, the Complainant alleged that the Recipient discriminated against the Student on the basis of race by (a) disciplining her too severely for retrieving a book without permission while a white student that also retrieved a book without permission was not punished; and (b) removing the Student from the cheerleading team because of accumulated demerit points while white cheerleaders who had also accumulated demerit points were not suspended or removed from the team. In the written complaint filed with OCR, the Complainant also alleged that the Recipient retaliated against the Student. However, during a call with the OCR, the Complainant withdrew the allegation and OCR dismissed the allegation in the letter of notice to the Complainant.

OCR is responsible for enforcing 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. As a recipient of Federal financial assistance from the Department, the University is subject to these laws. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

OCR's investigation of the complaint included an analysis of data provided by the Complainant and the Recipient, as well as interviews with the Complainant and six members of the Recipient's staff. OCR reviewed the evidence under the preponderance of the evidence standard. Under a preponderance of the evidence standard, OCR examines the evidence in support of and against a particular conclusion to determine whether the greater weight of the evidence supports the conclusion or whether the evidence is insufficient to support the conclusion. After a thorough review of all of the evidence, OCR has determined that there is insufficient evidence to support a finding of noncompliance with Title VI, as alleged for issue 1(a). However, for issue 1(b), prior to the completion of the investigation, the Recipient requested to voluntarily resolve the complaint and OCR determined it was appropriate to do so.

Pursuant to Section 302 of OCR's Case Processing Manual (CPM), allegations under investigation may be resolved at any time when, prior to the point when the Regional Office issues a final determination under CPM Section 303, the recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them with an agreement. The bases for OCR's determinations are set forth below.

Legal Standards

Title VI: Different Treatment

The Title VI implementing regulation at 34 C.F.R. § 100.3(a) states 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 program to which the regulation applies. The Title VI implementing regulation at 34 C.F.R. § 100.3(b)(1)(i)-(iii) states that a recipient under any program to which the regulation applies may not, directly or through contractual or other arrangement, 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 with is different, or is provided in a different manner, from that provided to others under the program; or (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.

Allegation 1(a): Whether the Student, who is black, was discriminated against when the Student was disciplined too severely for retrieving a book without permission but did not discipline a similarly situated white student.

Factual Findings

The Complainant alleged that the Recipient discriminated against the Student on the basis of race when, on October 4, 2017, it disciplined the Student too severely for retrieving a book without permission while a white female student, who also retrieved a book without permission on the same day, did not receive a punishment.

OCR reviewed documents provided by the Complainant and the Recipient. On October 4, 2017, the Student received a disciplinary referral from her teacher (Teacher 1) for leaving class and the designated area outside of the classroom without permission. She was subsequently assigned to one day of In-School Suspension (ISS). On that same day, Teacher 1 also referred another student for the same offense. That student (Student 3) was listed as a white male, and he also received one day of ISS. Two black male students were also written up for leaving the break area by another teacher (Teacher 2), and both of them received one day of ISS, as well.

OCR spoke with the referring, Teacher 1, who stated that on that particular day, the students were leaving the classroom, with Teacher 1's approval, to spend the last fifteen minutes of their instruction period outside in a designated area. The Student requested to go to another teacher's classroom, and Teacher 1 told her that she could not leave. The Student left against Teacher 1's instruction and remained gone for the rest of the class period. Teacher 1 told OCR that she spent

the entire fifteen-minute period looking for the Student, and when the Student failed to return, Teacher 1 wrote a referral for her. Teacher 1 also stated that she wrote a referral for Student 3 for the same offense. Teacher 1 confirmed that on that day, no other student in her class left the designated area outside of the classroom. OCR also spoke with Teacher 2, who was overseeing another class, and she confirmed that she wrote two referrals for two male students for leaving the designated area outside of the classroom during her class, and that no other student in her class left the designated area outside of the classroom. According to staff interviewed, all of the students who left the designated area outside of the classroom were referred to the Assistant Principal (AP 1) for discipline.

OCR interviewed AP 1, who stated that she referred to the Code of Student Conduct (Code) to determine what infraction had been committed when the students left the designated area outside of the classroom. The evidence showed that according to the Code, there were three different classes of violations: minor (Class I), intermediate (Class II) and major (Class III). AP 1 told OCR that leaving class without permission constitutes a safety concern. She determined that the Student's action was a class II offense and she gave the Student one day of ISS.

The Complainant alleged that a White female student (Student 4) also left the designated area outside of the classroom but was not punished. OCR did not identify any evidence, either from the Complainant or the City Schools, which showed that Student 4 left the designated area outside of the classroom without permission. During her interview with OCR, AP 1 stated that on the day of the incident with the Student, she only received four referrals for students who left a classroom or designated area outside of the classroom without teacher approval or permission: one for the Student, one for Student 3 and one for each of the male students referred by Teacher 2. Teachers 1 and 2 both denied writing referrals for Student 4 or being aware that Student 4 left the break area.

Analysis & Conclusion

To determine whether different treatment occurred, OCR first considers whether the evidence establishes a prima facie case of different treatment on the basis of race by determining whether the Student suffered an adverse action (i.e. a denial of access to an aid, benefit or service) and whether other similarly-situated students of a different race received a benefit that the Student did not.

Even though the evidence showed that the Student suffered an adverse action when she was given ISS for leaving the designated area outside of the classroom, there was no evidence that other similarly-situated students of a different race engaged in similar conduct by leaving the designated area outside of the classroom without permission but did not receive a punishment. In fact, the evidence showed that each student, who left the designated area without permission, which included a White male student, received ISS. The Complainant could not provide any information to refute this fact. For this reason, OCR could not establish a prima facie case of discrimination, and OCR ended the analysis here.

Accordingly, based on the preponderance of the evidence, OCR determined that there is insufficient evidence to conclude that the Recipient discriminated against the Complainant on the basis as alleged in noncompliance with Title VI as alleged.

Allegation 1(b): Whether the Student was discriminated against when the Student was removed from the cheerleading team because of accumulated demerit points while white cheerleaders who had also accumulated demerit points were not suspended or removed.

Prior to the completion of OCR's investigation, the City Schools requested to voluntarily resolve Allegation 1(b) and OCR agreed to pursuant to Section 302 of OCR's CPM. The attached Resolution Agreement (Agreement) will require the Recipient to take actions to remedy compliance concerns regarding the functioning of the cheerleading squad.

On October 29, 2018, OCR received the enclosed signed Agreement that, when fully implemented, will resolve Allegation 1(b). OCR will monitor the Recipient's implementation of this Agreement to ensure that it is fully implemented. If the Recipient fails to fully implement the Agreement, OCR will reopen the case and take appropriate action to ensure compliance with Title VI.

With respect to Issue 1(a), this concludes OCR's investigation of the complaint. This letter should not be interpreted to address the College'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 may not harass, coerce, 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. If OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information that, if released, could constitute an unwarranted invasion of privacy.

If you have any questions, please contact Jamila Montaque, Esq. at (404) 682-3342 or by email at jamila.montaque@ed.gov, or me at (404) 974-9408.

Sincerely,

April England-Albright, Esq.
Supervisory General Attorney