



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

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May 4, 2017

Ms. Kathy Dinger
Superintendent
Bushnell-Prairie City Community Unit School District #170
845 N. Walnut Street
Bushnell, IL 61422

Re: OCR Docket #05-16-7034

Dear Ms. Dinger:

This letter is to notify you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), completed its case resolution processing for the complaint filed against Bushnell-Prairie City Community Unit School District #170 (District), alleging discrimination on the basis of race.

Specifically, the complaint alleged the following:

1. the District subjected a bi-racial high school student (Student A) to discrimination based on race since the 2014-2015 school year to the present when students harassed Student A based on race and the District was aware of the racial harassment, but failed to respond adequately;
2. the District subjected a bi-racial junior high school student (Student B) to discrimination based on race in the 2015-2016 and 2016-2017 school years when students harassed Student B based on race and the District was aware of the racial harassment, but failed to respond adequately;
3. the District subjected Student B to discrimination based on race in the 2015-2016 and 2016-2017 school years when an employee harassed Student B based on race while teaching a class and the District failed to respond adequately; and
4. the District subjected Student B to discrimination based on race during summer and fall 2016 when the basketball coach did not give Student B the same opportunities to start and play at a higher squad level in basketball as was provided other basketball players of a different race.

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, which prohibit discrimination based on race, color or national origin by recipients of Federal financial assistance from the Department. As a recipient of Federal financial assistance, the District is subject to Title VI.

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

During its investigation, OCR reviewed data provided by the Complainant and the District and interviewed the Complainant, Student A, Student B, other students, and District personnel. OCR has determined that the evidence is insufficient to establish that the District discriminated against Student B as alleged in Allegation #4. Prior to the conclusion of OCR's investigation, the District expressed interest in resolving Allegations #1 - #3. Discussions between OCR and the District resulted in the District's signing the enclosed Resolution Agreement (Agreement), which, when fully implemented, will resolve the issues raised in Allegations #1 - #3 of the complaint.

Background

The District operates one elementary school, one junior high school (the Junior High School), and one high school (the High School). In the 2016-2017 school year, Student A was a 12th grade student at the High School and Student B was a 7th grade student at the Junior High School.

The District has policies that prohibit discrimination on the basis of race, including racial harassment, that are posted on its website and include the name and contact information of the individuals responsible for responding to inquiries regarding Title VI.¹ The District's 2016-2017 Parent-Student Handbook (Handbook), which is available on the District's website,² under the section "Bullying, Intimidation, and Harassment," prohibits bullying on the basis of race and encourages students to immediately report such bullying orally, or in writing, to a "District complaint manager or any staff member." The Handbook also outlines the student code of conduct (the Code). The Code prohibits bullying, and includes race harassment in its description of prohibited conduct. The Handbook also states that the District has a formal grievance policy that covers race discrimination and harassment complaints; this procedure can be found in the Board of Education Policy and Procedure manual located at each District school and on the District's website.³

Allegations # 1- #3

Legal Standards

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

Racial harassment that creates a hostile environment can constitute 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

¹ <http://www.bpcschoools.org/boe/Policy-Manual.cfm>

² <http://www.bpcschoools.org/highschool/documents/B-PCHandbook2017.pdf>

³ <http://www.bpcschoools.org/boe/documents/5Section2-SchoolBoard.pdf>

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.

To show racial harassment in violation of Title VI, the evidence must establish that: (1) a hostile environment on the basis of race existed, *i.e.*, harassing conduct (e.g., physical, verbal, graphic, or written) 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. In analyzing claims of harassment based on race, OCR considers the totality of the circumstances to determine whether a hostile environment has been created. 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.

The extent of a recipient's responsibilities when an employee harasses a student is determined by whether or not the harassment occurred in the context of the employee's provision of aids, 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 including the type and degree of responsibility given to the employee 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 institution 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 elementary and secondary school 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 an employee who is acting (or who reasonably appears to be acting) in the context of carrying out these responsibilities over students engages in racial harassment, the recipient is responsible for the discriminatory conduct. The recipient 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. These steps are the recipient'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. 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 recipients adopt and implement complaint procedures to address allegations of discrimination based on race, color or national origin. However, grievance procedures that encompass race 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.

