



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

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April 27, 2017

Ms. Kelli Jacobi
Superintendent
School District of Rhinelander
665 Coolidge Ave, Suite B
Rhinelander, Wisconsin 54501

Re: OCR Docket #05-16-1322

Dear Ms. Jacobi:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed against the School District of Rhinelander (District) alleging discrimination on the basis of race and retaliation. Specifically, the complaint alleged the District subjected Student A to discrimination based on race XXXXXX from the XXXX school year continuing through the XXXX school year when three Caucasian peers subjected Student A to racial harassment that created a hostile environment at XXXXXXXX School, and the District was aware of the hostile environment, but did not take appropriate action in response. In addition, the complaint alleged that after District staff spoke to the students about the racial harassment of Student A, the students engaged in retaliatory racial harassment of Student A during the XXXXX school year.

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 and retaliation, by recipients of Federal financial assistance. OCR is also responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 12132, and its implementing regulation at 28 C.F.R. Part 106. Title IX prohibits retaliation and discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance. As a recipient of Federal financial assistance from the Department, the District is subject to these laws.

OCR reviewed documentation provided by the District and the Complainant and conducted onsite interviews of the Complainant, Student A, student witnesses, District staff and administrators, and the School Resource Officer. Prior to the conclusion of OCR's investigation, in accordance with Section 302 of OCR's *Case Processing Manual* (CPM), the District expressed interest in resolving this complaint. The District signed the enclosed Resolution Agreement, which, when fully implemented will resolve the issues raised in this complaint. A summary of OCR's investigation to date follows.

Legal Standard

Racial Harassment: The Title VI regulation, at 34 C.F.R. § 100.3(a), states 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 that receives Federal financial assistance from the Department. The Title VI regulation, at 34 C.F.R. § 100.3(b)(1)(ii), provides that a recipient of Federal financial assistance shall not discriminate against any person on the basis of race, color, or national origin by providing different services, financial aid, or benefits or by providing them in a different manner from those provided to other students.

Racial harassment is a form of race discrimination prohibited by Title VI. To show racial harassment under a hostile environment approach, the evidence must establish that: (1) a hostile environment on the basis of race 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 determining whether a racially hostile environment exists, OCR considers whether there was harassing conduct (e.g., physical, verbal, graphic, or written) 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. OCR considers the totality of the circumstances from both an objective and subjective perspective and examines the context, nature, scope, frequency, duration, and location of racial incidents, as well as the identity, number, and relationships of the persons involved.

If a racially hostile environment exists, then the recipient is required to take appropriate and effective 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 who was harassed. A series of escalating consequences may be necessary if the initial steps are ineffective in stopping the harassment.

The regulation implementing Title VI does not contain an explicit requirement that districts adopt and implement complaint procedures to address allegations of discrimination based on race, color or national origin. However, 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 Title VI discrimination.

Harassment on the Basis of Sex: The Title IX regulation at 34 C.F.R. § 106.31 provides generally that, except as provided elsewhere in the regulation, no person shall on the basis of sex be excluded from participation in, denied the benefits of, or subjected to discrimination in education programs or activities operated by recipients of financial assistance from the Department.

Sexual harassment that creates a hostile environment is a form of sex discrimination prohibited by Title IX. Sexual harassment is unwelcome conduct of a sexual nature. Sexual harassment of a student creates a hostile environment if the conduct is sufficiently serious that it interferes with or limits a student's ability to participate in or benefit from the recipient's program or activity.

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. Conduct is unwelcome if the student did not request or invite the conduct and regarded it as undesirable or offensive. OCR considers the conduct in question from both an objective perspective and the subjective perspective of the person allegedly subjected to harassment.

A recipient has notice of harassment if a responsible employee actually knew or, in the exercise of reasonable care, should have known about the harassment.

