

November 20, 2013

Dr. Connie K. Valenza
Superintendent
Platteville Public Schools
780 N. 2nd St.
Platteville WI 53818

Re: OCR Docket # 05-13-1098

Dear Dr. Valenza:

The U.S. Department of Education, Office for Civil Rights (OCR) has completed its investigation of the above-referenced complaint filed against the Platteville Public Schools (District) on XXXXXX alleging discrimination on the basis of race.

The complaint alleged the following:

1. The District subjected an XXXXXX student (Student A) to discrimination based on race (African American) in the XXXXXX school year, in that students and an employee subjected Student A to racial harassment and the District was aware of the harassment but did not take appropriate action to respond;
2. The District subjected a XXXXXX student (Student B) to discrimination based on race (African American) in the XXXXXX school year, in that other students subjected Student B to racial harassment and the District was aware of the harassment but did not take appropriate action to respond; and,
3. The District subjected Student A to discrimination based on race in the XXXXXX school year, in that the District repeatedly disciplined Student A, including XXXXXX in XXXXXX.

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 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 of Education, the District is subject to Title VI.

As part of its investigation, OCR conducted interviews with the Complainant, Student A and District employees. In addition, OCR thoroughly reviewed documentation provided by the District and the Complainant. OCR finds that the District created a hostile environment for Students A and B on the basis of race, and that it failed to take appropriate action to end the hostile environment. In addition, OCR finds that the District subjected Student A to discrimination on the basis of race when it disciplined him. The bases for these determinations are set forth below.

Legal Standards

Under Title VI and its implementing regulation at 34 C.F.R. § 100.3(a), no individual may be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination on the basis of race, color, or national origin under any program or activity that receives Federal financial assistance from the Department. The Title VI regulation, at 34 C.F.R. §100.3(b)(1)(i)–(iv) states, in relevant part, that a recipient may not, on the basis of race, color, or national origin, deny an individual any service or other benefit provided under the program; provide any service or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program; subject an individual to segregation or separate treatment in any matter related to his receipt of any service or other benefit; or deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others.

Different Treatment

In analyzing an allegation of different treatment of a student on the basis of race, OCR ascertains whether there were any apparent differences in the treatment of similarly-situated students of different races. If such differences are found, then OCR considers whether the district has a legitimate, non-discriminatory reason for the differences in treatment and whether the reason provided by the district is a pretext for unlawful discrimination based on race. Additionally, OCR examines whether the district treated the student in a manner that was inconsistent with its established policies and procedures and whether there is any other evidence of race discrimination.

Harassment

Racial harassment is a form of race discrimination prohibited by Title VI. Racial harassment is intimidation or abusive behavior toward a student based on race that creates a hostile environment by interfering with or denying a student's participation in or receipt of benefits, services, or opportunities in the institution's program. Harassing conduct may take many forms, including verbal acts and name calling, as well as nonverbal behavior, such as graphic and written statements, or conduct that is physically threatening, harmful, or humiliating. Harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents.

OCR determines whether conduct constitutes a hostile environment based on race by examining the totality of the circumstances. These circumstances include the context, nature, scope, frequency, duration, and location of the harassment incidents, as well as the identity, number, and relationships of the persons involved. To show harassment under a hostile environment approach, the evidence must establish that: (1) a hostile environment existed, *i.e.*, harassing conduct (physical, verbal, graphic, or written) on the basis of race occurred 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 recipient; (2) the recipient had notice of the hostile environment; and (3) the recipient failed to respond adequately

to address the hostile environment. If a hostile environment based on race exists and a recipient has actual or constructive notice of it, then the recipient is required to take appropriate and adequate responsive action reasonably calculated to end the harassment, eliminate any hostile environment that has been created, prevent its recurrence and, where appropriate, remedy the effects of the harassment on the student(s) subjected to the harassment.