Facts

The complaint alleged that the District subjected Student A to discrimination based on race from the 2014-2015 school year to the present when students harassed Student A based on race and the District was aware of the racial harassment, but failed to respond adequately. The complaint also alleged that the District subjected Student B to discrimination based on race in the 2015-2016 and 2016-2017 school years when students harassed Student B based on race and the District was aware of the racial harassment, but failed to respond adequately and when an employee harassed Student B based on race while teaching a class and the District failed to respond adequately.

The Complainant told OCR that since the 2014-2015 school year to the present, Student A has been subjected to frequent racial slurs and jokes from other students. She said Student A did not report this conduct after a student received only a one-day suspension for directing the N-word toward Student A. She said she reported the incidents on several occasions over the years to the Superintendent, Principal, and teachers; most recently, she spoke at Board meetings in September 2016 and October 2016. She said the District has not taken actions to prevent the conduct from recurring. The Complainant did not file a complaint of bullying or race harassment under the formal grievance procedure.

The Complainant said the incidents of harassment of Student B included an incident in May 2016 when a teacher made a remark about Student A's race, refusal by the teacher to accept correct answers from Student B, a comment made in the 2015-2016 school year by another student on the bus used for an away volleyball game, and an incident in September 2016 where racial remarks, including the N-word, were directed toward Student B. The Complainant said she reported the school bus incident to the volleyball coach and junior high school principal and Student B said she also reported the incident to the volleyball coach, but no action was taken in response. Student B said she also reported the September 2016 incident to a teacher. Student B also identified incidents of alleged harassment that occurred at basketball practices.

October 20, 2014, alleged harassment of Student A

According to the Complainant and Student A, in October 2014, a white 10th grade student (Student C) called Student A the N-word. The Complainant and Student A told OCR that in response, the District issued Student C a one-day suspension for directing the N-word toward Student A, which is a lesser sanction than the Complainant and Student A felt he deserved. Student A also said he reported use of racial slurs by another student (Student D) at the same time as he reported Student C.

The Superintendent informed OCR that, on October 14, 2014, Student A's grandfather and grandmother met with her and reported that Student C and Student D told a racial joke to Student

A. The Superintendent told OCR that in response to the report, she instructed the high school principal at the time⁴ to conduct an investigation.

The Superintendent said that the principal's investigation confirmed that Students C and D made several disparaging remarks to Student A, including calling him or members of his family the N-word, and as a result of his findings and based on the District's range of allowable sanctions for such conduct, the principal suspended Student C for 2 days for "Gross misconduct - racist comments directed toward an individual" and suspended Student D for "Gross disobedience or misconduct" for "bullying and intimidating another student" and recommended to the District's school board that a hearing be held to consider Student D's expulsion from the High School. On October 29, 2014, the school board expelled Student D from the High School for up to two calendar years.

The Superintendent said the principal determined the discipline of Student C without her involvement, but that she was involved in the discipline of Student D because of the severity of the sanction. She said Student D had a prior disciplinary history that was considered in determining the sanction.

The District provided OCR a copy of the notes taken by the Superintendent, copies of three witness statements taken by the principal, and a copy of what the Superintendent believes are notes taken by the principal documenting his findings with respect to Student C and D. Two of the witness statements recounted instances of racial comments made about Student A by two female students other than Student C and Student D. Neither the Complainant nor Student A identified these students to OCR as other students that subjected Student A to harassment based on race. According to the Superintendent, the principal, after conducting the investigation, did not discipline the two students because he found insufficient evidence to warrant consequences.

The Superintendent said she was not aware of discussions about remedies for Student A. She said she does not know if the principal offered counseling to Student A.

According to the Complainant and Student A, because the District failed to respond adequately to their first report of racial harassment, Student A did not report subsequent similar conduct by Student C that persisted, including use of the N-word, references to the KKK and Black Panthers, and saying that he was a black guy when he wore a "wife beater" tank top.

The Complainant said she reported the ongoing harassment by Student C to the Superintendent in November 2015, but nothing was done in response. The Superintendent said she had no contact with the Complainant before September 2016.

