



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

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October 27, 2017

Dr. Matt Swick
Superintendent
Wilmington School District 209U
209U Wildcat Court
Wilmington, IL 60481

Re: OCR Docket # 05-17-1292

Dear Dr. Swick:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed against Wilmington School District 209U (District), alleging discrimination on the basis of race. Specifically, the complaint alleged that, during the 2016-2017 school year, the District subjected a middle school student (Student A) to discrimination based on race (Biracial) when other students subjected Student A to a racially hostile environment and the District was aware of the hostile environment but failed to respond appropriately.

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

Prior to the conclusion of OCR's investigation, the District expressed interest in resolving the complaint. Discussions between OCR and the District resulted in the District's signing the enclosed Resolution Agreement (Agreement), which, when fully implemented, will resolve the allegation and issued raised in the complaint.

District Policies and Procedures

The School Board Policies are summarized in the Student Planner and Handbook (Handbook), which is available on the District's website at http://toolbox1.s3-website-us-west-2.amazonaws.com/site_0712/WilmingtonMSHdbk2016-17_080416.pdf.

Board Policy 7:10, *Equal Educational Opportunities*, provides that equal educational and extracurricular opportunities shall be available for all students without regard to, in relevant

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

part, race, color, and national origin. The policy states that any student may file a discrimination grievance by using the *Uniform Grievance Procedure*.

The District's *Uniform Grievance Procedure*, Board Policy 2:260, explains how students, parents, employees or community members may file a complaint of discrimination, and sets forth the process for investigating the complaint. The procedure states that the complaint manager will investigate and file a written report with the Superintendent within 30 days, and the Superintendent will mail a written decision to the complainant within 5 days thereafter. The procedure also provides for an appeal of the decision to the Board within 10 school business days and identifies a Nondiscrimination Coordinator and two Complaint Managers by name and provides their address and telephone number, however the policy does not contain the names or email addresses of the District's current Nondiscrimination Coordinator and Complaint Managers..

Board Policy 7:20, *Harassment of Students Prohibited*, states that no person shall harass, intimidate, or bully a student on the basis of actual or perceived race, color, or national origin.¹ The policy provides examples of harassing conduct and directs students to report instances of bullying and harassment to the Nondiscrimination Coordinator, Building Principal, Assistant Building Principal, or a Complaint Manager. The policy cross references the District's *Uniform Grievance Procedure* and the names and contact information of the Nondiscrimination Coordinator and Complaint Managers.

Board Policy 7:180, *Prevention of and Response to Bullying, Intimidation, and Harassment*, also prohibits bullying, intimidation, and harassment of a student on the basis of actual or perceived race. The policy directs students to report instances of bullying and harassment to any staff member with whom the student is comfortable or to the Complaint Manager, and provides the Complaint Manager's contact information (address, email address, and telephone number). The policy provides for a prompt investigation within 10 school days of a report, includes procedures governing the District's investigation of harassment complaints, provides for a meeting with the Principal or school administrator or designee to discuss the findings of the investigation and actions taken to address any reported incident of bullying. The policy states that interventions to address bullying may include school social work services, restorative measures, social-emotional skill building, counseling, school psychological services, and community-based services. Retaliation against any person who reports an act of bullying is prohibited. The policy also requires the District create a bullying prevention plan.

Legal Standard

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.

¹ OCR provided technical assistance to the District regarding including a reference to Title VI and federal civil rights statutes.

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 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 find a 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 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

According to Student A's parent, Student A, XXXXXXXX, was subjected to numerous incidents of racial harassment during the 2016-2017 school year. Student A's parent told OCR that the incidents were reported to administrators, but the District failed to take action to stop the harassment. As a result, Student A did not want to attend school.

Student A's parent told OCR that, XXXXXXXXXX, Student B and Student C called Student A the "N word" in separate incidents during lunch. She said Student A reported it to the Assistant Principal. Thereafter, Student D started making racist comments to Student A during shop class. Student A's parent said that Student D stated something to the effect that "[b]ack in the day, you would be a slave and I would be whopping the s--- out of you." Student A went to the office to report it to the Principal. Documentation submitted by the District regarding incidents of harassment reported by or on behalf of Student A do not reflect that Student A reported these incidents.

