



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS**

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August 10, 2018

Dr. Sherry L. Grate
Superintendent
Westfield Washington Schools
1143 E. 181st Street
Westfield, IN 46074

Re: OCR Docket #05-14-1139

Dear Dr. Grate:

This is to notify you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its complaint resolution activities in the above-referenced complaint filed against Westfield Washington Schools (Corporation) alleging discrimination on the basis of race.

The complaint alleged the following:

- 1) in XXXXX, the Corporation subjected an African American XXXXX student (Student A) to discrimination based on race when another student subjected Student A to racial harassment on a school bus, and the Corporation was aware of the harassment, but failed to take action to address it; and
- 2) in the XXXXX school year, the Corporation subjected Student A to discrimination based on race when it repeatedly disciplined Student A more harshly than white students who engaged in similar conduct, including suspending and referring Student A to law enforcement for an incident in XXXXX.¹

OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d - 2000d-7, and its implementing regulation, 34 C.F.R. Part 100. Title VI prohibits discrimination on the basis of race, color, or national origin. The Corporation is a recipient of Federal financial assistance from the Department, and therefore is subject to the provisions of Title VI.

During its investigation, OCR reviewed data provided by Student A's parent and the Corporation, including discipline records provided by the Corporation, and interviewed the

¹ By letter dated March 20, 2014, OCR notified the Corporation that this allegation raised whether the Corporation subjects black students to discrimination on the basis of race when imposing exclusionary discipline. OCR has concluded that there is no current systemic allegation appropriate for further investigation and resolution and is closing the systemic allegation pursuant to Section 108(i) of OCR's Case Processing Manual (CPM). The CPM can be found here: <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

parent and Corporation employees. Based upon its investigation, OCR has determined that the preponderance of the evidence is insufficient to establish a violation with regard to Allegation #2. Prior to the completion of OCR's investigation, the Corporation agreed to take actions to resolve Allegation #1. The bases for OCR's determinations are set forth below.

Legal Standards

The Title VI implementing regulation, at 34 C.F.R. § 100.3(a), provides that 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 funds.

The Title VI implementing regulation, at 34 CFR §100.3(b)(1)(i)-(vi), provides that a recipient may not, directly or through contractual or other arrangements, on the grounds of race, color or national origin, deny an individual any service or benefit of its programs; provide any service or 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 receipt of any service or other benefit under the programs; restrict an individual in the enjoyment of any advantage or privilege or other benefits of its programs; treat an individual differently in determining whether he or she satisfies any requirement in order to be provided any service or benefit under the program; or deny an individual an opportunity to participate in a program through the provision of services which is different from that afforded others under the program.

In determining whether a recipient subjected a student to discrimination on the basis of race, absent direct evidence of discrimination, OCR considers whether the recipient treated similarly-situated students differently on the basis of race. If evidence of different treatment is found, OCR then determines whether the reasons offered by the recipient for the different treatment are legitimate, non-discriminatory reasons and whether they are merely a pretext for unlawful discrimination. Additionally, OCR examines whether the recipient treated a student in a manner that is inconsistent with its established policies, practices and procedures and whether any other evidence of discrimination based on race exists.

Racial harassment that creates a hostile environment is a form of discrimination prohibited by Title VI. Harassment based on race 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 education benefits, services, or opportunities in the recipient's program. Harassing conduct may take many forms, including verbal acts and name calling, 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.

To show racial harassment under a hostile environment approach, the evidence must establish that: (1) a racially hostile environment existed, *i.e.*, harassing conduct (physical, verbal, graphic, or written) occurred that was sufficiently severe, persistent or pervasive 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.

In analyzing claims of harassment based on race, OCR considers the totality of the circumstances to determine whether a hostile environment has been created, *i.e.*, whether the harassing conduct is sufficiently serious that it denies or limits a student's ability to participate in or benefit from the recipient's program. These circumstances include the context, nature, scope, frequency, duration, and location of the incidents, as well as the identity, number, age and relationships of the persons involved. OCR considers the conduct in question from both an objective perspective and the subjective perspective of the alleged victim of harassment.

The responsibility to respond to racial harassment, when it does occur, includes taking immediate action to eliminate the hostile environment, prevent its recurrence, and address its effects. The corrective action taken by the recipient should be tailored to the specific situation. At a minimum, the recipient's responsibilities include making sure that the harassed student knows 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. A series of escalating responses, including escalating consequences for the harasser, may be necessary if the initial steps are ineffective in stopping the harassment. In addition to counseling or taking disciplinary action against the harasser, effective corrective action may require remedies for the complainant, as well as changes to the school's overall services or policies.