Once a recipient knows or reasonably should know of possible sexual harassment, it must take immediate and appropriate action to investigate or otherwise determine what occurred. If an investigation or other inquiry reveals that sexual harassment created a hostile environment, a recipient must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment if one has been created, prevent the harassment from recurring and, as appropriate, remedy its effects. These duties are a recipient's responsibility regardless of whether or not the student who was harassed makes a complaint or otherwise asked the recipient to take action. If, upon notice, a recipient fails to take prompt and effective corrective action, the recipient's own failure has permitted the student to be subjected to a hostile environment. If so, the recipient will be required to take corrective actions to stop the harassment, prevent its recurrence, and remedy the effects on the student that could reasonably have been prevented had the recipient responded promptly and effectively.

The Title IX regulation, at 34 C.F.R. § 106.8(b), provides that a recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action which would be prohibited by the regulation. The Title IX regulation, at 34 C.F.R. § 106.8(9), provides that a recipient shall implement specific and continuing steps to notify applicants for admission and employment, students and parents, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex or gender in the educational program or activity which it operates, and that it is required by Title IX and this part not to discriminate in such a manner.

Retaliation: The regulation implementing Title VI, at 34 C.F.R. § 100.7(e), prohibits a recipient from intimidating or retaliating against an individual for the purpose of interfering with any right or privilege secured by the regulation or, in relevant part, because the individual has made a complaint or participated in any manner in an investigation or proceeding under the regulation.

A recipient engages in unlawful retaliation when it takes an adverse action against an individual either in response to the exercise of a protected activity or to deter or prevent protected activity in the future. To find a *prima facie* case of retaliation, each of the following three elements must be established:

1. an individual experienced an adverse action caused by the recipient; and
2. the recipient knew that the individual engaged in a protected activity or believed the individual might engage in a protected activity in the future; and
3. there is some evidence of a causal connection between the adverse action and the protected activity.

In determining whether the recipient took the adverse action because an individual engaged in a protected activity or for the purpose of interfering with a protected activity, OCR considers whether there is some evidence of a causal connection between the adverse action and the protected activity. The evidence may include changes in the treatment of the individual after protected activity occurred, the proximity in time between protected activity and adverse action, the recipient's treatment of the individual compared to similarly-situated individuals, or the recipient's deviation from established policies or practices.

Background

According to data provided on the Wisconsin Department of Public Instruction website, during the XXXX academic year, there were XXXX students enrolled in the XXXXX school, of whom XX students or XXXX were African American, XX students or XXXX were of two or more races, and XXXX students or XXXX were Caucasian.¹

The District's Nondiscrimination and Access to Equal Educational Opportunity Policy, Policy 2260, is available on its website and prohibits discrimination on various bases, including race and sex.² The District's Student Anti-Harassment Policy, Policy 5517, contains information on how to file a discrimination complaint, and the District's investigation and complaint procedures. The anti-harassment policy identifies the Superintendent as the District's Anti-Harassment Compliance Officer. The District told OCR that it intends to provide training to District staff and students about these policies.

Facts

Discrimination

The Complainant alleged that during Student A's XXXXX year at the XXXXX School in school year XXXX continuing through most of Student A's XXXXX in school year XXXX, three Caucasian students (Students B, C, and D) harassed Student A based on her race. Student A told OCR that on multiple occasions Students B and C called her offensive racial slurs; however, Student A later clarified that Student D did not say any racial slurs to her but laughed or seemed to agree when the other students made racial slurs. Student A acknowledged that she did not

¹ <http://wisedash.dpi.wi.gov/Dashboard/portalHome.jsp> .

² http://www.rhineland.k12.wi.us/cms_files/resources/Annual%20Notices%202016-2017.pdf

report every incident when Students B and C used racial slurs, but believes she reported the students' use of racial slurs five or six times over the three year period to the Principal.³ The Complainant and Student A told OCR that Students B and C called her a slut and whore on numerous occasions. They did not recall the specific dates when the harassment occurred. Student A told OCR that each time she reported specific slurs made by Students B and C to the Principal; he said he would take care of it.

The Complainant stated that she and Student A met with the Principal to discuss the racial incidents involving the other girls; however, she did not recall the dates of the meetings. The Complainant identified 5 relatives who were present at some of the meetings she and Student A had with the Principal. OCR attempted to contact all of the Complainant's witnesses and interviewed the two relatives who made themselves available for interview. Both relatives said they were present at meetings the Complainant and Student A had with the Principal when they witnessed Student A provide the Principal information about the racial harassment, including the specific racial remarks made by the other girls; however, they were unable to provide specific dates when these meetings took place.