Schools are responsible for taking prompt and effective action to stop racial harassment and prevent its recurrence. The extent of a school's responsibilities if a school employee racially harasses a student is determined by whether or not the harassment occurred in the context of the employee's provision of aid, benefits, or services to students. OCR will consider a variety of factors in determining whether or not the harassment has taken place in this context. The factors include the type and degree of responsibility given to the employee, including both formal and informal authority, to provide aids, benefits, or services to students, to direct and control student conduct, or to discipline students generally; the degree of influence the employee has over the particular student involved, including in the circumstances in which the harassment took place; where and when the harassment occurred; the age and educational level of the student involved; and as applicable, whether, in light of the student's age and educational level and the way the school is run, it would be reasonable for the student to believe that the employee was in a position of responsibility over the student, even if the employee was not.

In cases involving allegations of harassment of secondary school-age students by an employee during any school activity, consideration of these factors will generally lead to a conclusion that the harassment occurred in the context of the employee's provision of aid, benefits, or services. If a secondary school employee who is acting in the context of carrying out these responsibilities over students engages in racial harassment, then the school is responsible for the discriminatory conduct. The school is, therefore, also responsible for remedying any effects of the harassment on the victim, as well as for ending the harassment and preventing its recurrence. More specifically, it should take immediate and appropriate steps to investigate or otherwise determine what occurred and take prompt and effective steps reasonably calculated to end any harassment, eliminate a hostile environment if one has been created, and prevent harassment from occurring again. These steps are the school's responsibility whether or not the student who was harassed makes a complaint or otherwise asks the school to take action and whether or not the recipient has "notice" of the harassment.

In some situations, if the school knows of incidents of harassment, the exercise of reasonable care should trigger an investigation that would lead to a discovery of additional incidents. The specific steps in a recipient's investigation will vary depending upon the nature of the allegations, the source of the complaint, the age of the student or students involved, the size and administrative structure of the school, and other factors. In all cases, however, the inquiry should be prompt, thorough, and impartial. At the conclusion of a school's investigation, both parties must be notified, in writing, about the outcome of the complaint, *i.e.*, whether harassment was found to have occurred.

While the regulation implementing Title VI does not contain an explicit requirement that recipients adopt and implement complaint procedures to address allegations of discrimination

based on race, color or national origin, grievance procedures that encompass race, color and national origin discrimination can be part of a prompt and effective response to harassment or other forms of discrimination prohibited by Title VI. In addition, a recipient that has adopted discrimination complaint procedures must apply the procedures in a manner that does not constitute discrimination prohibited by Title VI. Whether or not it has such procedures, a recipient is responsible for addressing harassment incidents about which it knows or reasonably should have known. In some situations harassment may be in plain sight, widespread, or well-known to students and staff. In other situations, the recipient may become aware of misconduct, triggering an investigation that could lead to the discovery of additional incidents that, taken together, may constitute a hostile environment.

Where the recipient learns of harassment based on race by a student's peers, the recipient must investigate the incident(s) promptly and respond appropriately. The responsibility to respond to harassment based on race, when it does occur, includes taking prompt and effective action reasonably calculated to end the harassment, eliminating any hostile environment that has been created, preventing it from recurring, and where appropriate, remedying the effects of the harassment on the student who was harassed. These duties are a recipient's responsibility even if the misconduct also is covered by an anti-bullying policy, and regardless of whether a student has complained, asked the school to take action, or identified the harassment as a form of discrimination. The corrective action taken by the recipient should be tailored to the specific situation and may include the 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 targets of racial harassment. A series of escalating responses, including escalating consequences for the harasser, may be necessary if the initial steps are ineffective in stopping the harassment.

Finally, the recipient should take steps to stop further harassment and prevent any recurrence. At a minimum, the recipient's responsibilities include making sure that the harassed students know how to report any subsequent problems, conducting follow-up inquiries to see if there have been any new incidents, and responding promptly and appropriately to address continuing or new problems.

Background

During the XXXXXX school year, Student A and Student B, XXXXXX were enrolled in the XXXXXX (School) as XXXXXX students, respectively. There are XXXXXX students at the School in XXXXXX, of which XXXXXX (XXX%) are white, non-Hispanic students and XXXXXX (XXX%) are African American students.¹

The District's nondiscrimination policy² prohibits discrimination based on race and national origin, among other forms of discrimination. The policy encourages informal resolution of

¹The XXXXXX..