September 19, 2016, alleged harassment of Student A

The Complainant said that on September 19, 2016, another student asked Student A, "How do you get a [N-word] out of a tree? You cut the rope off." The Complainant said she reported this

⁴ The Superintendent told OCR that the principal is no longer employed by the District and did not provide any notes from interview(s) with Student A.

remark to the Superintendent and then at a School Board meeting on September 21, 2016. Student A indicated to OCR that Student C made this remark in the High School hallway. He said no District personnel have questioned him to obtain any more information about this incident. He said that he reported it at a September 29, 2016 meeting with the High School Principal (Principal A) and counselor, and they said they would handle it.

Principal A said she and the counselor met with Student A on September 29, 2016, after the Complainant spoke at a school board meeting about alleged harassment. She said Student A indicated that there had not been any harassment of him during the 2016-2017 school year, but that a racial joke had occurred a couple of years earlier. The counselor also said Student A indicated that there had not been any recent incidents of harassment.

Alleged Harassment of Student B by Teacher A

The Complainant said that in May 2016, Teacher A said, “We are all white except [Student B] who is black.” Student B told OCR she does not recall what Teacher A or the class was talking about at the time, but said race was not being discussed as part of a classroom discussion. Student B said she did not report this to any school officials at the time, but reported it to the Complainant in August 2016.

Teacher A said the class was discussing the situation in Ferguson, Missouri, and he tried to help students understand demographics. He said the District is in a predominantly white community. He stated that he might have said that Student B is black but then reiterated that it does not matter, as everyone should be treated equally under the law.

Teacher A said he talked to the Junior High School Principal (Principal B) after class because he was concerned he may not have presented the information in the best possible way, and he did not wish to make anyone uncomfortable. He said he told Principal B he made a comment about a predominantly white community and having almost an all-white class and then referenced Student B being black. He said Principal B advised him to be careful how he worded things. Principal B said he became aware of this incident when Teacher A talked to him about it, but he did not consider this incident harassment. He said Teacher A made an innocent comment, something referencing race but also saying that “we are all Americans.” He said he talked to Teacher A about choosing words carefully and being sensitive to students in class.

The Complainant said that on several occasions in 2016-2017, Teacher A has asked a question and Student B had answered, only to be told by the teacher that she is wrong; however, when a white student then gives the same answer, the student is told he or she is correct. Student B said this happened in social studies class about six times in a two-week span. A student interviewed by OCR said she witnessed one occasion when Student B gave the correct answer and Teacher A told her she was wrong, but then another student said the same answer as Student A and was told by Teacher A that the answer was correct. Teacher A denied this assertion and said that when Student B answers correctly, he acknowledges that she is correct.

Alleged Harassment of Student B by other students

The Complainant said the incidents of harassment by students included an incident in 2015-2016 when Student B was told by another student (Student E) to go to the back of the bus used for an away volleyball game and an incident in September 2016 where a racial slur was directed to Student B by a female student (Student F); she said Student F told Student B, “I am going to suck a [N-word]’s dick” and also told Student B she wants to be a bad influence like her because Student B is black. She said there have not been any other incidents of harassment of Student B.

The Complainant said she reported the 2015-2016 incident to the volleyball coach and junior high school principal and Student B said she also reported the incident to the volleyball coach. The volleyball coach said Student B did not report the comment, but the Complainant called her to report it. She said the Complainant said that Student E made a racist comment to Student B, but she did not want her to say anything to anyone. The volleyball coach said she told the parent she had an obligation to report the incident. The volleyball coach said she told Principal B what happened, and he said he would investigate and talk to the students involved. She said he later told her that he talked to the girls and they admitted to saying things to each other, told her the matter had been handled, and said she did not need to do anything else.

Principal B said Student B acknowledged that the comment occurred when she and Student E were “joking around.” Student E admitted she made a comment about whites getting off the bus first. He said he contacted Student B’s grandfather, who at the time typically handled all matters related to the children at school; he noted that he had a document from the Complainant granting her parents authority to act on her behalf. He said the grandfather said the girls are friends and joke all the time and requested that the District do nothing further.

Principal B said that while Student E’s conduct violated the student code of conduct, he believed the discussion with her was sufficient to address the situation because Student E had no history of prior discipline. He said he met with Student B as well, but does not believe he offered her counseling. He said the students gave him the impression that they tease each other and call each other names, although they did not give the impression that they made other race-based comments to each other. He said he talked to both students about potential consequences should the name calling continue.

