



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS
MIDWESTERN DIVISION, CHICAGO OFFICE

November 16, 2011

Mr. Bruce Watkins
Superintendent
St. Cloud Area School District #742
1000 44th Avenue North
Suite 100
St. Cloud, MN 56303

Re: OCR Docket # 05-10-1146

Dear Mr. Watkins:

This is to advise you of the resolution of the complaint (#05-10-1146) filed by the Council on American-Islamic Relations (CAIR) with the U.S. Department of Education (Department), Office for Civil Rights (OCR), on March 19, 2010, against St. Cloud Area School District #742 (District) alleging discrimination on the basis of race, color or national origin.

Specifically, the complaint alleged that during the 2008-09 and 2009-10 school years, the District subjected Somali high school students to a hostile environment on the basis of race, color or national origin when students at the District's Apollo Senior High School (Apollo) and Technical Senior High School (Tech) harassed Somali students on the basis of race, color or national origin, and the District failed to stop the harassment.

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, which prohibit discrimination on the basis of race, color or national origin by recipients of Federal financial assistance. The regulation implementing Title VI, at 34 C.F.R. § 100.3(a), provides, in relevant part, that no person shall, on the basis 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 receiving Federal financial assistance. The District is a recipient of Federal financial assistance and is, therefore, subject to the provisions of Title VI and its implementing regulation.

Harassment on the basis of race, color, or national origin is a form of prohibited discrimination. To determine whether a hostile environment based on race, color, or national origin exists, OCR considers whether there was harassing conduct that was sufficiently severe, pervasive or persistent so as to interfere with or limit the ability of an individual to participate in or benefit from the services, activities or privileges provided by a school. If a hostile environment based on race, color, or national origin exists, and a school has notice of the hostile environment, then the school is required to take appropriate responsive action.¹

¹ See OCR's 2010 Dear Colleague letter on Harassment and Bullying, which is available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html>.

As part of its investigation, OCR obtained and reviewed extensive data from the District and CAIR. Apollo and Tech are both located in Saint Cloud, Minnesota. During the 2009-10 school year, Apollo had a student population of over 1300 students, with approximately 139 Somali students, while Tech had a student population of over 1400 students with a Somali student population of approximately 124 students.

The District has in place Harassment and Violence Policy 105 (Policy)² and Administrative Procedure 105A (AP 105A),³ which prohibit harassment or violence on the basis of race, color, creed, religion, national origin, sex, age, marital status, familial status, status with regard to public assistance, sexual orientation, or disability. AP 105A includes the District's procedures for responding to allegations of harassment. Pursuant to AP 105A, harassment is defined (in relevant part) as physical or verbal conduct relating to an individual's race, color, creed, religion, national origin, sex, age, marital status, familial status, status with regard to public assistance, sexual orientation, or disability that:

1. has the purpose or effect of creating an intimidating, hostile, or offensive working or academic environment;
2. has the purpose or effect of substantially or unreasonably interfering with an individual's work or academic performance; or
3. otherwise adversely affects an individual's employment or academic opportunities.

Moreover, according to AP 105A:

As used in these procedures, the term "harassment" includes the use of derogatory language (including racial or ethnic epithets), intimidation, and threats, unwanted physical contact and/or physical violence, and the use of derogatory language and images in graffiti, pictures or drawings, notes, e-mails, postings on internet and social networking sites and/or phone messages.

The Policy encourages persons to immediately report to District officials any violation of the Policy. The Policy further advises potential complainants to use the specific form developed by the District for that purpose and states that the form is available from the principal of each school building, from the District's Central Office and on the District's website. However, AP 105A makes clear that oral reports "shall be considered complaints as well." According to AP 105A, upon receipt of a report, the designated report taker for the school building is required to notify the District's human rights officer within five (5) days of receiving the report. The human rights officer can investigate the complaint herself or authorize an investigation of the complaint by a school official or a third party designated by the District. The Policy provides that complaints shall be investigated immediately (defined as "as soon as possible but in no event longer than 48 hours") and that the investigations will be "completed as soon as practicable."

² <http://isd742.org/schoolboard/Policies/bp105.pdf>

³ <http://isd742.org/schoolboard/Policies/ap105a.pdf>

The specific harassment alleged in the OCR complaint involved offensive and derogatory comments and behaviors by white students and teachers toward Somali students during the 2008-09 and 2009-10 school years. Evidence obtained by OCR during its investigation indicated that, during the 2009-10 and 2010-11 school years, Somali students at both high schools were subjected to negative comments and physical intimidation, based on their race and national origin, in school classrooms, hallways and cafeterias. In addition, OCR learned that the harassment was reported to the District.

Prior to the completion of OCR's investigation, the District expressed an interest in resolving the complaint by voluntarily entering into a settlement agreement. Subsequent discussions with the District resulted in the District signing the enclosed agreement (Agreement) which, when fully implemented, will resolve the issue in the OCR complaint. The provisions of the Agreement are aligned with the OCR complaint allegation and with the information obtained to date during the OCR investigation. The Agreement provisions are consistent with the applicable regulations. As a result of the Agreement, OCR is not making any compliance determination regarding the allegation of discrimination in the OCR complaint.

Under the provisions of the Agreement, the District will take all reasonable steps to ensure that all students in the District are not subjected to harassment or discrimination on the basis of race, color or national origin, and to respond promptly and appropriately to all reports of harassment. The Agreement includes a number of specific steps that the District has agreed to take to further this objective, including: (1) issuing an anti-harassment statement to all District students, parents and staff; (2) reviewing and revising its harassment and disciplinary policies and procedures to ensure they provide the District sufficient options for responding promptly and appropriately to incidents of harassment; (3) conducting training of District faculty, staff and students on discrimination and harassment; (4) meeting with Somali high school students to discuss their concerns about harassment; (5) maintaining a student committee at each District high school to provide a forum for students to discuss matters concerning harassment and suggest measures for improving the effectiveness of the District's anti-harassment program; (6) establishing a working group of District personnel, community representatives, parents and students to make recommendations regarding the District's anti-harassment program; (7) developing a District-wide age-appropriate orientation program for all students to address harassment; (8) maintaining a District monitoring program to assess the effectiveness of the District's anti-harassment efforts; and (9) providing annual compliance reports to OCR while the Agreement is in effect.

OCR will monitor the District's implementation of the Agreement. We look forward to receiving the District's first report regarding its implementation of the Agreement by November 30, 2011.

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. CAIR may file a private suit in federal court whether or not OCR finds a violation.

If you have any questions regarding this letter, you may contact Jason Frazer, OCR Regional Attorney, at (312) 730-1653 or by email at jason.frazer@ed.gov.

Sincerely,

/s/
Dave Blom
Team Leader

Enclosure

Cc: XXXXXX, Esq.