

August 26, 2015

Mr. Christopher A. Smith
Superintendent
Taylor Community School Corporation
3750 East County Road 300 South
Kokomo, Indiana 46902

Re: OCR Docket #05-15-1061

Dear Mr. Smith:

This is to notify you of the disposition of the above-referenced complaint filed with the U.S. Department of Education, Office for Civil Rights (OCR) against the Taylor Community School Corporation (Corporation), alleging discrimination on the basis of national origin.

Specifically, the complaint alleged that the Corporation subjected a German foreign exchange student (Student A) to discrimination based on national origin beginning in February 2014 when a Corporation employee (Teacher A) subjected Student A to harassment on the basis of national origin and the Corporation was aware of the harassment but failed to respond appropriately.

OCR is responsible for enforcing Title VI of the Civil Rights of 1964 (Title VI), 42 U.S.C. § 2000d – 2000d-7, and its implementing regulation at 34 C.F.R. Part 100, which 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 Corporation is subject to Title VI.

During the course of the investigation, OCR analyzed data provided by the Corporation, Student A, and Student A's host parent (Parent), and interviewed current and former Corporation employees, high school students, and the Parent. Based on the investigation, OCR determined that the Corporation did not meet the requirements of Title VI in connection with the issue in this case. The Corporation signed the enclosed Resolution Agreement (Agreement) which, when fully implemented, will address the issue raised in the complaint. The bases for OCR's conclusion are set forth below.

Legal Standards

The regulation implementing Title VI, at 34 C.F.R. § 100.3(a), states that no person shall, on the basis of national origin, be excluded from participation in, denied the benefits of, or otherwise

subjected to discrimination under any program or activity that receives Federal financial assistance. The Title VI regulation, at 34 C.F.R. § 100.3(b)(1)(ii), also prohibits a recipient, on the basis of national origin, from providing any service or other benefit to a student that is different, or is provided in a different manner, from that provided to other students.

Harassment based on national origin is a form of discrimination prohibited by Title VI. Harassment based on national origin is intimidation or abusive behavior toward a student based on national origin 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, 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 national origin 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 national origin 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 national origin 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 harassment based on national origin and prevent its recurrence. The extent of a school's responsibilities if a school employee harasses a student based on his/her national origin 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, as in this case, 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 harassment on the basis of national origin, 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 should 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.

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. When implementing remedial measures, recipients should minimize the burden on the harassed student.

Facts

In the complaint, Student A identified several examples of harassment based on national origin to which he was subjected by Teacher A, including being called “The German” or “Nazi,” being asked where his red armband was, and being subjected to negative remarks about German actions in World War II.

During the first half of the 2013-14 school year, Student A attended Logansport (Indiana) High School, which is not in the Corporation, as a foreign exchange student. In a letter to the Michigan-based foreign exchange student placement agency (Agency), the Logansport High School Principal wrote that Student A was “extremely likeable, sociable, kind, helpful, and always cheerful” and “was a positive member of our school community” and that “[Student A’s] future is bright.” When his host family in Logansport moved, arrangements were made for Student A to live with the Parent and attend Taylor High School (School) in the Corporation. Student A attended the School from late January 2014 to April 21, 2014.

The Corporation’s Notice of Nondiscrimination (Notice) and its anti-harassment policy (Policy) are located in the Student Handbook. The Notice prohibits discrimination on the bases of race, color, and national origin, among other bases, identifies the Superintendent as the coordinator, and includes the Superintendent’s address and phone number. The Policy identifies the School’s Principal as the employee designated to investigate claims of harassment based on national origin at the School. The Policy does not require a complaint to be placed in writing. The Policy states that the Principal will investigate complaints “promptly.”

The Parent told OCR that several weeks after Student A enrolled at the School, he informed her that Teacher A, who taught Student A’s American Studies class in the 6th and 7th periods of the school day and supervised Student A’s study hall during 5th period, often called him “The German.” According to the Parent, Student A subsequently informed her that Teacher A’s remarks included calling Student A a “Nazi” and asking him why he did not wear a red armband with a swastika on it, among other derogatory comments directly related to Student A’s national origin. Teacher A was the only teacher who supervised the study hall, and he co-taught the American Studies class with another teacher (Teacher B). Student A told the Parent that the comments typically occurred when Student A was the first student to enter the study hall class or when students were boisterous.