² <http://www.platteville.k12.wi.us/district/board/Policies.pdf>

complaints under the policy but does direct persons to the District’s formal complaint procedures.

The District’s Student Conduct and Discipline Plan (Discipline Plan)³ organizes disciplinary infractions into four categories of misconduct, with Level Four Misconduct identifying the most serious infractions. In addition, the Discipline Plan identifies five categories of disciplinary consequences: time out/detention (detention), in-school suspension (ISS), program adjustment, out-of-school suspension (OSS), and expulsion.

Each category of misconduct allows for different punishments, including both maximum and minimum punishments. Level One Misconduct allows disciplinary consequences up to and including a one-day OSS. Level Two Misconduct allows for disciplinary consequences up to and including a three-day OSS. In addition, the Discipline Plan mandates a minimum consequence of ISS for Level Two Misconduct. Level Three Misconduct requires an OSS, which may be up to five days, and also allows a recommended expulsion. Level Four Misconduct requires a five-day OSS and a recommended expulsion. Although the District does not have a formal, progressive discipline policy, it allows repeated Level One Misconduct to be classified as Level Two Misconduct.

The School Principal is responsible for implementing the Discipline Plan at the School, including making any permissive or mandatory expulsion recommendations to the Superintendent. The Principal said that XXXXXX follows the Discipline Plan. In addition, the Principal explained that XXXXXX employs an informal progressive discipline scheme, escalating the disciplinary consequence within the permitted disciplinary options for repeated misconduct. The Principal said that after a second or third offense involving Level One Misconduct XXXXXX generally would impose an ISS as a disciplinary consequence instead of detention. The Principal also said that XXXXXX considers a student’s disciplinary history, including lesser consideration given to disciplinary history from prior school years, when determining an appropriate consequence for student misconduct.

The District tracks student misconduct using an electronic database called Skyward. The Skyward database records the date of the offense, the type of misconduct, the person who referred the offense, the person imposing the discipline, a brief description of the incident and any follow-up, and the disciplinary consequence imposed, if any. A student’s Skyward file includes disciplinary incidents from prior school years.

In addition, the Skyward system allows for the entry of “notes” in a student disciplinary file. Initially, the Principal said that XXXXXX utilizes the notes system to record conflicts between students, making a note in a student’s Skyward file to indicate that a student has raised a complaint about another student. The Principal acknowledged that the complaint should be entered in the offending student’s Skyward file. The Principal said that XXXXXX also utilizes the note system to record warnings given to students for alleged misconduct when XXXXXX

³ <http://www.platteville.k12.wi.us/district/board/Policies.pdf>

finds that an allegation is not substantiated or when XXXXXX does not impose any formal discipline. The Principal said that XXXXXX considers the information contained within the notes portion of a student’s Skyward file both to determine a student’s credibility and to determine what disciplinary action is appropriate in subsequent incidents.

Facts

During the XXXXXX school year, Student A, XXXXXX student, engaged in six instances of misconduct. After each incident, the Principal investigated the allegations against Student A and, with the exception of one incident, found the allegation to be substantiated. The chart below identifies the date of each incident of misconduct by Student A, a brief description of each incident, and the disciplinary consequence imposed, if any.

Student A’s Disciplinary History

Date of Misconduct	Misconduct	Disciplinary Consequence (if any)
XXXXXX School Year		
XXXXXX	Failure to follow Teacher Directions	Description of incident and warning in Skyward Notes
XXXXXX	XXXXXX	Warning
XXXXXX	XXXXXX	Description of alleged incident in Skyward Notes
XXXXXX	XXXXXX	1-day ISS
XXXXXX	XXXXXX	3-day ISS
XXXXXX	XXXXXX	XXXXXX ⁴

Although OCR did not find evidence to undermine the Principal’s determinations that Student A had engaged in alleged misconduct, OCR did find evidence to demonstrate that the Principal treated Student A differently than other white students when imposing discipline.

