



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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October 31, 2018

Mr. Jamie Benson  
Superintendent  
School District of River Falls  
852 East Division Street  
River Falls, Wisconsin 54022

OCR Case No. 05-18-1304

Dear Mr. Benson:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the School District of River Falls (District). The complaint alleges that from XXXXXXX, the District discriminated against a XXXX student (Student A) on the basis of race (African American) when students repeatedly made race-based comments to Student A that created a 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, 34 C.F.R. Part 100. Title VI prohibits discrimination on the basis of race, color, or national origin by recipients of Federal financial assistance from the Department of Education. As a recipient of Federal financial assistance from the Department of Education, the District is subject to the requirements of Title VI and its implementing regulation.

OCR investigated the complaint by reviewing documents provided by the Complainant and the District. In addition, OCR interviewed the Complainant and three District staff members. Applying a preponderance of the evidence standard, OCR concludes that the District violated Title VI with respect to the allegations in this complaint. The basis for OCR's determination follows.

#### Applicable Policies and Procedures

The District maintains policies and procedures that prohibit race discrimination and racial harassment. The policies and procedures are available on the District's website.<sup>1</sup>

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<sup>1</sup> [https://drive.google.com/drive/folders/1hLr\\_ri3TnJ7YuMraPOK8dKZqxMv81WkW](https://drive.google.com/drive/folders/1hLr_ri3TnJ7YuMraPOK8dKZqxMv81WkW)

Policy 411, Equal Educational Opportunities, states that the right of students to be admitted and to participate fully in District programs and activities shall not be abridged or impaired because of race.

Policy 411-Rule 1, Student Discrimination Complaint Procedures, sets out the procedures to be used to resolve complaints against the District for discrimination, including racial harassment. The procedures include a four-level complaint process:

- Level One (Informal Complaint Procedure) – Any person who has a complaint may discuss the concern with the building principal or Equal Opportunity Coordinator, who must investigate the complaint and reply to the complainant in writing within three school days. If the reply is not acceptable to the complainant, he/she may initiate the formal complaint procedure.
- Level Two (Formal Complaint Procedure) – The complaining party may report the complaint in writing to the Superintendent within five school days of receipt of the written reply at Level One. The complaint must include the nature of the complaint, facts upon which it is based, and the relief requested. The Superintendent, upon receiving a written complaint, must immediately undertake an investigation. The Superintendent reviews with the building principal, or other appropriate persons, the facts comprising the alleged discrimination. Within 10 days after receiving the complaint, the Superintendent is required to determine the action to be taken, if any, and report in writing the findings and the resolution of the complaint to the complainant. The procedures do not direct the Superintendent to report the findings to the respondent.
- Level Three – If the complainant is dissatisfied with the decision of the Superintendent, he/she may appeal the decision in writing to the Board.
- Level Four – The Board hears the appeal. The Board must make its decision in writing within 15 school days after the hearing. Copies of the written decision are to be mailed or delivered to the complainant and Superintendent.
- Level Five – If the complaint is not satisfactorily resolved at Level Four, further appeal may be made within 30 days to the Department of Public Instruction, Equal Educational Opportunity Office.

The District's harassment rule and complaint procedures follow a similar format. Policy 411.1, Harassment, states that all students must be allowed to learn in an environment free from harassment, including harassment based on race. The policy provides definitions and examples of harassment. All employees are required to report any suspected acts of harassment of students. Policy 411.1 encourages staff to make informal efforts to resolve acts of harassment. However, staff are nevertheless required to report any harassment of which they are aware.

Policy 411.1, Rule, Harassment Complaint Procedures, states that anyone can report harassment to the school principal verbally or in writing. The policy includes a five-step











is not styled as such, and appears intended for the district in which the Complainant hoped to enroll her children. The letter begins, “Thank you for considering our application to open enroll in XXXXX” The letter, which is one page long, goes on to narrate the events leading to the family’s decision to leave the District, and addresses the school district they hoped to enter.

The District stated in its narrative response to the complaint to OCR: “The District proceeded under its District Policy to address this concern.” The Superintendent conducted an investigation. He spoke with the Principal, Teacher A, and the Counselor. He did not interview Student A or other students. Teacher A provided unclear information to OCR as to whether the Superintendent observed her class or merely visited the class in order to speak with her. The Superintendent met with Student A’s parents on XXXXX, to discuss their concerns. On XXXX the Superintendent issued a written determination, stating, “please consider this letter as my formal reply to your claims of discrimination and/or bullying.”

The Superintendent’s decision narrated many of the incidents described above and summarized the School’s response to each matter. The Superintendent was unable to substantiate some comments, such as comments about Student A being “XXX.