Teacher A, who left the Corporation at the end of the 2013-2014 school year and is now employed by another school corporation, denied directing derogatory comments toward Student A or said he could not recall making such comments. Teacher A estimated that he called Student A “The German” 10 times per week, but said the term was used during “casual interactions” and was not intended to be derogatory.

Teacher B recollected that Teacher A called a foreign exchange student from Italy (Student B) “The Italian” in class 2-3 times per week and called Student A “The German” less frequently, but “numerous” times. Teacher A estimated he called the Italian foreign exchange student “The Italian” 10 times per week. Teacher B said she did not view the name calling to be derogatory. Teacher B also explained that Student A did not approach her to express concern about Teacher

A's word choice and she did not view Student A's reaction as ever being offended. Teacher B denied ever hearing Teacher A direct derogatory comments toward Student A, including "Nazi."

Of the seven students interviewed by OCR who were in either the study hall or the American Studies class with Student A, four indicated they heard Teacher A call Student A "The German." Two estimated they heard it once per week and the other two recalled hearing the name less often. One student who was in American Studies with Student A and Student B (Student C) said she "definitely" heard Teacher A state, in a joking manner while Student A was texting, that Student A should say hello to his mother from his "German-hating teacher."

None of the students interviewed by OCR recalled hearing Teacher A make any of the other derogatory remarks Student A reported in the OCR complaint. Student C estimated that Teacher A called Student B "The Italian" once per week.

Another teacher who taught Student A in multiple classes (Teacher C) and a former teacher at the School (Teacher D) both reported Student A had expressed concern about the treatment he received from Teacher A, including reporting being called "The German" and a "Nazi." Neither heard first-hand the remarks attributed to Teacher A by Student A. Teacher D informed the Principal on April 16 that Student A had reported being called "The German" and a "Nazi" by Teacher A, and Teacher C also met with the Principal at some point to report the remarks, although Teacher C could not recall when this occurred.

The Parent told OCR that after having repeated discussions with Student A about Teacher A, she felt she had to intervene. The Parent and the School's Principal exchanged text messages on April 16, which the Parent provided to OCR; the Parent explained in one text that she thought it was inappropriate for Teacher A to call Student A a "Nazi" and "The German." The Principal invited her to a meeting to discuss the matter later that day. Prior to the meeting, the Principal spoke to Teacher A about the accusations. The Principal noted in a narrative provided to OCR that Teacher A admitted to calling Student A "The German," but denied directing derogatory comments toward him and specifically denied calling the student a "Nazi." The narrative said Teacher A explained to the Principal that the use of "The German" was not intended to be derogatory and acknowledged that he called Student B "The Italian" during class.

On April 16, the Parent met with the Principal and then met separately with the Superintendent. After the second meeting, the Superintendent sent the Principal an email that explained 1) the Parent would provide details that supported the "formal complaint," 2) the Principal would need to conduct an investigation upon receipt of the forthcoming information, and 3) Student A should be removed from the three class periods in which he was with Teacher A. Student A said he attended periods 5-7 in Teacher A's room on April 17. Student A did not attend school on April 18, and the School coded his absence as unexcused. He went to Teacher D's room for periods 5-7 on April 21; as described below, this was the final day in which he was enrolled at the School.

The Parent sent an email to the Superintendent on Sunday, April 20, that included two pages written by Student A. The Parent wrote that most of the comments came during the 5th period study hall. Student A wrote that Teacher A "constantly" called him "The German," referred to

him as a “Nazi,” asked why Student A was not wearing a red armband, and recorded Student A’s name in the computerized academic record as “The German.” Student A also wrote that Teacher A said “Germans are so weird” because they killed “7 million innocent people.” Further, Student A wrote that once when he was texting his mother, Teacher A said to Student A that he should say hello from his “German-hating teacher” and that Student C overheard the comment. Student A wrote that the comments occurred in both American Studies class and in study hall. Student A concluded, “Because I respect other countries culture, I raise every morning to the american (sic) flag for the ‘Pledge of Allegiance’, and five hours later I get, because of my nationality, discriminated.” He also twice accused Teacher A of “racism.”

