



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

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WISCONSIN

December 19, 2017

Dr. Mark Schweer
Superintendent
4121 Harry Langdon Blvd
Council Bluffs, IA 51503

Re: OCR Docket # 05-17-1386

Dear Dr. Schweer:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed against Lewis Central Community School District (District) alleging discrimination on the basis of race. Specifically, the complaint alleges that the District subjected an African American student (Student A) to discrimination based on race during the 2016-2017 school year when other students subjected Student A to a racially hostile environment and the District was aware of the harassment 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.

During its investigation, OCR considered information submitted by Student A's parents and the District. 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.

Relevant District Policies and Procedures¹

Notice of Non-Discrimination:

Board Policy 106 states, in pertinent part, that the District does not discriminate on the basis of race or color in its educational programs or activities. The policy identifies the District's

¹ The District's School Board Policies are available on the District's website at http://www.lewiscentral.org/board_of_education/board_policies/series_100_educational_philosophy/policy_103_equal_educational_opportunity

Equity Coordinator as responsible for coordinating the District’s efforts to comply with Title VI, and provides her address, telephone number, and email.

Anti-bullying/Harassment

Board Policy 104, *Anti Bullying/Harassment Policy*, prohibits harassment, bullying, hazing, or any other victimization, of students based on certain actual or perceived traits or characteristics, including race or color. The policy states it “is in effect while students or employees are on property within the jurisdiction of the board; while on school-owned or school-operated vehicles; while attending or engaged in school-sponsored activities; and while away from school grounds if the misconduct directly affects the good order, efficient management and welfare of the school or school district.”

Grievance Procedure

Board Policy 106, *Grievance Procedure*, states that “District students, parents of students, employees and applicants for employment have the right to file a formal complaint alleging non-compliance with federal and state regulations requiring non-discrimination in educational opportunities and employment.” This policy provides for informal and formal resolution of grievances and two levels of appeal (to the Superintendent and Board of Directors.)

Student Handbook

Students, parents, and employees are also informed of these policies annually via the School’s Student Handbook (Handbook).² The Handbook contains the District’s Student Code of Conduct (Code) which was approved by the District Board of Directors and are consistent with Section 282.4 of the Code of Iowa and Section 502 of the Board Policy (Student Behavior and Discipline Suspension, Expulsion and other Disciplinary Measures). The Handbook distinguishes “minor disciplinary infractions,” such as disruptive or disorderly conduct in halls or classrooms, from “major disciplinary infractions,” such as fighting, discrimination, harassment or intimidation.

The Handbook provides a range of disciplinary interventions and actions that school administrators and staff may take in response to infractions, including but not limited to teacher-student or principal-student conferences, parent notification, removal from the classroom, loss of privileges, detention, and suspension.

The Handbook also contains a Bus Misconduct Matrix (Matrix) that provides a range of disciplinary interventions for misconduct that occurs on District Busses. The Matrix provides four (4) categories of infractions: Safety; Disruptive Behavior; Non-Compliance; and Inappropriate Language and Gestures. The Matrix provides a range of disciplinary

² The District’s Student Handbook is located on the district website at http://lcth.lewiscentral.org/UserFiles/Servers/Server_1011618/File/2017-2018%20Lewis%20Central%20Elementary%20Handbook.pdf

infractions, including but not limited to parent/guardian notification, referral to administration, and possible bus suspension.

Facts

Allegation 1 - Racially Hostile Environment

During the 2016-2017 school year, Student A was a XXX grade student in the District's XXX School (School).

According to Student A's parents, on XXX, Student A was riding the bus home when two XXX School students—Students B and C—asked Student A if they could write on XXX face. Student A's parents told OCR that Student A told Students B and C that XXX did not wish for them to write on XXX face and that the students nonetheless held her down anyway and wrote on XXX face. According to Student A's parents, Student A cried out and repeatedly said, “no” but no one came to her assistance. Student A's parents stated that Student A informed them that the bus monitor was sitting in the seat directly in front of XXX and that he did nothing to assist XXX.

Student A's parents stated that when Student A came home XXX had “loser” written on XXX forehead and a mustache drawn on XXX. Student A's mother took photographs of the drawings. On XXX, Student A's parents went to the District to report the offense to Principal A. Student A's parents were unclear as to whether they told Principal A they believed the incident occurred because of Student A's race.

According to the District, Student A's parents met with the School Principal (Principal A) on XXX, and alleged that Student A was “bullied” by Students B and C when they held XXX down and wrote on XXX face. Student A's parents did not indicate that they believed Students B and C wrote on Student A's face because of Student A's race. Student A's parents showed Principal A photographs of the writing and drawing on Student A's face and emailed him copies of the photographs at his request.

On XXX, Principal A conducted an investigation which included interviewing Students A, B and C, and an additional student (Student D) who was a witness. The District informed OCR that Principal A's investigation revealed that Student B, who is biracial (African American/White), and Student C (White), claimed Student A consented to be drawn on. Student B is the one who wrote and drew on Student A's face while Student C held Student A and looked on. Student D informed Principal A that she witnessed Student A trying to get away. The District stated that as a result of the investigation, Principal A suspended Student B from the bus for five days and Student C for two days. Additionally, Principal A moved Student A's and XXX sister's (Student X) assigned seats near the front of the bus. Students B and C remained in their assigned seats towards the back of the bus.³

³ The District reported that all students on the bus are assigned seats.