First, as noted in the chart above, the Principal twice recorded instances of Student A’s alleged misconduct in the notes portion of Student A’s Skyward file. In one of these two instances, the Principal had determined that the allegation was not substantiated. However, the Principal did not create similar notes to record warnings XXXXXX gave to Students M, N, DD, EE, and FF, all of whom were white XXXXXX students. The Principal substantiated each of these incidents and all of them involved harassment of Students A or B. Further, Students M, N, and DD engaged in subsequent misconduct during which the Principal considered their prior disciplinary history in determining what discipline to administer. The Principal acknowledged to OCR that

⁴ XXXXXX

the warnings XXXXXX gave to Students M, N, DD, EE, and FF should have been entered in the notes portion of the District's Skyward system.

Second, the Principal told OCR that XXXXXX applied an informal progressive discipline scheme when determining the discipline to impose upon Student A. The District's disciplinary records indicate that the Principal increased the disciplinary consequence administered to Student A after each substantiated incident, culminating in XXXXXX. Further, Student A received an ISS after the third substantiated instance of misconduct during the XXXXXX school year, his only year at the School. However, the District's discipline records indicate that the Principal did not apply a similar informal progressive discipline scheme when determining the discipline to administer to Student M, a white XXXXXX student.

Student M's Skyward file contains 28 instances of misconduct during the XXXXXX and XXXXX school years. Student M's Skyward file does not include any record of a warning and detention he received for an incident involving insensitive language directed at Student A. During the XXXXXX school year, Student M engaged in seven instances of Level One Misconduct before receiving a 1-day ISS. In the XXXXXX school year, Student M engaged in four instances of Level One Misconduct before receiving a 1-day ISS. However, Student A received a 1-day ISS after his second instance of Level One Misconduct in the XXXXXX school year. In each of Student M's XXXXXX years at the School, he continued to engage in misconduct after he had received an ISS. However, in several such incidents, the Principal did not follow a progressive discipline policy and administered discipline less than ISS. The Principal administered discipline of ISS or OSS in only 6 of Student M's 28 disciplinary incidents. The Principal administered no discipline to Student M in 6 of the 28 disciplinary incidents and warnings in 3 of the 28 disciplinary incidents, including several incidents that involved physical aggression or bullying.

The Principal explained that Student M's misconduct did not involve acts of physical aggression or bullying directed towards other students and therefore, according to XXXXXX, were not comparable to the misconduct engaged in by Student A. However, Student M's Skyward file indicates that in five of Student M's seven offenses during the XXXXXX school year involved physical aggression or bullying, six of Student M's nine offenses during the XXXXXX school year involved physical aggression or bullying, and one of Student M's first six offenses during the XXXXXX school year involved physical aggression or bullying.

Third, the evidence indicates that the Principal did not respond similarly to the Complainant's allegations that other students were enticing Student A to engage in misconduct by teasing him as XXXXXX did when Student BB's, a white XXXXXX student, mother made similar allegations.

During a disciplinary conference between the Principal and Student A on XXXXXX, the Principal discussed with Student A how other students might perceive his behavior. Among other things, the Principal told Student A that other students may have "negative stereotypes" about him and that he "needed to show the other students what it was like to be a black man." The Principal told OCR that XXXXXX did, in fact, believe that other students had stereotypes of

Student A because he was an African American male XXXXXX and said further that students wondered whether he was in a gang and stereotyped him as intimidating. The Principal confirmed that XXXXXX told Student A that he “needed to show the other students what it was like to be a black man,” because XXXXXX frequently challenges students to avoid giving other students the power to dictate their responses by “demonstrating the man they want to be.” When asked why XXXXXX told Student A to demonstrate what it was like to be a “black man,” the Principal acknowledged that XXXXXX probably should not have referred to Student A’s race.