The Superintendent forwarded the e-mail to the Principal in order for the Principal to conduct an investigation. On Monday, April 21, prior to the initiation of the investigation, Student A met with the Guidance Director (Director) in her office before the start of the school day to learn where he should go during periods 5-7. The Director summoned the Principal, and the “closed door” meeting lasted a couple of minutes. The Principal stated he explained he had interviewed Teacher A, who denied calling Student A a “Nazi” but admitted to calling Student A “The German” and Student B “The Italian.” According to the Principal, the Director asked Student A why Student A found it acceptable for Teacher C to call Student A a “Kraut” and a “communist” and Student A replied that he had “another relationship” with Teacher C, meaning they were on friendly terms with one another.

Immediately after the meeting, Student A texted the Parent that he had been accused of being mad because he was failing the American Studies class and that the Principal and Director said “everything is appropriate,” and were “yelling at me and stuff like that.” Both the Director and Principal denied to OCR that voices were raised at Student A or that he had been accused of being untruthful.

Less than 90 minutes later, the Parent sent the Superintendent an email, which read, in part,

I was just contacted by [Student A] who is upset due to the fact that [the Principal and Director] met with him in the office and [Student A] was told by [the Principal] that [Student A] is just upset with his grade and that [Teacher A] was not inappropriate and that because there is no one he has found to verify these allegations that he feels [Student A] is just making this an issue to cover up his bad grade. [Student A] contacted me upset because of the fact that he states [the Principal] was angry and yelling at him!

In response to the April 20 e-mail from the Parent with the statement from Student A, the Principal obtained the 5th period study hall roster and interviewed 16 students from 5th period study hall and only Student C from the American Studies class that day. He posed the following questions:

1. Have you heard anyone in 5th period mistreat [Student A]?
2. Have you ever heard [Teacher A] say anything rude to [Student A]? Including calling him a Nazi.
3. Have you ever heard [Teacher A] and [Student A] talk to each other?

4. What was the context of the conversation?
5. Do you feel like this conversation upset [Student A]?

The Principal did not specifically ask students about the comments reported by Student A in his statement, other than the reference to Student A as a “Nazi.” Notes of these interviews provided to OCR by the Corporation indicated that two students stated they had heard Teacher A address Student A as “The German.” Two students interviewed by the Principal mentioned they heard Teacher A use the word “Nazi” when he spoke to Student A; however, the students explained there was a historical context because Teacher A and Student A were talking about Student A’s ancestors and the country of Germany. The Principal asked Student C about the “German-hating teacher” remark; the Principal’s notes indicated that Student C was “pretty positive” Teacher A did not make the remark.

After the Principal completed his student interviews, he met with the Parent and her spouse in the afternoon on April 21. The Parent told OCR that the Principal discussed the testimony of the students and showed her the interview notes. According to the Parent, the Principal said that the interviews confirmed Teacher A had not subjected Student A to discrimination. The Principal told OCR the student interviews were “pretty compelling” and the lack of evidence supported his conclusion that the complaints were not substantiated. The Principal did not share his findings with Student A.

The Principal did not interview the Parent or Student A; instead, the Principal relied on the information provided in the e-mail. The Principal did not prepare a written report to support his conclusion and did not issue a written determination to Student A or the Parent.

In light of her belief that the Principal berated Student A earlier in the day, coupled with the fact that she did not believe the Principal had conducted an impartial investigation, the Parent contacted the Agency on April 21. On April 23, the Parent advised the Principal via email that due to the Corporation “placing the blame on [Student A] and the existence of a hostile environment,” the Parent was searching for alternatives away from the School. Student A did not return to the School after April 21, and arrangements were made with the Agency for Student A to volunteer at the Indiana Veterans’ Home, where the Parent is employed. Student A did not lose the opportunity to receive academic credits he needed, as he was a foreign exchange student not seeking to obtain credits to graduate from high school in the United States. Instead, Student A received a certificate of completion from the Agency per its procedures.

The Parent told OCR that on occasion she would permit Student A to stay at home because he complained he was “stressed” about going to Teacher A’s class.

Analysis and Conclusion

The complaint alleged that the Corporation subjected Student A to discrimination based on national origin beginning in February 2014 when Teacher A subjected Student A to harassment on the basis of national origin and the Corporation was aware of the harassment but failed to respond appropriately.