Student B said that on September 12, 2016, Student F approached her in in chorus class in front of other students and said “I’m going to suck a [N-word]’s dick.” She said Student F also said to Student B she wanted to be a “bad influence” like Student B because she is black. Student B said she reported this to the chorus teacher, and she thinks the teacher reported it to Principal B. She said that after the report, Student F might have been suspended.

Principal B said Student B reported the September 12, 2016 remark, and he investigated by taking a statement from Student B, talking to witnesses, and then interviewing Student F. He said Student F was suspended for 2½ days and removed from the chorus class. He said Student F wanted to meet with Student B to apologize, but Student B did not want to accept her apology, so he could not get restorative closure on the issue. He said he did not offer Student B counseling.

Student B said that upon Student F's return, Student F stalked her in the hallway for about two days; she said she reported this to Principal B, and Student F later apologized to her, which she said makes her think someone talked to Student F. She said Student F does not attend the same school anymore and did not make any additional comments after the September 12 incident. Principal B said Student B did not report that Student F stalked her in the hallway.

Student B also said that Student E's younger sister (Student G), a 6th grader, harassed her this school year. In particular, she said that during the basketball season, Student G pushed her approximately once a week, screamed at her multiple times a week to "move," and yelled at her to "pass the ball" at every practice. She said the coaches saw Student G's conduct but did not say anything about it. She said Student G also did the same thing to three other white students. She said Student G did not use race-based slurs or remarks. Teacher A, who is the head coach, said he had no knowledge that Student G harassed Student B as asserted. He said he observed the students during practice and never saw any such harassing behavior. Principal B said Student B did not report any harassment occurring in basketball.

Analysis and Conclusions

OCR has determined that Allegations #1 - #3 are appropriate for resolution under Section 302 of OCR's *Case Processing Manual*. The District expressed interest in resolving the allegations and OCR would need to interview students who may have witnessed or engaged in racial harassment, Student A's and B's grandparents, and the former principal of the high school in order to complete its investigation of these allegations.

The agreement requires the District to take the following actions: (1) provide administrators, teachers and staff effective training on the District's policies and procedures prohibiting harassment based on race; (2) provide effective training to all District staff who are directly involved in processing, investigating and/or resolving complaints or other reports of harassment based on race; (3) provide a program for students which will address harassment based on race in order to promote respect and tolerance for others and to avert the establishment of a discriminatory or hostile environment based on race for students enrolled in the District; (4) investigate whether Student A was subjected to harassment based on race, submit its proposed findings, supporting documentation, remedial actions, and disciplinary actions to OCR for review and approval, send written notification to Student A's parent of the finding and of the opportunity to appeal any findings and of the remedial actions to be taken, and implement appropriate discipline and/or remedial actions, if any are warranted; (5) investigate whether Student B was subjected to harassment based on race, submit its proposed findings, supporting documentation, remedial actions, and disciplinary actions to OCR for review and approval, send written notification to Student B's parent of the finding and of the opportunity to appeal any findings and of the remedial actions to be taken, and implement appropriate discipline and/or remedial actions, if any are warranted; and (6) maintain documents relating to specific complaints or other reports of discrimination or harassment of students based on race.

OCR will monitor the District's implementation of the agreement.

Allegation #4

Legal Standards

The regulation implementing Title VI, at 34 C.F.R § 100.3(a), states that no person shall, on the basis of race or national origin, be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity by a recipient of 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 race or 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.

In determining whether the District subjected an individual student to discrimination on the basis of race, OCR considers whether the District treats 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 District for the different treatment are legitimate, non-discriminatory reasons and whether they are merely a pretext for unlawful discrimination. Additionally, OCR examines whether the information shows that the District treated particular students in a manner that is inconsistent with its established policies, practices and procedures or whether any other evidence of discrimination based on race exists.

Facts

The complaint alleged that the District subjected Student B to discrimination based on race during summer and fall 2016 when the basketball coach did not give Student B the same opportunities to start and play at a higher squad level in basketball as was provided other basketball players of a different race.