In addition, the Complainant told the Principal at the XXXXXX meeting that other students at the School targeted Student A because of his race. The Complainant told the Principal that XXXXXX believed other students were “setting up” Student A so that he would retaliate against them and then be subject to discipline. The Complainant provided several examples to support her allegation. Specifically, Student A and the Complainant told the Principal that Student M, a white, XXXXXX, had previously asked Student A whether he had been shot after noticing a band-aid on Student A’s elbow. The Complainant told the Principal that she believed the remark to be racially motivated. The Principal said that XXXXXX looked into the matter and that Student M neither admitted nor denied making the remark, but acknowledged that it “sounded like something he would say.” The Principal determined that Student M had made the remark and that it was insensitive. Student A and the Complainant also told the Principal at the meeting that Student N, a white, XXXXXX student, had spread rumors that Student A lived in a shelter and physically abused girls at the School. The Complainant told the Principal that she believed Student N’s comments to be racially motivated. The Principal told OCR that XXXXXX met with Student N, who admitted making the comments, and discussed with her the importance of respecting other students’ privacy and the insensitivity of her remarks. Although the Principal determined that both Students M and N had made the alleged remarks and gave Student M a lunch detention and Student N a warning, XXXXXX did not create an entry in either student’s Skyward file, including the notes portion of the file.

After the meeting with the Complainant and Student A, the Principal advised the Superintendent by email that the Complainant had alleged that the Principal and other students were “[n-word] baiting” and “setting up” Student A with racist actions. The Superintendent said that she believed the Complainant’s allegation caused the Principal to perceive XXXXXX as the victim. The Superintendent said that she attempted to direct the Principal to address the Complainant’s concern. However, in her responsive e-mail, the Superintendent told the Principal that the best thing the School could do for Student A was to “teach him how to keep himself from responding [to the other students’ actions]” and suggested that Student A have sessions with a school counselor. The Superintendent explained that XXXXXX wanted the Principal to empower Student A so that other students’ actions would not affect him. Neither the Principal nor the Superintendent construed the Complainant’s allegation that Student A’s peers were targeting him to be an allegation of race discrimination and did not investigate the allegation or contact Student A’s teachers to ask them to watch for such behavior by other students.

In contrast, in XXXXXX Student BB’s mother made an allegation that her son (who is Caucasian) was being “set-up,” complaining that other students were targeting him so that he would retaliate and be subject to discipline. In response, the Principal sent an email to the School

faculty advising them of the Student BB's mother's allegation and encouraging them to watch for behavior among the XXXXXX class that would incite retaliatory acts. The Principal explained that XXXXXX sent the e-mail because teachers had reported to her that they had heard XXXXXX students tell each other that they were "going to get each other suspended."

Finally, the evidence indicates that when a white XXXXXX student, Student S, engaged in misconduct on the bus that constituted a XXXXXX, the Principal did not recommend XXXXXX for Student S, as XXXXXX had for Student A. On XXXXXX, a parent reported that Student S, a white, male, XXXXXX student, had manipulated Student JJ, a XXXXXX girl, to XXXXXX. Although the other boys resisted Student JJ's efforts to comply with Student S's manipulations, he repeatedly urged her to continue, and she continued to follow his instructions. Student S admitted to the misconduct. The Principal acknowledged to OCR that Student S's manipulation of the XXXXXX girl amounted to a XXXXXX. However, the Principal classified the conduct as bus misbehavior, which is Level One Misconduct, and not XXXXXX, which is Level Three Misconduct and requires an OSS and allows for XXXXXX. After classifying the behavior as bus misconduct, the Principal gave Student S a 1-week bus detention.