The Complainant and Student A stated each time Student A reported harassment involving Students B and C to the Principal, the conduct would stop for 4 to 7 weeks but then it would start again. Student A stated, generally, she did not report the racial harassment by Students B and C to any other District personnel but she did discuss the racial harassment, including the specific slurs, with her Counselor who told her to continue to report it to the Principal. In addition, the Complainant said she reported the harassment to a School Board member; however, she did not recall that person's name. Student A and the Complainant did not file any written complaints with the District and did not provide OCR with any contemporaneous written documentation describing any racial harassment that may have occurred or indicating that they reported racial slurs to District personnel.

OCR interviewed the Principal who said at no time did the Complainant or Student A ever use the word discrimination, racial harassment or the racial slur n-word when speaking to him about Students B or C. Also, the Principal said the Complainant and Student A did not file a formal complaint alleging discrimination.

The Principal described Student A as having friendship problems with Students B and C, over the three year period, that were typical of problems faced by other girls at the school. The Principal recalled Student A complaining to him about 8-10 times about incidents she had with Students B and C. Student A told him the girls were bullying her, being mean to her, calling her offensive (not race-based) names, including "slut" and "whore", bumping into her in the hall, not talking to her, or whispering about her. The Principal said Students B and C often reported similar conflicts they were having with Student A to him and other school staff. The Principal said he knows the Complainant very well and recalled meeting with the Complainant and

³The Complainant and Student A assert that all incidents were reported to a single individual, who they said was the Associate Principal when Student A was a freshman and sophomore and who became the Principal when Student A was a junior. The District informed OCR that the Principal of the high school has served as principal for the last six years.

Student A to address Student A's claims that the other girls were mean to her. The Principal said that one of the Complainant's relatives attended a meeting he had with the Complainant and Student A but he denied that the Complainant or Student A alleged racial harassment during the meeting.

OCR interviewed the Counselor and she stated that Student A never reported or discussed racial harassment, including the specific slurs, with her. The Counselor indicated that she met with Student A on several occasions to discuss Student A's concerns about non race-based comments by Students B and C e.g., calling her a liar and spreading rumors about her sexual relationship with boys.

Documentation from the District indicated that in May XXXX two incidents involving Student A were reported to school staff that involved alleged racial harassment.⁴ On May XXXX, Student A reported to the Associate Principal (AP) that Student B had called her a racial slur. The AP spoke with Student B who denied calling Student A a racial slur. The AP spoke with Student B's XXXXX, told him that the District could not determine if Student B had used a racial slur but, if future assertions occurred, the District would take the situation very seriously. The high school's School Resource Office (SRO), was involved with this incident and confirmed to OCR the AP's version of the incident and was present in the room when the AP called the XXXXXX.⁵ On May XXXX, a teacher emailed the AP and other staff, and stated that Student A appeared upset and told her that a student had made racist remarks. The AP told OCR and documentation shows that the AP talked with Student A and she stated no racial remarks had been made to her. Student A told OCR that she could not recall any incidents that she reported to or were investigated by the AP in May XXXX or at any other time. Also, the Complainant stated she was unaware of these two alleged incidents.

OCR interviewed Students C, D and E (all students are in the same year in school as Student A) about the alleged incidents of racial harassment involving Student A. Student A told OCR that Students D and E are her friends. OCR was unable to interview Student B because she is no longer enrolled in the District.

Student C denied making specific inappropriate hostile racial remarks to Student A and denied the specific assertions against her by Student A. Student C stated that during XXXXX year, they were watching a music video and Student A called herself the "n-word." Student B then called Student A the "n-word." Student C said that same day the students were called in to see the Principal because Student A complained the video was racist and that the other girls had called her the "n-word." Student C said she and Student E denied using the n-word. No other student witnesses OCR interviewed recalled this incident, including Student A. Student C said that Student A called herself the "n-word" as a joke several times.

