



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

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February 9, 2019

Dr. Bryan Johnson
Superintendent
Hamilton County Schools
3074 Hickory Valley Road
Chattanooga, TN 37421

RE: OCR Complaint No. 04-18-1459
Resolution Letter

Dear Dr. Johnson:

This letter is to advise you of the outcome of the complaint that the U.S. Department of Education (the Department), Office for Civil Rights (OCR) received on April 24, 2018 against Hamilton County Schools (District). The Complainant filed the complaint on behalf of her daughter (Student 1) and her son (Student 2). Both Students attend Ooltewah High School (School). The Complainant alleged that the District discriminated against Student 1 and Student 2 on the basis of race (black) by disciplining the Students more harshly than similarly situated white students and treating the Students differently.

OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d et. seq. and its implementing regulation at 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 District is subject to Title VI.

OCR investigated the following legal issues:

1. Whether the District disciplined Student 1 and Student 2 more harshly than similarly situated white students, in noncompliance with Title VI and its implementing regulation at 34 C.F.R. § 100.3.
2. Whether the District subjected the Students and the Complainant to different treatment on the basis of race, in noncompliance with Title VI and its implementing regulation at 34 C.F.R. § 100.3.

During the course of the investigation, OCR reviewed documents provided by the District, including the disciplinary records of Student 1, Student 2, and other students; the Student Code of Conduct; information concerning vehicle searches conducted at the School; correspondence between District staff; and correspondence between District staff and the Complainant. OCR also interviewed the School's Principal and an administrator (Administrator).

The District entered into an agreement to resolve Issue 1 prior to the completion of OCR's investigation pursuant to Section 302 of OCR's Case Processing Manual (CPM). With regard to Issue 2, OCR found insufficient evidence of noncompliance with Title VI, as alleged. Set forth below are a discussion of the facts and Section 302 resolution of Issue 1, as well as a summary of OCR's factual findings and conclusions regarding Issue 2.

Legal Standards

Under Title VI and its implementing regulation at 34 C.F.R. § 100.3(a), no individual may on the basis of race, color, or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance from the Department. The regulation at 34 C.F.R. § 100.3(b)(1) states in part, that a recipient under any program to which the regulation 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.

Issue #1 Whether the District disciplined Student 1 and Student 2 more harshly than similarly situated white students.

The Complainant alleged that in April 2018, the School expelled Student 1 after an altercation with a white student, whereas the School suspended the white student. The Complainant also alleged that the District falsely accused Student 1 of using someone else's credit card.¹ The Complainant alleged that the School suspended Student 2 for use of his cell phone in class in March 2018 and for kissing his girlfriend in January 2018, whereas similarly situated white students were not suspended for the same behavior.

Facts

Relevant District Policies

The District has a Student Code of Conduct (Code), which lists several possible "violations," or types of misconduct, and sanctions that may be imposed upon the first, second and third offense for each type of misconduct. The Code does not state whether the increased sanctions for subsequent offenses apply only if the previous offenses involve the same misconduct. The Code does not address the offense of school disruption. The Code identifies "fighting" as an offense and specifies the following sanctions: a 10 day out of school suspension and a 5 day in school suspension for a first offense; a 20 day out of school suspension and a 5 day in school suspension

¹ While OCR's investigation found that the District subjected the Student to discipline for the credit card incident, OCR did not complete its investigation into this incident in light of the decision to proceed under Section 302. Accordingly, this specific allegation is not discussed further.

for a second offense; and, administrative discretion concerning the sanction for the third offense. The Code identifies “PDA/out of place”² as an offense and states that the sanction for a violation could range from parent notification and/or detention to an out of school suspension for a first or second offense. The sanction for a third offense is at the administrator’s discretion.

Discipline Incidents

Student 1 and Student 2 were enrolled in the eleventh grade at the School during the 2017-2018 school year. During the course of the year, both students were subjected to various disciplinary actions, including the disciplinary actions described below which the Administrator handled. While the Administrator was not generally responsible for discipline of eleventh grade students, he sometimes handled discipline for students in grades that were not assigned to him.

The discipline history provided by the District did not corroborate that Student 1 was expelled for a physical altercation with a female student in April 2018 or disciplined for any incident that occurred in April 2018 as the Complainant alleged. However, a February 28, 2018 referral reflects that the Administrator suspended Student 1 out of school for 61 days for “disruption of the school climate” and “domestic fighting.” According to a summary that the Administrator included in the discipline history, Student 1’s conduct included disrespectful, negative and harassing conduct in a teacher’s class as well as a physical altercation with an ex-boyfriend. The Administrator told OCR that the severity of an incident is a factor in determining the sanction for a disciplinary incident. While he imposed a 61 day suspension for Student 1’s conduct, the Administrator imposed only a 10 day out of school suspension upon Student A, a white student, involved in a fight which resulted in a need to transport to the hospital both Student A and the student she fought.

Based upon a September 2017 incident, the Administrator imposed a 3 day out of school suspension on Student 2 for being out of area. This was Student 2’s second discipline referral of the year. For the same offense, the Administrator assigned two days of in school suspension (ISS) to Student B, a white student. The out of area infraction was Student B’s fifth discipline referral of the year and her prior offenses included a verbal altercation and a physical fight.

Analysis

Prior to OCR’s completion of the investigation, the District expressed an interest in resolving this allegation under Section 302 of the CPM and OCR determined that it would be appropriate to resolve this allegation under Section 302 because OCR’s investigation had identified issues that could be addressed through a resolution agreement. The District signed the enclosed Resolution Agreement that, when fully implemented, will resolve Issue 1. The Agreement requires the District to conduct a review of the Administrator’s discipline decisions for the 2017-2018 school year and the first semester of the 2018-2019 school year to determine whether there was different treatment of similarly situated black and white students and, if so, develop and implement a plan to prevent further discrimination in the administration of discipline. The

²The Code explains that “PDA . . . displays could be defined as kissing, embracing, and/or other forms of physical fraternization.”