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.

Corporation Policies and Procedures

The Corporation's Equal Educational Opportunity Policy (Nondiscrimination Policy) states that the Corporation does not "discriminate on the basis of race, color, [or] ... national origin ... in its educational programs or activities."²

At the time of OCR's investigation, the Corporation had a Racial Harassment Policy, which provided that it is the policy of the Corporation "to maintain a learning and working environment that is free from racial harassment."³ It defined the types of racial harassment and included examples.

² <https://in02206768.schoolwires.net/cms/lib/IN02206768/Centricity/domain/448/policy/10000%20-%20STUDENTS/10000-35%20EQUAL%20EDUCATIONAL%20OPPORTUNITY.pdf>

³ The Racial Harassment Policy is no longer on the Corporation's website, but a general Corporation anti-harassment policy can be found at https://www.wws.k12.in.us/cms/lib/IN02206768/Centricity/Domain/502/13000-01_NONDISCRIMINATION_AND_ANTI-HARASSMENT.pdf. The anti-harassment policy says, "Harassment or

The Corporation's Discrimination Grievance Procedures set forth the procedures for students or employees to file a complaint of discrimination.⁴ The Corporation also has a discrimination complaint form available on its website.⁵

The Corporation's Student Behavior, Rights, and Discipline Policy⁶ provides that:

Westfield Washington Schools (WWS) balances the rights of student expression with the rights of all members of WWS, with the interests of an orderly and efficient educational process, and with the needs of a school environment suitable for the healthy growth and development of all students.

Recognizing that the behavior of some students may be so disruptive that it interferes with school purposes or educational functions of WWS, school officials may find it necessary to remove a student from the school. The Board supports the concept of progressive discipline which is a method of enforcing school/classroom rules through a system of increasing consequences.

Rules provide rights and define responsibilities. Students are expected to demonstrate proper behavior as defined in the Student Handbook, and are subject to disciplinary action when the rules are not followed, but also have the full protection of due process including appeal of any decision where applicable. All Student Handbooks are approved by the Board of School Trustees. . . .

Documentation of the steps taken during progressive discipline will be kept in a manner consistent with individual building level procedures. In addition to the actions specifically provided in each student handbook, the Superintendent, principals, any administrative personnel, or any teacher of WWS shall be authorized to take any action in connection with student behavior which is reasonably desirable or necessary to help any student, to further school purposes, or to prevent an interference therewith, consistent with state and federal law.

The Corporation's Intermediate School Student Handbook (Handbook) is available on the individual school page located on the Corporation's website.⁷ The Handbook provides that, if a child is referred to the office for rule violations, any of a number of actions may be taken, ranging from a conference with the student to expulsion.

discrimination of students, staff members, and guests is prohibited at all academic, extra-curricular, and school-sponsored activities."

⁴ <https://in02206768.schoolwires.net/cms/lib/IN02206768/Centricity/domain/448/policy/10000%20-%20STUDENTS/Discrimination%20Procedures.pdf>

⁵ <https://in02206768.schoolwires.net/cms/lib/IN02206768/Centricity/domain/448/policy/10000%20-%20STUDENTS/Discrimination%20Report%20Forms.pdf>

⁶ <https://in02206768.schoolwires.net/cms/lib/IN02206768/Centricity/Domain/502/10000-05%20STUDENT%20BEHAVIOR%20AND%20RIGHTS.pdf>

⁷ <https://www.wws.k12.in.us/cms/lib/IN02206768/Centricity/Domain/323/2018-2019%20WIS%20Student%20Handbook%20Board%20Approved%20for%206-12-18.pdf>

The Handbook states that student misconduct and/or substantial disobedience are grounds for suspension or expulsion. Among the examples of student misconduct and/or substantial disobedience that are grounds for suspension or expulsion are “Using violence, force, noise, coercion, threat, intimidation, fear, passive resistance, or other comparable conduct constituting an interference with school purposes, or urging other students to engage in such conduct”; “Intentionally causing or attempting to cause physical injury or intentionally behaving in such a way as could reasonably cause physical injury to any person”; “Engaging in any activity forbidden by the laws of Indiana that constitutes an interference with school purposes or an educational function”; and “Violating or repeatedly violating any rules that are reasonably necessary in carrying out school purposes or an educational function and are established in accordance with Indiana law.”