The Complainant said in the summer of 2016, Student B participated in a summer “open gym” program. Student B said the summer open gym program is run by the school. The Complainant and Student B asserted to OCR that students use open gym as an opportunity to practice and develop their skills before tryouts for the basketball team. Student B said the open gym is managed by Teacher A. The District told OCR the summer open gym program is a voluntary recreational summer basketball league operated by and held at the local YMCA and is not a school or District program. Teacher A confirmed that he is a coach for the summer recreational league, which holds games once a week and open gym sessions three times a week.

Student B asserted that Teacher A treated her differently than white students with regard to missed open gym sessions in summer 2016. More specifically, Student B missed two open gym sessions because of the illness of a family member, and she was not allowed to start or move up to the 8th grade team because of these absences, while white students who missed open gyms were allowed to start and to play up. She said the denial of her opportunities to start or move up to the 8th grade team included a summer tournament right before tryouts for the fall and then the fall season. Teacher A told OCR he does not use a player’s participation in the summer YMCA program as a basis for any decision related to the District’s girls’ basketball program.

Student B also stated that she thinks she should play at a higher level (“play up”) over other white players who do not play as hard as her and who slack off. She named three such players, two of whom were starters for the 7th grade team (Students H and I) but did not play up, and the other who played up to the 8th grade team (Student J).

Teacher A said that in determining who will play up, he considers talent, behavior, grades and classroom behavior, attitude toward teammates and coaches, leadership skills, and execution of offense and defense; based on these factors, he identified Student J and a black student (Student K) to play up to the 8th grade team. He said Student B’s execution in running the team’s offense and defense was not as good as that of Student J and Student K. Moreover, Student B’s work ethic and attitude were not consistently good. He said Student J and Student K, compared to Student B, were stronger in ball handling, shooting, attitude, work ethic, execution, and practice.

The assistant coach said Students J and K worked hard at practices, always tried to get better, were coachable, had great basketball knowledge, and were great leaders on the court and off the court. The assistant coach said that, in contrast, Student B showed minimal effort on some days and did not play to her full capabilities. She said that Student B on some days was not “coachable.” As an example, she said that at a practice students were required to run if they missed free throws; Student B ran more slowly than the other players even though she is usually the fastest runner. Moreover, even after the coaches said the team will run until everyone makes maximum effort, Student B kept slacking.

Student B acknowledged that she would jog during sprints at practice and would then not be allowed to play up. However, she said white students, including Student J, jogged during sprints and did not have consequences. The assistant coach said there may have been occasions when other players jogged during practice, but this did not occur consistently and especially did not occur after they were warned.

OCR attempted to interview the other members of the team and was able to obtain parental consent and interview three students, including Student K. Student K identified Student B as talking a lot during practice and also slacking during sprints. She said Teacher A used leadership skills and behavior as factors in determining who would play up.

A white student interviewed by OCR (Student L) said that the entire 8th grade team asked Teacher A to allow Student B to play up at some point in the middle of the season, because they believed Student B could help them win. She said the coaches did not take this seriously. Student L acknowledged that Student B slacked off but also said she did not think any players slacked off more than others in practice.

One other white student interviewed by OCR (Student M) said Student B and all other 7th grade players slacked off from time to time during practice. Student M said she considered Student B the best player on the 7th grade team. Student M also said she felt that Teacher A was inconsistent when he considered a player’s behavior during practice as a factor for determining what players would play up.

Analysis and Conclusions

The evidence established that the summer basketball program is not a District program. With regard to the fall 2016 basketball season, Student B asserted that she should have been allowed to play up to the 8th grade squad. The testimony of the coaches indicated that Student B was not selected to play up because two other players, including one who is black, were determined to be better suited to play up; they identified reasons related to Student B's playing ability and deficiencies in her attitude. Testimony from some students confirmed the coaches' testimony regarding Student B's conduct in practice, although only one indicated that Student B's behavior was atypical.

Based on the above, OCR determined that the evidence is not sufficient to establish that the District subjected Student B to discrimination based on race with regard to Allegation #4.

Overall Conclusion

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 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 wish to thank you and your staff for your cooperation and courtesy during our investigation. In particular, we would like to thank Mr. J. Christian Miller, District counsel. If you have any questions, please contact Salina Gamboa, Senior Equal Opportunity Specialist, at (312) 730-1627 or by email at Salina.Gamboa@ed.gov.

Sincerely,

Jeffrey Turnbull
Team Leader

Enclosure

cc: Mr. J. Christian Miller