



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
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November 25, 2020

Dr. Don Angelaccio
Superintendent
Prospect Heights School District 23
700 N. Schoenbeck Road
Prospect Heights, IL 60070

VIA E-MAIL ONLY to: dangelaccio@d23.org

Re: OCR Complaint # 05-16-1067

Dear Dr. Angelaccio:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed against the Prospect Heights School District 23 (District). Specifically, the complaint alleged:

1. The District discriminated against Student A, a XXX student enrolled at Betsy Ross Elementary School (School A), based on race (African American) when District students and staff subjected Student A to racial harassment, the District was aware of the harassment and failed to respond adequately;
2. The School A Principal (Principal) discriminated against Student A based on sex (male) by subjecting Student A to sexual harassment, and the District failed to respond in a prompt and equitable manner to the reports of the harassment; and
3. The District retaliated against Student A because of the Complainant's report of racial harassment of Student A when it expelled Student A from the afterschool program, required Student A to sit at the back of the school bus, and when the School A Principal threatened to suspend Student A.

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 at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color or national origin by recipients of Federal financial assistance from the Department. OCR is also responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681–1688, and its implementing regulation at 34 C.F.R. Part 106, which prohibits discrimination on the basis of sex by recipients of Federal financial assistance from the Department. These laws also prohibit retaliation. As a recipient of Federal financial assistance from the Department, the District is subject to these laws.

During its investigation, OCR reviewed information provided by the Complainant and the District, and interviewed the Complainant, Student A, and District staff members. On August 31,

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

2020, OCR dismissed Allegation 2 and closed Allegation 3. Prior to OCR making a finding regarding Allegation 1, the District expressed interest in resolving the allegation in accordance with Section 302 of OCR's *Case Processing Manual* (CPM). The District executed the enclosed Resolution Agreement (Agreement) on October 30, 2020 that, when fully implemented, will address Allegation 1. OCR will monitor the implementation of the Agreement.

Legal Standards

The Title VI implementing regulation, at 34 C.F.R. § 100.3(a), provides, in relevant part, that no person shall, on the basis of race, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance from the Department.

Racial harassment is a form of discrimination prohibited by Title VI. Racial harassment is intimidation or abusive behavior toward a student based on race that interferes with or denies a student's participation in or receipt of education benefits, services, or opportunities in the recipient's program. If racial harassment existed and the recipient had notice of the harassment, the recipient must respond adequately to address the racial harassment. The school is responsible for remedying the effects of the harassment on the student, as well as for ending the harassment and preventing its recurrence.

OCR considers the totality of the circumstances to determine whether the harassing conduct is sufficiently severe, persistent, or pervasive that it interferes with or limits a student's ability to participate in or benefit from the school's program. These circumstances include the context, nature, scope, frequency, duration, and location of the harassing incidents, as well as the identity, number, 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.

OCR enforces the requirements of Title VI consistent with the requirements of the First Amendment of the U.S. Constitution. The laws that OCR enforces protect students from discrimination but are not intended to restrict the exercise of protected speech in violation of the First Amendment.

Facts

School A is an elementary school with second and third grades. During the 2014-15 school year, School A reported having 301 students. The 2014-15 school year was Student A's first in the District,¹ and he was XXX. Student A began the year also attending the District's afterschool Extended Day Program (EDP) which was physically located at School A. Student A attended the EDP from August until the beginning of November 2014.

¹ Student A attended a different school district for the 2015-16 school year on forward due to the Complainant moving.

The Complainant alleged that other District students harassed Student A based on race during the EDP and on the District school bus.² On September 7, 2014, the Complainant emailed the Principal, Student A's teacher (Teacher A) and the EDP Director and reported that a white, XXX student (Student B), hit, slapped, kicked, used "vulgar" language and made several racial slurs towards Student A. The Complainant wrote Student B told Student A that "black people smell," and Student A responded that "white people smell." According to the Complainant, Student A reported the incidents to "several EDP staff members" including the Director yet the District did not take action in response. According to the District, the Director did take steps to follow up on these items. The Director is no longer employed by the District.

An XXX EDP staff member (Staff Member A) told OCR that Student A reported to her "once or twice" that he got into a physical or verbal fight with Student B because Student B called him the "n-word." Staff Member A stated that she did not hear Student B use the word herself. Staff Member A told Student A to "be careful, stop acting out because they are watching you. Start behaving and be careful of your actions." Staff Member A did not tell anyone at the District or the Complainant what Student A reported to her.