Allegation #1

Facts

The complaint alleged that, on one occasion in XXXXX, the Corporation subjected Student A to discrimination based on race when another student subjected Student A to racial harassment on a school bus, and the Corporation was aware of the harassment, but failed to take action to address it. In the 2013-2014 school year, Student A was a XXXXX student at XXXXX School (the School). Student A’s parent told OCR that a White XXXXX student (Student B) called her son the “n” word on the school bus. She said that her son responded back, “You look like you swallowed your balls.” Student A’s parent said Student A was removed from the bus after Student B’s parent complained. Student A’s parent said she filed a complaint with the School about the racial harassment of Student A, but the Corporation failed to respond to her complaint.

The former Principal of the School told OCR that Student B’s parent sent a letter to the transportation department alleging that Student A called her son “white trash” and “cracker.” Assistant Principal A⁸ investigated the allegations in the letter. The investigation revealed that Student A made a comment about Student B’s Adam’s apple and said it looked like “he swallowed his balls and penis.” Student B pretended to have a whip and was whipping Student A. Student B also made racial comments that Assistant Principal A could not recall. The investigation did not confirm that Student A called Student B “white trash” or “cracker.” It was unclear who instigated the incident.

The former Principal said that, based on Assistant Principal A’s investigation, he determined Student A’s discipline. He said he XXXXX for the remainder of the school year as a consequence, although Student A could still XXXXX. He said he was concerned about Student A XXXXX because there were XXXXX. OCR has not yet obtained information about whether the Corporation offered Student A counseling or other services.

The former Principal said that he could not discipline Student B because he was a student at the Corporation’s XXXXX School. He said he reported the incident to the XXXXX School

⁸ When OCR conducted interviews, the Assistant Principal was no longer employed with the Corporation.

Principal. He did not know whether the XXXXX School took any further action regarding the incident. The XXXXX School Principal told OCR he had only a vague memory of the incident and did not remember the name of the XXXXX School student involved. OCR did not locate any information on a discipline spreadsheet provided to OCR that suggested a XXXXX school student was disciplined for conduct similar to that described in connection with this allegation.

Analysis and Conclusion

Prior to the conclusion of OCR's investigation of this allegation, the Corporation advised OCR that it was interested in voluntarily resolving this allegation and issue raised pursuant to Section 302 of OCR's CPM. OCR determined it is appropriate to resolve the allegation and issue at this juncture because OCR has not obtained sufficient evidence to support a finding.

The Resolution Agreement submitted by the Corporation on August 8, 2018, specifies that the Corporation will provide access to a statement to all of its parents, students, administrators, and staff stating that the Corporation does not tolerate unlawful harassment in any Corporation program or activity; review and, as necessary, revise the relevant sections of its policy relating to racial harassment to ensure that they adequately address any incident of unlawful harassment prohibited by Title VI and provide for appropriate response to complaints alleging such harassment; take steps to determine whether Student A was subjected to harassment prohibited by Title VI on a school bus, provide Student A's parent written notice of its determination, and, depending on the outcome of the investigation, provide the parent an opportunity to appeal the determination or to identify any remedial actions necessary as a result of the harassment; and provide effective professional development to all employees who are directly involved in the response to allegations of harassment prohibited by Title VI.

Allegation #2

Facts

The complaint alleged that, in the XXXXX school year, the Corporation subjected Student A to discrimination based on race when it repeatedly disciplined Student A more harshly than white students who engaged in similar conduct, including suspending and referring Student A to law enforcement for an incident in XXXXX.

The Corporation provided Student A's discipline log from its computer system for the XXXXX school year. There were four entries for the school year. The first entry was made by Assistant Principal A on XXXXX; on that date, Student A received XXXXX for an altercation with another student (Student C) while playing football and for calling Student C a "b----." The Corporation provided data regarding a similar incident; on that occasion, in XXXXX, two white 6th grade students received XXXXX for an altercation after a gym class.

The second entry was for the XXXXX incident, described above under allegation #1. The discipline spreadsheet provided to OCR does not include any other incidents of inappropriate language on a bus.

The third entry was for an incident on XXXXX. Assistant Principal B told OCR that a white female student (Student D) told her homeroom teacher that Student A XXXXX. When Assistant Principal B spoke to Student D, she said that Student A XXXXX. Assistant Principal B said he spoke to two or three students in the class who confirmed Student D's allegation. Student A denied the allegation and argued that, as he was getting up, he accidentally XXXXX Student D. The former Principal said he gave Student A a XXXXX. He said Student A did not serve the XXXXX and did not receive any further consequence. The discipline spreadsheet provided to OCR does not include any other incidents of XXXXX.