OCR also learned that that XXXXXX Student B, was subject to harassment from his peers based on his race. On XXXXXX Student AA, a white XXXXXX student, was upset with Student CC and, in an effort to cause Student B and Student CC to fight, told Student B a falsehood-- that Student CC had called Student B the n-word on the bus several weeks earlier. Student B reported the information to School Counselor. Student CC promptly denied the allegation, and Student AA's story quickly unraveled. As it turned out, sometime in XXXXXX, Student BB, a white student, told Student AA that Student B was an n-word while they (but not Student B) were on the bus. Student B did not hear Student BB's XXXXXX comment. When the School Counselor investigated the incident, Student BB admitted that he made the comment about Student B in XXXXXX. Student AA admitted to the Counselor that he was mad at Student CC and told Student B that Student CC had previously called him the n-word in order to upset Student B and cause him to retaliate against Student CC. Based on Student AA's and BB's admissions, the Principal determined that both of the students had used the n-word and that their uses were "malicious, derogatory, and racial in nature." The Principal classified the incident as bullying based on race. According to the Discipline Plan, bullying or harassment based on race constitutes Level Two Misconduct, which calls for a minimum punishment of an ISS. However, the Principal said that because it was Students AA's and BB's first offense, XXXXXX gave them a lesser punishment of a 5-day lunch detention and required them to engage in restorative practice, which constituted reading material about race discrimination, discussing how their actions may have affected Student B, and identifying remedies for their misconduct.

One week later, on XXXXXX, Students DD, EE, and FF, white XXXXXX students, were rehearsing a skit during the XXXXXXXX homeroom period they shared with Student B. The script for the skit instructed the actors to "snigger," which is a half-laugh. Student B told Teacher I that while rehearsing the skit, Students DD, EE, and FF said the n-word, repeatedly. Teacher I asked Students DD, EE, and FF whether they had used the n-word. The students denied saying the n-word and explained to Student B that they had said "snigger" because it was in the script, and they also explained the meaning of snigger.

Student B complained about the incident to the Counselor, who reported it to the Principal. The Principal obtained written statements from Students DD, EE, and FF and interviewed them. Students DD's and EE's written statements indicated that Student FF said the n-word after misconstruing Student DD's pronunciation of the word "snigger." However, the Principal determined that either Student DD or EE had spoken the word "snigger" as the script directed at the end of the play and that Student FF had laughed because he thought Students DD and EE had said the n-word. Notwithstanding Students DD's and EE's written statements indicating that Student FF had said the n-word, the Principal determined that no one actually said the n-word and that Student FF's laughter amounted to a misunderstanding regarding pronunciation of the word "snigger."

The Principal said that XXXXXX warned Students DD, EE, and FF that future incidents would lead to disciplinary consequences and made them engage in a restorative exercise by writing about how they believed Student B may have felt because of the incident and how they could remedy the misunderstanding. Although the Principal said that XXXXXX warned each of the students, XXXXXX said that XXXXXX mistakenly failed to record the warning in any of the three students' Skyward files. XXXXXX acknowledged to OCR that XXXXXX should have entered the warnings in their Skyward files for future reference. Student DD's Skyward file indicates that he engaged in Level One misconduct subsequent to this incident, for which he received another warning.

Finally, on XXXXXX, the Complainant left a message with the Principal that a School student had thrown an object at Student B after school that day, but that she did not know the student's name. The Principal reviewed security video footage of the area in which Student B had been located and determined that Student M, the white, non-disabled student who the Principal had previously determined had made an insensitive remark to Student A, had thrown an object at Student B. The Principal then interviewed Student B, Student M, and Student HH, who, the footage revealed, was nearby.

Student B told the Principal that Student M asked him when Student A would return to school. When Student B responded that it was none of Student M's business, Student M told Student B to "shut his brown ass up" and threw a thumbtack at him. Student HH told the Principal that Students B and M had a verbal exchange but that he did not see Student M throw a thumbtack or hear Student M make a racially derogatory remark. Student M initially denied throwing a thumbtack at Student B, but when confronted with the security footage, admitted that he had done so. Student M, however, denied making a racially derogatory remark.

Although Student M had 21 disciplinary incidents in the preceding two-and-a-half years, including incidents involving bullying and harassment based on sex and an incident involving an insensitive remark directed towards Student XXXXXX, and initially had lied about throwing a thumbtack at Student B, the Principal determined XXXXXX could not conclude that Student M made the alleged derogatory remark to Student B. The Principal stated that XXXXXX reached the determination because Student HH said that Student M had not made the remark and because Student B was not himself honest. As an example of Student B's dishonesty, the Principal

explained that on an unspecified date he entered XXXXXX office and took candy from a candy dish on XXXXXX desk without permission and later stated that he had entered XXXXXX office only to retrieve his coat. The Principal gave Student M a 2-week lunch detention.