Student D denied using the "n-word" at any time towards Student A. Student D recalled a meeting with the Principal possibly during the XXXX school year in which Student A accused Student C of calling her the "n-word." Student D said the Principal told them all to never use that

⁴ According to the District, there were no other racial incidents reported in the last three years.

⁵ The SRO told OCR that he knew Students A, B, and C well. He stated that he saw them together often until Student B left the school during their junior year.

word again. Student E corroborates this incident. The Principal did not recall this meeting. Student D stated that other students use racial slurs in a joking manner around their friends in school but they do not mean anything when they use the slurs.

Student A asserted that Student E witnessed some of the incidents when Students B and C made specific racial remarks. Student E told OCR, in general, that when she was a XXXXX she heard Student B, as well as Student A, using racial slurs in a joking manner. Student E said, after XXXXX year, she did not see Student A as often because they had different class schedules; however, Student A told her that other students were using racial slurs but Student E did not hear any such remarks herself. Student E recalled a meeting in the Principal's office when Student A accused Student C of using the "n-word" and the Principal told the girls never to use the racial slur again. Also, Student E stated that she recalled Student A showing her a text from Student B in which Student B used the "n-word."

About a month before the end of the XXXXX school year, Student A had a XXXX issue unrelated to alleged racial harassment⁶ XXXXX. Student A showed OCR staff text messages XXXXXX which demonstrated a dispute between Student A and Student D about friendship issues but there were no apparent racial remarks in the messages. XXXXXXXXXXXXXXXXXXXX.

Conclusion

In accordance with Section 302 of OCR's *Case Processing Manual*, a complaint may be resolved at any time when, before the conclusion of an investigation, if the recipient expresses an interest in resolving the complaint. Prior to the conclusion of OCR's investigation, the District expressed interest in resolving this complaint.

OCR determined that a resolution agreement with the District is appropriate under the circumstances present in this particular case to resolve the issues. The enclosed Resolution Agreement, when fully implemented, will address all of the issues in this case. The provisions of the Resolution Agreement are aligned with the complaint allegation and the information obtained during OCR's investigation, and are consistent with the applicable regulations. OCR will monitor the implementation of the Resolution Agreement until the District is in compliance with the Title VI and Title IX regulations at issue in the case.

Retaliation

The Complainant alleged that after XXXXXX staff spoke to the Students B and C about the racial harassment of Student A, the students engaged in retaliatory racial harassment of Student A during the XXXXX school year. According to documentation provided by the District, the District was aware that Student A had engaged in a protected activity when in May XXXX she complained that other students were harassing her on the basis of race.

⁶Initially, the Complainant asserted that the XXXXX issue Student A experienced in May 2016 was related to hearing racial slurs from Students C and D, but during an interview with OCR, with the Complainant present, Student A said the students were texting her about a non-racial or sexual/sex based issue.

Student A indicated to OCR that there were racial incidents involving Students B and C during the XXXX school year but, neither Student A nor the Complainant identified any incidents of retaliatory harassment (e.g. where the accused harassers threatened Student A because she had complained about prior harassment) or any incidents that were different from the race and sex based harassment she had experienced before the protected activity. Moreover, they did not assert that the incidents increased in number after Student A engaged in protected activity. OCR found no evidence of a causal connection between the alleged adverse action and the protected activity. The evidence was not sufficient to establish that there was a change in treatment of Student A because the harassing conduct occurred prior to and subsequent to the protected activity. OCR determined that under these circumstances the evidence is insufficient to establish a prima facie case of retaliation as alleged. However, OCR notes that the attached agreement addresses the incidents of racial and sexual harassment that Student A experienced during the XXXX school year.

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 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 personal privacy.

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

We wish to thank the District for the courtesy and cooperation extended during this investigation. We look forward to receiving the District's first monitoring report on June 30, 2017. If you have any questions, please contact me at (312) 730-1560 or Ms. Catherine Martin, Equal Opportunity Specialist, at (312) 730-1592 or by e-mail at Catherine.Martin@ed.gov.

Sincerely,

Dawn R. Matthias
Team Leader

Enclosure