The Principal responded to the Complainant's September 7 complaint by email on September 8, 2014, and told her that the Director was taking steps to address the situation. The Principal also had lunch with Student A and Student B to discuss the incident. The Complainant alleged Student B continued to "harass" Student A in the EDP despite the meeting.

During parent-teacher conferences in November 2014, the Complainant told the Principal and Teacher A that a student called Student A the "n-word" in August 2014. The District believed this was the same incident the Complainant referenced in the September 7, 2014 email, and took no additional actions.

From mid-March 2015 through June 2015, Student A attended an offsite afterschool program that required Student A to take a different District school bus to the new program. Middle school students from School B also rode this bus.

The Complainant told OCR that sometime in April 2015, two male, middle school students (Student C and Student D) put makeup on Student A's face. On a different day, Student C took a video of Student A and said he was posting it online. The Complainant told OCR that Student C called Student A the "n-word" several times when Student A exited the bus, and Student D called Student A "brownie."

According to the District, on May 7, 2015, Student A's grandmother reported to the Superintendent that two male students from School B put makeup on Student A on the bus. The Superintendent told the Principal who investigated the complaint and found there was no video posted online. The School B Principal told OCR that she interviewed Student C and Student D and they told her that Student A let them put makeup on him. During the investigation, one of the

² The Complainant also asserted that a teacher required Student A to use the restroom in the nurse's office instead of the restroom available to all students based on his race. The evidence obtained thus far suggests that this decision was based on Student A's misbehavior in the restroom used by other students. According to the District, Student A was "harassing and intimidating other smaller students in the bathroom."

male students admitted to calling Student A “blackie.” The Principal and School B’s Principal determined it was best to assign seats for the two male School B students behind the bus driver for closer supervision for the rest of the year. The School B Principal also called Student C and D’s parents and discussed the incident with them. Student A was permitted to pick a seat on the bus of his own choosing, and to sit with a peer of his own choosing. Student A chose a seat next to a friend in the middle of the bus.

In late May 2015, the Principal received a report from a Hispanic female (Student E) that Student A called her mother a “fat Mexican.” The Complainant reported that Student E called Student A a “black bitch”, so Student A made the comment about Student E’s mother. The Principal spoke with several students who confirmed that Student A made negative comments about Student E’s mother and Student E made comments back about Student A’s mother. In response to the report, the Principal rode the bus “to make sure things had calmed down.” The Principal did not receive any additional reports.

On June 2, 2015, the District received an email from the Complainant’s attorney that alleged Student A had been called the n-word “repeatedly” at school by other students and “has been physically assaulted multiple times.” According to the Complainant’s Attorney the incidents were reported to the Principal and Superintendent on multiple occasions, yet no actions were taken. The email did not request any action by the District. According to the District, every incident that was brought to their attention, either by the Complainant or by Student A, was addressed appropriately.

Analysis and Conclusion

In accordance with Section 302 of OCR’s CPM, a complaint may be resolved at any time when, before the conclusion of an investigation, the recipient expresses an interest in resolving the complaint. OCR has concerns about the District’s responses to several reported incidents of racial harassment. In particular, OCR has concerns about the evidence indicating that an EDP staff member was dismissive of Student A’s reports that he was called the n-word and did not refer that report for investigation. OCR also has concerns that the District did not respond appropriately to reports that older students applied makeup to Student A’s face without his permission and that they called him racially offensive names. Finally, OCR has concerns that the District did not take action reasonably designed to prevent further harassment and remedy the effects of the harassment on Student A.

The District expressed interest in resolving the allegation, and OCR determined that it is appropriate to resolve this allegation under Section 302 of the CPM. On October 30, 2020, the District executed the enclosed Agreement, which when fully implemented, will address the concerns regarding this allegation. The provisions of the Agreement are aligned with the allegation and the information obtained during OCR’s investigation, and are consistent with the applicable regulations. OCR will monitor the 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. OCR is closing this complaint as of the date of 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 District may not harass, coerce, intimidate, or discriminate against any individual because he or she 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 released, 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 would like to thank you for the cooperation extended to us during the course of our investigation. In particular, we wish to thank Mr. Robert Swain, counsel for the District. If you have any questions, please contact me at 312-730-1632 or by email at Marcela.Sanchez@ed.gov.

Sincerely,

Marcela Sanchez-Aguilar
Supervisory Attorney

Enclosure

cc: Robert E. Swain, Esq.