Analysis

Student A

The Complainant alleged that the District subjected Student A to discrimination based on race in the XXXXXX school year. The evidence demonstrates that the School treated Student A differently than similarly situated white School students, namely Students M, N, S, BB, DD, EE, and FF, when applying its Discipline Plan. Student A engaged in several instances of misconduct and the School followed its Discipline Plan when disciplining him. However, the School did not consistently follow the Discipline Plan when disciplining the white students and treated white students more favorably than Student A.

First, the School did not consistently record warnings given to similarly situated white students, including Students M, N, DD, EE, and FF, in the notes portion of their Skyward files, as XXXXXX did for Student A. The Principal acknowledged to OCR that XXXXXX considered warnings in the Skyward files in determining future disciplinary consequences. In two instances, the Principal created notes in Student A's Skyward file describing disciplinary incidents that he was involved in but received only warnings. However, the Principal did not create similar notes to record warnings XXXXXX gave to Students M, N, DD, EE, and FF, all of whom were white. Students M, N, and DD engaged in subsequent misconduct. In particular, the Principal found that Student M had made insensitive remarks to Student A, but did not record the warning and detention that XXXXXX gave him for those remarks in the notes portion of his Skyward file.

Second, the Principal employed an informal progressive discipline policy that XXXXXX applied to Student A, increasing the severity of the disciplinary consequence after each incident involving Level One Misconduct. By contrast, Student M, a similarly situated white student who had a more extensive disciplinary history, did not face increasingly severe disciplinary consequences. Notably, Student M did not receive an ISS until his fourth and seventh disciplinary incidents involving Level One Misconduct in the XXXXXX and XXXXXX school years, respectively. Further, in XXXXXX, after Student M received a 1-day ISS for his fourth disciplinary incident involving Level One Misconduct, he engaged in three further instances of Level One Misconduct. For the seventh instance of Level One Misconduct during the XXXXXX school year, which involved an incident in which he gave another student a concussion, Student M received a 1.5-day ISS. The Principal stated that Student M's conduct did not involve acts of physical aggression or bullying, but this assertion is contradicted by Student M's Skyward file.

Third, the Principal responded more favorably to Student BB's mother's allegations that other students were teasing him to entice him to engage in misconduct than XXXXXX did when responding to the Complainant's similar allegations concerning the harassment Student A experienced. Although the Principal asserted that teachers had reported conduct that confirmed Student BB's mother's allegations, the Principal investigated two of the Complainant's

allegations and found that the students had directed insensitive comments towards Student A as alleged.

Fourth, the School treated Student S, a similarly situated, white, male XXXX student who XXXX assaulted a XXXX girl, more favorably in disciplining him than it treated Student A. The Principal acknowledged that Student S, like Student A, committed a XXXX assault. However, the Principal classified Student S's behavior as bus behavior, which is Level One Misconduct. Although Student S did not have a prior disciplinary history at the time he XXXX assaulted the XXXX girl, XXXX assault is Level Three Misconduct under the District's Discipline Plan and requires an OSS. While Student A was XXXX for XXXX assault, Student S was only given a 1-week bus detention.

For its legitimate, non-discriminatory reason for the differences in treatment, the District asserted that the Principal's failure to record warnings in the discipline files of Students M, N, DD, EE, and FF and to punish Students AA, BB, and S in accordance with the Discipline Plan, were mistakes. The District stated that the discrepancy between the disciplinary consequences received by Student A and Student M was due to the fact that they were not similarly situated. The District asserted that Student M and Student A were not similarly situated because Student A's misconduct involved acts of physical aggression or bullying and Student M's did not; however, this is contradicted by Student M's Skyward file, which indicated that Student M's disciplinary history was more extensive than Student A's and did, in fact, involve numerous incidents of physical aggression or bullying. Moreover, although the District asserted that the different treatment received by Students M, N, S, DD, EE, and FF were mistakes, the evidence shows that this assertion too was a pretext for discrimination on the basis of race. The quantity and frequency with which the School made such mistakes and the variety of mistakes it made in each case favoring treatment of the white students as compared to Student A, established a pattern of unjustified, discriminatory treatment on the basis of race in the discipline administered to Student A.