According to Student A’s parents, on or about XXX, they learned from Students A and E that Students B and C were suspended from the bus for a “few days.” Student A’s parents advised OCR that they did not believe the discipline was harsh enough or would help keep their XXX safe. Student A’s parents stated that as a result, they contacted local media stations to complain about the racial bullying that happened to their XXX.

According to the District, on XXX, they were contacted by local television stations about the bus incident. The District provided the following statement in response:

[We] conducted an investigation into the incident and have taken steps to discipline those involved. [We] will continue to work with our student body to ensure that everyone is treated with dignity and respect.

The news reports state that “[Student A’s parent] believes the bullying was racially motivated.” On XXX, the District received a letter from Student A’s attorney informing them that he was retained to assist Student A’s parents in dealing with the “discriminatory harassment” of Student A and that Student A was in fear of a “hostile environment” on the bus and at school and noting that the District had “not offered to create a safe zone” for Student A. This letter did not specifically identify the “discrimination” as race-based. According to the District, after receiving the letter from Student A’s attorney, the District’s Equity Coordinator contacted Student A’s parents to inform them that she would be conducting an additional investigation.⁴

According to the District, the Equity Coordinator interviewed Student A and Student E in the presence of their parents. She also interviewed Students B and C, the bus monitor, the bus driver, and several other students on the bus. The Equity Coordinator also spoke with Student A’s teacher who stated that Student A seemed “nervous to talk to the police” and that XXX “didn’t seem XXX normal self for 1-2 weeks” after the bus incident. The Equity Coordinator’s investigation did not reveal any information suggesting that the incident occurred because of race, and she did not recommend any further discipline for Students B or C. However, she memorialized in a memo dated “XXX” that she followed up with Student A’s parents on “two or three separate occasions” to see how Student A was doing. She wrote that Student A’s father reported that Student A was having a hard time sleeping and the Equity Coordinator “offered support each time for [Student A] through the [District] counseling office or a partnership with Heartland Family Service.” She noted that Student A’s parents indicated they were not interested in counseling. The Equity Coordinator noted she also reviewed Student A’s attendance and grades and “did not see any significant changes.”

⁴ The District also reported to OCR that it also contacted by the local Police Department and the police conducted their own investigation of the incident. The District provided OCR a copy of the police department’s investigation, which found no facts indicating that incident was race related, and stated that no criminal charges would be filed. The police report states, “The mother does not believe it (the incident) was racially motivated which is now the claim they want to make.”

Despite notice from media publication that Student A’s father considered the incident to be race based, neither the Equity Coordinator nor anyone else in the district made a determination as to whether Student A was subjected to a racially hostile environment.

Student A’s parents told OCR that even after Students B and C were disciplined, Student A continued to experience a “hostile environment.” They stated that they could not recall the dates and details of the incidents, but that other students approached Student A and teased XXX for being the “XXX who got XXX face drawn on,” and said other rude things to XXX.

According to the District, there was an incident on XXX, where another student (Student E) threatened to punch Student X in the face if Student A continued to “be mean to [Student B.]” According to the District, Student E was suspended from the bus for 4 days for threatening Student X.

On XXX, the District reported receiving a call from Student A’s parents stating that other District students continued to discuss the XXX bus incident and make fun of Student A. They stated that they felt the school was not creating a “safe space” for Student A. The District convened a meeting on XXX, with Student A, XXX parents and Principal A to discuss the issues. According to the District, during the meeting Student A informed them that two boys (Student F and Student G) who stood next to XXX in line by the bus called XXX “XXX”⁵ and then made fun of XXX for having “loser” written on XXX forehead. According to the District, Student A’s parents informed Principal A that Student A stated XXX did not want to attend school anymore and that XXX wanted to hurt XXX. The District stated that Principal A met with Student A to have XXX identify the two students from an array of photographs, and XXX was able to identify Student F and Student G. The District told OCR that, in response, Principal A counseled Student F and Student G about their behavior and made them apologize to Student A. The District did not make a determination as to whether Student F and Student G contributed to and/or continued a racially hostile environment for Student A through their retaliatory harassment.

Student A and Student X are no longer enrolled in the District.

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. In order to complete its investigation, OCR needs to interview Principal A and the Equity Coordinator, as well as Student A, XXX sister and any other students who may have witnessed and/or reported any of the alleged harassment.

⁵ OCR will provide technical assistance to the District regarding its obligations to respond to sex-based comments under Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 - 1688, and its implementing regulation, 34 C.F.R. Part 106.

Page 6 – Dr. Mark Schweer

The Agreement requires the District to train School administrators, teachers, and staff on the District's policies and procedures prohibiting harassment based on race, and to train all School staff processing, investigating, and/or resolving complaints of race harassment on how to conduct adequate, reliable and impartial investigations under the District's policies and procedures. The Agreement also requires the District to provide relevant information and training to all School students addressing harassment based on race. Finally, the Agreement requires the District to offer counseling to Students A and X should they re-enroll in the District prior to the end of the 2018-2019 school year. 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, Student A's parents 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.

We wish to thank the District for its cooperation in this matter. In particular, we wish to thank Mr. Gregory Barnsten, the District's counsel. If you have any questions or concerns about OCR's determination, you may contact Kendrick Washington II, Attorney, at (312) 730-1670 or Kendrick.Washington@ed.gov.

Sincerely,

Marcela Sanchez-Aguilar
Supervisory Attorney

cc: Gregory Barnsten