

May 18, 2016

Dr. John Capasso  
Superintendent  
Prairie Central Community Unit School District #8  
605 N Seventh St  
Fairbury, IL 61739

Re: OCR Docket #05-16-1063

Dear Dr. Capasso:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed against the Prairie Central Community Unit School District #8 (District) on November 23, 2015 alleging discrimination on the basis of race.

Specifically, the complaint alleged that, in the 2015-2016 school year, the District subjected an African American junior high school student (Student A) to discrimination based on race when students subjected Student A to racial harassment and the District was aware of the harassment but failed to take appropriate action in response.

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.

During its investigation, OCR conducted interviews with the Complainant and District employees and reviewed documentation provided by the District and the Complainant. Based on the investigation, OCR determined that the District did not meet the requirements of Title VI in connection with the issue in this case. The District 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**

Harassment on the basis of race is a form of discrimination prohibited by the Title VI regulations. 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 recipient'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) occurred on the basis of race 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.

In some situations harassment may be in plain sight, widespread, or well-known to students and staff, such as harassment occurring in hallways, during academic classes, during school sponsored activities, or through graffiti in public areas. In these cases, the obvious signs of the harassment are sufficient to put the recipient on notice. 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.

Once a recipient has notice of a hostile environment based on race, the recipient is required to take immediate and appropriate 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. In addition to counseling and taking disciplinary action against the harasser(s), effective corrective action may require changes to the recipient's overall services or policies.

In some situations, if the recipient 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(s) involved, the size and administrative structure of the school and other factors. In all cases, however, the inquiry should be prompt, thorough, and impartial.

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.

Finally, the recipient should take steps to stop further harassment and prevent any retaliation against the person who made the complaint (or was the subject of the harassment) or against those who provided information as witnesses. At a minimum, the recipient's responsibilities include making sure that the harassed students and their families know how to report any subsequent problems, conducting follow-up inquiries to see if there have been any new incidents or any instances of retaliation, and responding promptly and appropriately to address continuing or new problems.

### **Background**

The District's Notice of Non-Discrimination, which is available in the Student Handbook on the District's website<sup>1</sup>, states, "Equal educational and extracurricular opportunities shall be available for all students without regard to color, race, [or] nationality."

The District's Uniform Grievance Procedure says, "A student, parent/guardian, employee, or community member should notify any District Complaint Manager if he or she believes that the School Board, its employees, or agents have violated his or her rights guaranteed by the State or federal Constitution, State or federal statute, or Board policy, or have a complaint," including regarding race discrimination.

The principals of each school are listed as the Complaint Managers and the District's Superintendent is listed as the Non-Discrimination Coordinator. The procedure specifies that within 30 school business days of the date the complaint was filed, the Complaint Manager shall file a written report of his or her findings with the Superintendent. Within five days of receiving the Complaint Manager's report, the Superintendent is to mail his or her written decision to the complainant and the Complaint Manager. The complainant may file an appeal to the District's School Board.

In addition, the District's student discipline policy says students may be disciplined for "gross disobedience of misconduct, including ... [engaging] in hazing or any kind of bullying or aggressive behavior that does physical or psychological harm to a staff person or another student." Harassment is listed as one example of such misconduct. The policy identifies 12 specific disciplinary measures that may be taken, including suspension from school and after-school detention. The policy does not specify particular sanctions for specific offenses, other than possession of weapons at school.

### **Facts**

The Complainant told OCR that Student A started attending the District's junior high school (the School) in October 2015 as a seventh grader and that racial harassment of Student A began shortly thereafter. She told OCR that Students B, C and D, all of whom are white, had directed

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<sup>1</sup> <http://www.prairiecentral.org/juniorhigh/>

racial slurs toward Student A and identified witnesses to the harassment. Students B and D are siblings. The Complainant said she communicated verbally to the Principal and Superintendent concerns about racial harassment occurring at school and about negative posts from Student B on social media but that the District did nothing in response.

The Complainant informed OCR that she called the Principal in early November and told her Student B and Student C were bullying Student A and calling her “all types of racial names.” The Principal said the Complainant contacted her on November 12 to discuss Student A’s transition to the school, but did not report that Student A was being harassed based on her race or report racial remarks at this time. The Principal also stated that he scheduled a face to face meeting with the Complainant for November 19, but the Complainant did not attend. While the Complainant said the meeting was to discuss her concerns about racial harassment, the Principal said “nothing had been disclosed as to issues prompting the meeting.” According to the Complainant and Student A, another student (Student E) had reported to the Principal that Students B and C were treating Student A badly and bullying her because of her race. The Principal said Student E talked about students bullying Student A and making racial remarks, but she did not recall when this conversation occurred, and said she thought that Student E might have been trying to stir up trouble. The Principal said that Students B and C reported on November 19 that Student A had said she was going to beat up Students B and C, and she told Students B and C to stay away from Student A.

On November 19, after a bus ride in which racial slurs and other racial remarks were apparently directed at Student A, Students A and B exited the bus and began to fight. The Principal was alerted to the fight by multiple parties, including the Complainant who reported that Student B called Student A the n-word. She began her investigation immediately and continued her investigation until the following day, November 20.

The Principal interviewed the bus driver and five students, including Students A, B, and C. During her investigation she learned that Students B and C had used the n-word toward Student A and that Student C stuck her middle finger up at Student A. Earlier in the day on November 19, Student B had informed the Principal that she felt Student A was going to beat her up that day and had called her “white trash.” The Principal interviewed Student B on November 20 and Student B reported that Student A had also said cruel things about an aunt that had recently passed away. As a result of the November 19 incident, Student B was suspended from school and the bus for one day and removed from the cheer squad for “a minor altercation” and for using “derogatory” words. The discipline documentation did not specifically reference racial comments.