For the foregoing reasons, the evidence demonstrates that the School treated white students differently from Student A without justification when applying its Discipline Plan, in violation of Title VI and its implementing regulation at 34 C.F.R. § 100.3(a) and 34 C.F.R. § 100.3(b)(1)(i)–(iv).

Hostile Environment for Students A and B

The Complainant alleged that the District discriminated against Students A and B based on race in the XXXX school year. In this regard, she alleged that the Principal and School students subjected Student A to racial harassment and School students subjected Student B to racial harassment, specifically repeated racially derogatory comments, and the District was aware of the harassment but did not take appropriate action to respond.

In this case, the evidence shows Student A and Student B were subjected to severe, pervasive, and persistent harassment on the basis of race of which the District had notice but did not take immediate corrective action. School students, including Students M, N, AA, BB, DD, EE, and

FF, made racially derogatory or insensitive remarks to or about Students A and B, of which they were aware, that created a hostile environment for Students A and B. Moreover, the Principal created a hostile environment for Student A when XXXXXX instructed him to show other students what it was like to be a “black man” when advising him to ignore other students’ efforts to antagonize him because they had negative stereotypes of Student A based on his race.

When it substantiated the harassing misconduct, the School did not offer remedies to Students A and B. Rather, the School responded to incidents of harassment by suggesting that the School teach Student A to keep himself from responding to other students, telling Student B to “turn the page,” or inviting Student B to listen to harassing students’ explanations for their behavior, all of which placed the onus on Students A and B to respond to the harassment.

In this case, there is insufficient evidence that the School eliminated the hostile environment by stopping the harassment, preventing a recurrence or otherwise responding promptly and appropriately to address continuing or new problems; nor did the School remedy the hostile environment’s effects for students A and B. The School had notice of the hostile environment but did not respond adequately to address the environment, including taking appropriate and adequate responsive action reasonably calculated to end the harassment, eliminate the hostile environment that had been created, prevent its recurrence, and, as appropriate, remedy the effects of the hostile environment on Students A and B. Although the School investigated each incident of alleged harassment, the School did not take sufficient responsive action because the incidents of harassment continued and increased in severity, culminating in an incident involving a student who had previously harassed Student A harassing Student B and throwing a thumbtack at him.

In failing to respond adequately, the School did not adequately record the incidents of harassment in the harassing students’ Skyward files, did not punish white students that it found to have committed harassment in accordance with its Discipline Plan, did not similarly discipline white students for similar or more egregious misbehaviors, including Students S and M, did not respond to the Complainant’s concern about Student A being “set up” similarly to the way it responded to a white parent’s concern about her child being “set-up,” ignored or overstated evidence in concluding that no racial harassment had occurred, and did not offer individual remedies to Student A or Student B, all of which conveyed a message to the two students that such behavior would be tolerated and that it was their responsibility to combat the harassment or negative stereotypes.

Conclusion

For the foregoing reasons, the School’s actions violated Title VI and its implementing regulation at regulation at 34 C.F.R. § 100.3(a) and 34 C.F.R. §100.3(b)(1)(i)–(iv). Therefore, OCR has obtained a resolution agreement from the District that is aligned with the violations identified by OCR’s investigation and with the issues investigated, and is consistent with the applicable regulations and legal standards. The resolution agreement is enclosed with this letter.

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.

The 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.

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 privacy.

We wish to thank you and your staff for the cooperation and courtesy extended to OCR during our investigation. In particular, we wish to thank Lori Lubinsky, Attorney at Law. If you have any questions regarding this letter, please contact me at (312) 730-1593 or by email at Dawn.Matthias@ed.gov.

Sincerely,

Dawn R. Matthias
Team Leader

CC: Ms. Lori Lubinsky, Counsel

Enclosure