Student A's parent recalled a third XXXXXXXXXXXXXXXX. She said that a female classmate, Student E, told Student A that he was "ugly" and that, "if it were not for President Obama, you would not be here." Student A, in turn, told Student E that she "had two tons of pimples and if she didn't, maybe people would like her." Student E reported Student A to the Assistant Principal who contacted Student A's parent regarding possible discipline. Student A's parent said she reported the "Obama" comment to the Assistant Principal and insisted that, if Student A was to be "punished," that both students be punished equally. She also brought up the incidents that occurred over lunch and during shop class, and the Assistant Principal reportedly told her that the incidents were unsubstantiated because it was "he said, she said." Student A was not disciplined for making inappropriate remarks to Student E.

According to Student A's parent, the harassment of Student A continued throughout the spring semester. XXXX, another student, Student F, reportedly told Student A: "[I]like the rest of your people, you will be sitting in jail for the rest of life." Student A responded, "[w]hen I'm in jail, I will be watching you on TV with your 600 pounds and acne on your face." Student F reported Student A's comment to the Assistant Principal. Student A's parent said that Student A was called to the office, and refused to talk to the Assistant Principal because he felt that the investigation is "always one-sided." When the Assistant Principal contacted Student A's parent, she said she informed him of Student F's racist comment, insisted that both students be disciplined equally, and raised the issue of diversity training. Student A was not disciplined for the incident involving Student F.

Finally, according to Student A's parent, XXXXXXXX, Student A was harassed by Student G² and then "wrongly reprimanded" by a custodian when Student A attempted to video record the incident on his phone. Student A's parent said that Student G called Student A the "N word" and "gay" so Student A began to video record Student G on his phone. Student G found a custodian and reported that Student A was taping him without permission. Student A's parent said the custodian then grabbed Student A's phone and arm, began reprimanding him, and escorted him to the office. Student A refused to speak to the Assistant Principal and Principal, and called his mother crying. Student A's parent told OCR that she complained about the District's failure to prevent ongoing harassment, and the District responded that Student A's version of the incident could not be proven after viewing District video surveillance of the incident with the custodian but agreed to separate the students in school. Student A's parent also said that she requested increased diversity training for the student body.

The District provided the Principal's notes regarding the XXXXXXXX incident. The Principal interviewed the students sitting near Student G and Student A and no one admitted to saying or hearing racial slurs. The custodian told the Principal that Student G reported that he was being videotaped against his wishes. The custodian then told Student A that videotaping others is not allowed. The Principal's notes indicate that he and the Assistant Principal reviewed the video camera footage and could see that the custodian did not touch or take the phone from Student A. The video did not have audio so the Principal could not confirm what

² Records provided by the District indicate that Student G admitted to calling Student A the "N word" during a high school football game on September 1, 2016. Student G was issued an out-of-school suspension.

the custodian told Student A.³ The District's investigation found insufficient evidence that racial harassment occurred XXXXXXXX as asserted.

Analysis and Conclusion

The District requested to resolve the allegation pursuant to Section 302 of the CPM prior to the conclusion of OCR's investigation. The terms of the enclosed Agreement are aligned with the allegation and issues investigated to date and are consistent with the requirement of Title VI.

The Agreement requires the District to take the following actions: review and revise its notice of nondiscrimination/nondiscrimination policy and grievance procedures to include the correct name, title and contact information for its Nondiscrimination Coordinator and Complaint Managers; provide training for staff on the District's anti-harassment and bullying policies and complaint procedures; provide training to staff directly involved in the processing, investigating, and resolving complaints of discrimination or reports of harassment on how to promptly respond to and investigate complaints of race harassment; extend an offer to meet with Student A and his parent to discuss any alleged incidents of race harassment other than the incidents described in the instant OCR complaint and for any additional incidents, investigate them and issue written findings to the parent under its grievance procedures, and implement appropriate discipline and/or remedial actions, if any are warranted; and extend an offer to Student A for counseling by a District social worker, counselor and/or school psychologist. OCR will monitor the District's implementation of the Agreement.

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.

If you have any questions or concerns about OCR's determination, you may contact Melissa Howard, Attorney Advisor, at (312) 730-1527 or Melissa.Howard@ed.gov.

Sincerely,

³ Student A's parent requested to view the video, but District denied her request because the District considers it a confidential student record under the Family Educational Rights and Privacy Act (FERPA). The video is no longer in existence because it was taped over.

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Marcela Sanchez-Aguilar
Supervisory Attorney

cc: XXXXXXXX, Esq.
XXXXXXX, Esq.