The Principal told OCR Student C admitted use of the n-word toward Student A in response to being called “white trash.” The Principal did not explain why Student C was not disciplined for her use of the racial slur. Student C was assigned detention for sticking her middle finger up at Student A. Student A was not disciplined for calling Student C “white trash.”

On November 20, Student A and the Complainant came to the school and filed a complaint of racial harassment and alleged that Student A was being bullied because of her race and color. The complaint alleged that Student B had hit her, spat on her, and called her the n-word and that

on November 19 Students B and C used racial epithets against her while on the bus and that Students C and D “told me to go back where I came from, that I am black and I don’t belong in this town or they (sic) school.”

The Principal did not conduct any additional investigation into the November 20 written complaint of racial harassment. Although the District had directed Students B and C to stay away from Student A, the Complainant kept Student A out of school until late January 2016, because she did not believe the school could keep Student A safe. The District informed OCR it provided Student A assignments she missed while out of school, and did not report Student A as truant when she was absent from school. The District further indicated that when Student A returned to the School, it provided her another school bus apart from Students B and C. The Complainant confirmed this and said Student A remained at the School until March. The District did not offer Student A counseling.

Student B denied to OCR that she used the n-word toward Student A, and Student D reported that she had not heard racial remarks toward Student A. OCR was not able to obtain parental consent to interview Student C or the other student witnesses identified by the Complainant.

### **Analysis and Conclusion**

In making a determination regarding compliance, OCR must often weigh conflicting evidence to determine whether the preponderance of the evidence substantiates the allegation. OCR finds that Student A was subjected to racially hostile environment; the District had notice of the hostile environment but failed to take appropriate action in response.

OCR determined that the use of racial slurs toward Student A created a hostile environment for Student A, leading to Student A’s parent removing her from the School. The evidence established that Student A was subjected to racial slurs on November 19, 2015. The District’s investigation, including testimony of students and the video of the bus ride, substantiated Student A’s complaint of racial harassment. Testimony conflicted as to when the District first received notice of racial harassment of Student A. The Complainant asserts that Student A has been subjected to racial harassment since October 2015, but the District stated it did not receive notice of possible harassment until November 20, 2015. The evidence established that at least by November 20, 2015 the District was on notice of the racial hostile environment for Student A.

OCR also finds that the District failed to take appropriate action reasonably calculated to end the harassment, eliminate the hostile environment that was created, prevent its recurrence, and remedy the effects after receiving notice that Student A was subjected to a hostile environment based on race. The Principal did not investigate the November 19 incident as racial harassment, but as a fight between students. While two students who used racial slurs were disciplined for their participation in the fight on November 19, the discipline of one student referenced “derogatory remarks” generally rather than the racial epithet and other racial remarks specifically, and the discipline of the other student was for an inappropriate gesture rather than the racial epithet and other racial comments.

Furthermore, the District's response to the known harassment did not remedy its effects. The District did not respond to Student E's report of race harassment directed at Student A. While the District provided Student A assignments she missed, did not report Student A's truancy when she was absent from school, and later allowed Student A to ride another school bus, these actions did not remedy the effects of the harassment and Student A was not offered counseling. Moreover, the District's response served to further victimize Student A by denying her the educational benefit of being transported to school with her peers (moving Student A to a different bus rather than the students who harassed her).

In addition, when the Complainant filed a written complaint on November 20 of racial harassment of Student A, the District did not investigate it. The District has not taken broader actions to address the hostile environment (e.g., staff training).

For all of these reasons, OCR finds sufficient evidence to conclude that the District failed to take appropriate action reasonably calculated to end the harassment, eliminate the hostile environment that had been created, prevent its recurrence, and remedy the effects of the harassment on Student A after receiving notice that Student A was subjected to a hostile environment based on race. 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 District 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 District to take prompt and appropriate responsive action to end the hostile environment created by harassment of Student A, prevent its recurrence, and, where appropriate, take steps to remedy the effects on Student A of the hostile environment, including providing counseling and academic support; and, if Student A re-enrolls in the District, to take all steps necessary to ensure that Student A is not subjected to a hostile environment on the basis of race, including identifying a specific contact person to whom Student A should report any additional incidents of racial harassment.

The Agreement also requires the District to review and revise, subject to OCR approval, its written policies and procedures relating to harassment on the basis of race, color, or national origin to ensure that they adequately address any incident of harassment based on race, color, or national origin and provide for the prompt and equitable resolution of complaints alleging such harassment; to adopt, implement and publish the revised policies and procedures; to issue a statement to all of its students, administrators, and staff, which will be widely published, stating that the District does not tolerate harassment, including acts of harassment based on race, color, or national origin; to provide all administrators, faculty, and staff with effective training on the District's revised harassment policies and procedures; to provide effective training to all employees who are directly involved in processing, investigating and/or resolving complaints or other reports of harassment on the basis of race, color, or national origin, and any counselors or other District personnel who are likely to receive reports of harassment; to provide a mandatory orientation session for all students on the District's policies and effectively communicate the District's Title VI policies and procedures referenced in this Agreement; to assess the effectiveness of the training and orientation sessions referenced in the Agreement by conducting

surveys of employees and students; and to maintain documents relating to specific complaints or other reports of racial harassment of students. OCR will monitor the District's implementation of the Agreement.

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

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. If you have any questions regarding this letter, please contact Geraldo Perez at (312) 730-1646 or by email at [gerald.perez@ed.gov](mailto:gerald.perez@ed.gov).

Sincerely,

Jeffrey Turnbull  
Team Leader

Enclosure