Assistant Principal B said that he also contacted the School Resource Officer (SRO) to make her aware of the XXXXX incident. While the Handbook does not specify what type of misconduct may result in a law enforcement referral, Assistant Principal B said that, consistent with Corporation practice, he notifies the SRO of any incident that could be criminal in nature; in this case, the conduct could have been considered XXXXX. He said that, during the same school year, they called the SRO for an allegation of XXXXX by a white student.

The SRO said she attempted but was not able to interview Student A about the incident because Student A's parent did not consent. The former Principal also attempted to schedule a meeting with Student A's parent, but the parent did not attend. The SRO was present during a call in which the former Principal spoke to the parent to provide information regarding the incident.

The SRO said that she conducted a separate investigation of the incident. She interviewed three students (two female and one male) in the class and they substantiated the allegation of XXXXX. She referred the incident to the XXXXX. Student A's parent told OCR XXXXX.

The fourth entry was for an incident on XXXXX. Assistant Principal B said that a white female student (Student E) alleged that Student A XXXXX, making Student E uncomfortable. Student A denied the allegation. Assistant Principal B viewed the lunch room cameras and saw Student A XXXXX. The former Principal contacted the parent, and Student A was reminded of the School's expectations to XXXXX; there was no further disciplinary action.

Assistant Principal B told OCR that Student A had several incidents involving XXXXX in the classroom, but the classroom teacher attempted to manage most of Student A's behavior in the classroom. The classroom teacher told OCR that she tracked Student A's behavior in a behavior log, worked with Student A to address his conduct in the classroom, and spoke with the parent XXXXX about his progress.⁹ She said she suggested the behavior log because she noticed that Student A XXXXX. She said some female students and their parents complained about Student A and his use of XXXXX. She said that Student A engaged in inappropriate behavior XXXXX.

Student A's parent said she sent a letter to the Corporation complaining about the discipline given to Student A during the XXXXX school year. The Corporation told OCR that, after receiving the parent's letter, it sent her a formal complaint form and the non-discrimination policies and grievance procedures. The Corporation said the parent did not complete the form and, therefore, it did not investigate further.

⁹ The former Principal and Assistant Principal B told OCR that they asked the parent XXXXX.

Information from the Corporation indicated that black students were 29, or 2.8%, of the 1050 students enrolled at the School in XXXXX. Black students were the subject of 10.9% of discipline incidents at the School in XXXXX, were 11.6% of the students who received ISS, and were 18.2% of the students who received OSS.

Analysis and Conclusion

The evidence established that the Corporation disciplined Student A for four incidents in the XXXXX school year, in accordance with its discipline policy and procedure on each occasion. With regard to the first incident, the Corporation provided data indicating that two XXXXX white students received a more severe consequence than Student A for similar misconduct. For the second and third incidents, there were no other similar incidents in the information OCR obtained about other discipline at the School in XXXXX. For the fourth incident, Student A was given only XXXXX, despite having had prior similar incidents of misconduct. Therefore, OCR determined that there was insufficient evidence to establish that the Corporation treated Student A more harshly than similarly situated white students.

OCR notes that the sanctions given to Student A for the reported conduct were within the range of sanctions described in the discipline policy. While the policy does not describe appropriate circumstances for law enforcement referral, the evidence indicated that the Corporation's practice, for students of all races, was to refer matters to the SRO when the misconduct incident possibly could be a criminal violation as well.

OCR also considered the evidence concerning the disproportionate discipline rate for black students at the School during the XXXXX school year, but nonetheless concluded that the disciplinary consequences that Student A received during the XXXXX school year were based on his conduct, consistent with the District's discipline policy and practice concerning such misconduct, and consistent with its treatment of similarly situated students. Thus, based on the above, OCR determined that there was insufficient evidence to conclude that the Corporation discriminated against Student A on the basis of race as alleged.

Overall Conclusion

This concludes OCR's investigation of the complaint and should not be interpreted to address the Corporation'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 Corporation 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 individual 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.

The Complainant may file a private suit in federal court, whether or not OCR finds a violation.

If you or any of your staff members have any questions regarding this matter, please do not hesitate to contact me at (312) 730-1611 or by email at Jeffrey.Turnbull@ed.gov.

Sincerely,

Jeffrey Turnbull
Team Leader

cc: Mr. Seamus Boyce