In making a determination regarding compliance, OCR must often weigh conflicting evidence to determine whether the preponderance of the evidence substantiates the allegation. In this case, it is undisputed that Teacher A referred to Student A as “The German” during the three months he attended Teacher A’s study hall and American Studies class, the latter of which included coursework about World War II. In the context of the course discussion about negative actions by Germany, OCR finds it credible that a student would find a reference to himself as “The German” to be derogatory in nature. While OCR was unable to verify first-hand knowledge of the use of other derogatory remarks attributed to Teacher A by Student A, one student heard the statement about the “German-hating teacher.” Adults in whom Student A confided said he told them contemporaneously that the comments made him uncomfortable, unhappy, and stressed. Therefore, OCR determined that the remarks created a hostile environment for Student A based on his national origin.

Upon receiving notice of the alleged harassment, the Corporation responded promptly by making plans to remove Student A from Teacher A’s class and having the Principal initiate an investigation. In the investigation, the Principal failed to interview the Parent or Student A, limited the roster of students he sought to interview to students in the study hall class and only one student from the American Studies class, and asked only whether students had heard “rude” comments or the use of the word “Nazi” rather than about all comments reported by Student A. In addition, the Principal did not prepare written findings. Student A left the School and did not return following a meeting with the Principal and Director in which he believed he was treated negatively.

Based on the above, Teacher A made the remarks in the context of providing aids, benefits, or services; therefore, the Corporation is responsible for responding promptly and effectively to end the harassment and prevent recurrence. In addition, the preponderance of the evidence established that the Corporation was aware of the hostile environment that existed for Student A and failed to respond appropriately to address the hostile environment. OCR has determined, therefore, that there is sufficient evidence to establish a violation of Title VI with regard to the allegation.

After the conclusion of OCR’s investigation, the Corporation signed the enclosed Agreement which, when fully implemented, will address the issue raised in the complaint. The provisions of the Agreement are consistent with applicable regulations and are aligned with the issue raised in the complaint. The Agreement requires the Corporation to issue a statement to all of its students, administrators, and staff, stating that the Corporation does not tolerate harassment, including acts of harassment based on race, color, or national origin and also acts of harassment based on sex, and encouraging any student or parent who believes he or she has been subjected to harassment to report the incident(s) to the Corporation; to review and revise, as necessary, its written policies and procedures relating to harassment to ensure that they adequately address any incident of harassment and provide for the prompt and equitable resolution of complaints alleging harassment; to examine the Corporation’s Employee Code of Conduct and disciplinary procedures for employees at the Corporation to determine whether the current rules of behavior and offense categories appropriately and adequately address violations of the Corporation’s policies and procedures regarding harassment of students; upon receipt of notice of OCR’s approval of the policies and procedures referenced above, to adopt, implement and publish the

revised policies and procedures; to provide all administrators, faculty, and staff with effective training on the Corporation's revised harassment policies and procedures and provide effective training to all employees who are directly involved in processing, investigating and/or resolving complaints or other reports of harassment, and any counselors or other Corporation personnel who are likely to receive confidential reports of harassment; to provide a mandatory orientation session for all students on the Corporation's policies and procedures referenced in the Agreement; to assess the effectiveness of the training and orientation sessions by conducting surveys of employees and students; to establish a working group that includes Corporation administrators, faculty, parents, and students to make recommendations to the Corporation regarding the effectiveness of the Corporation's anti-harassment program; to conduct a climate survey to assess the effectiveness of the steps taken by the Corporation to achieve its goal of having a school environment free of harassment based on race, color, or national origin; and to maintain documents relating to specific complaints or other reports of racial harassment of students. OCR will monitor the Corporation's implementation of the Agreement.

This concludes OCR's investigation of the complaint. This letter 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. 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.

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 a 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 release, could reasonably be expected to constitute an unwarranted invasion of personal privacy. The Complainant may file a private suit in federal court whether or not OCR finds a violation.

We wish to thank you and your staff for the courtesy and cooperation extended to OCR during this investigation. In particular, we wish to thank Mr. James Hamilton, Counsel. If you have any questions regarding this letter, please contact Mark Erickson at 312-730-1574 or via email at mark.erickson@ed.gov.

Sincerely,

Jeffrey Turnbull
Team Leader

Enclosure

cc: Mr. James Hamilton