District also agreed to conduct a review to determine whether the District subjected Student 1 or Student 2 to different treatment based on race and if so, will meet with the Complainant and the Students' teachers to discuss how to address the discrimination, including potentially amending the Students' discipline records or providing academic services to address missed instruction time. In addition, the School will revise discipline procedures to: (a) include criteria for selecting a disciplinary penalty, including explanations of how to distinguish between first and repeat offenders as well as how any progressive discipline will be implemented; (b) define "disruption," and provide a range of penalties that may be imposed for each infraction; and (c) develop, implement, and maintain a record-keeping system related to discipline.

Issue #2 Whether the District subjected the Students and the Complainant to different treatment on the basis of race.

The Complainant alleged that District staff engaged in different treatment based on race by searching Student 2's car for drugs without cause in April 2018 and May 2018. She also contended that while Student 2 was serving his suspension School staff refused to enter his grade for his math assignments, and while he completed his work the teacher assigned him a "0." She also alleged that the Administrator used the phrase "you people" in reference to black students and that the Principal used the phrase when discussing with the Complainant, the Complainant's concern that the Students had been subjected to different treatment.

Facts

Relevant District Policy

The Student Handbook states a principal or his designee or both may search any vehicle parked or otherwise located on school property if there is probable cause to believe that the vehicle contains a dangerous weapon, drug paraphernalia or drugs, or contains evidence of a violation of school rules or regulations which endangers or has endangered the health or safety of any member of the student body.

Car Searches

School administrators and the School Resource Officer (SRO) routinely monitor or patrol School parking lots. Students 1 and 2 were banned from having a parking permit or driving onto School campus as of August 2017 as a result of an earlier incident. Student 2's discipline record shows that despite the ban, he drove on campus on March 7, 2018 and marijuana was found in the vehicle. In May 2018, a vehicle used by Student 2 was on the School campus without the appropriate parking tag. According to Student 2's discipline history, there were small amounts of marijuana visible through the window. The SRO called for a K-9 unit and the dog "hit on" the car. Three law enforcement officers searched the vehicle and found marijuana inside.

The District identified 17 occasions during 2017-2018 on which School staff or administrators had reason to believe that a student's vehicle located on school property contained drugs or drug paraphernalia. These situations involved a total of six black students, including Student 2, and seven white students. In each instance the vehicle was searched. The vehicle of one white

student was searched as a result of the SRO patrolling the parking lot and seeing a lighter as well as marijuana through the window. Staff searched the vehicle of another white student after the student left campus and then returned. For three of the white students, the data included no explanation of why the vehicle was searched. For five of the black students staff either detected the odor of marijuana on the student or a dog “hit” on the student’s vehicle.

Math Homework Grades

The School provides two options for students to complete assignments while on suspension. Staff instruct parents to contact the student’s counselor to pick up assignments from the teachers while the student is out. There is also an option for students to complete assignments on the virtual school website. Teachers are expected to enter grades after a student completes an assignment. However, teachers have discretion to take 10% off the grade.

In the first semester of the 2017-2018 school year, Student 2 was enrolled in Geometry and received a “D.” In the second semester Student 2 was enrolled in Algebra 2 and received a “B.” Student 2 was suspended out of school for 3 days beginning February 27, 2018 and was expelled on May 2, 2018. The grade report for Algebra 2 reflects eight “0s” for homework assignments. Four of the zeros were assigned during Student 2’s suspension or expulsion. However the Student was not penalized for the missed homework assignments. Rather, for his final grade, he was assigned 151 out of total of 150 possible homework points, or 100.6% for that grading category.

Use of the Phrase “You People”

The Administrator told OCR that he never used any phrases such as “you people” when talking to the Complainant or about the Students. Additionally, the Principal told OCR that the Complainant never told the staff that she believed the two Students were being discriminated against based on race. Thus, the evidence did not substantiate that the Principal and the Complainant had the underlying conversation in which the Principal allegedly used the phrase “you people.”

Analysis

The District’s policy authorized a search of a student’s vehicle when there was probable cause to believe the vehicle contained drugs, drug paraphernalia or other items listed in the policy discussed above. The evidence substantiated that during the Spring 2018 semester the School conducted two searches of Student B’s vehicle, which had been banned from campus in August 2017 and at the time of the most recent search contained marijuana that was visible through the vehicle window. During the 2017-2018 school year, School staff or the SRO searched the vehicles of seven white students. The incidents involving white students included a situation in which lighters and marijuana pieces were visible through the window of the vehicle and a situation in which suspicion arose from the student having left the campus and returned. Based upon the foregoing, the evidence does not establish that the District subjected Student 2 to different treatment on the basis of race when it searched his vehicle.

The evidence establishes that Student 2’s math teacher did not deduct any points from his total homework points for the Spring 2018 term. Further, the alleged “you people” comments were not substantiated.

For the aforementioned reasons, OCR has determined there is insufficient evidence of noncompliance with Title VI, as alleged in Issue 2.

Conclusion

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, 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.

The Complainant has a right to appeal OCR’s determination regarding Issue 2 within 60 calendar days of the date indicated on this letter. In the appeal, the Complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the Complainant appeals OCR’s determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit to OCR a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

OCR is committed to prompt and effective service. If you have any questions, please contact Lachauna Edwards, Attorney, at (404) 974-9390 or by email at Lachauna.Edwards@ed.gov.

Sincerely,

Melanie Velez
Regional Director