However, the Superintendent also wrote, “I find confirmation of your specific examples of other XXX students making comments that referenced [Student A’s] African-American race XXX He wrote, “it is understandable that this behavior was also perceived to be discriminatory.” He went on, “Yet, in all cases the XXXX staff still took measures to address these concerns within the entire class of students—or with individuals—if identified.” The letter emphasized XXXXXXXXXXXXXXXXXXXX The letter concluded: “I find no evidence of XXXXX staff ignoring or permitting hurtful comments to persist.” The Superintendent wrote, “the school district cannot monitor the activities of students at all times and eliminate all incidents of bullying.”

The Superintendent’s letter did not inform Student A’s parents of their right to appeal the decision. The District stated in its response to the OCR complaint that the parents “did not appeal this matter.”

The Complainant argues that, throughout Student A’s semester, “While the school was often kind in their responses, the incidents did not stop.” She also contends that “The complaints provided to River Falls were not responded to in a timely or evenhanded manner. River Falls never took effective action to remediate the racial harassment.”

### Applicable Legal Standards

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 under any program that receives Federal financial assistance.

Racial harassment is a form of discrimination prohibited by Title VI that can result in the denial or limitation of a student’s ability to participate in or receive education benefits,



services, or opportunities. 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 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. For younger students, an incident that might not be considered extremely harmful to an older student might nevertheless be found severe and harmful. Therefore, the severe, pervasive or persistent standard must be understood in light of the age and impressionability of the students involved and with the special nature and purposes of the educational setting in mind.

Additionally, OCR must take into account the relevant particularized characteristics and circumstances of the target of the harassment, especially the individual's race and age, when evaluating the severity of racial incidents at an educational institution. If OCR determines that the harassment was sufficiently severe that it would have adversely affected the enjoyment of the recipient's educational program by a reasonable person, of the same age and race as the victim, under similar circumstances, OCR will find that a hostile environment existed. The reasonable person standard as applied to a child must incorporate the age, intelligence, and experience of a person under like circumstances to take into account the developmental differences in maturity and perception due to age.

Finally, racial acts need not be targeted at the complainant in order to create a racially hostile environment. The acts may be directed at anyone. The harassment need not be based on the ground of the student's or complainant's race, so long as it is racially motivated. Additionally, the harassment need not result in tangible injury or detriment to the victims of the harassment.

Once a recipient has notice of a racially hostile environment, the recipient has a legal duty to take reasonable steps to eliminate it. Thus, if OCR finds that the recipient took responsive action, OCR will evaluate the appropriateness of the responsive action by examining reasonableness, timeliness, and effectiveness. The appropriate response to a racially hostile environment must be tailored to redress fully the specific problems experienced at the institution as a result of the harassment. In addition, the responsive action must be reasonably calculated to prevent recurrence and ensure that participants are not restricted in their participation or benefits as a result of a racially hostile environment created by students or non-employees.

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. 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.

Analysis

OCR finds that a hostile environment on the basis of race existed for Student A at her School. Other students subjected her to frequent racial taunting over the course of her XXXXXXXX student in the District, which enrolls few African-American students. The harassment began in XXXX and continued until XXXXXX, when Student A’s parents decided to remove her from the School.

On a regular basis—and sometimes as often as multiple times per week—students mocked and taunted Student A with respect to her appearance as an African American. They targeted her XXXX. On other occasions, students shunned Student A and another African-American student because of their skin color XXX—a comment, that, in light of the context, encompassed race. Students also told Student A that they did notXXXX because of her skin color and called her “disgusting” when she XXXXXXXX.

In reaching this determination, OCR carefully considered the XXXXXXXXXX XXXXXXXXXXXXXXXX as well as the nature of the comments in question. The evidence indicates that XXXX students XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX While the comments in question were not severe racial epithets, they were persistent and pervasive over the course of the semester. OCR finds that the racial harassment was sufficiently persistent and pervasive from an objective standpoint to create a hostile environment.

The evidence also establishes that the racial harassment was sufficiently persistent and pervasive, from a subjective standpoint, to affect Student A’s ability to access the District’s educational programs and activities. Both the Complainant and the Principal agree that, over the course of the semester, Student A became more XXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXX. There is ample credible evidence from the Complainant that Student A did not wish to attend school because she feared further harassment from her peers. On an occasion XXXXXXXXXXXXXXXXXXXXXXXX. The Superintendent’s response to this encounter was to cast doubt on whether XXXXXXXXXXXXXXXXXXXXXXXX. This encounter is significant not as an additional act of harassment, but as an indication of the effects of in-school harassment on Student A, and the District’s narrow response to those effects. The appropriate inquiry was whether Student A was so fearful of harassment that she exhibited XXXXXXXXXXXXXXXXXXXXXXXX.

The evidence is undisputed that the District had notice of the harassment. The Complainant made Teacher A aware of the first instance on XXXXXX and each subsequent instance by e-mail. Teacher A also received reports directly from Student A. The Principal told OCR that she learned that the Complainant had raised concerns about studentsXXXX on Student A on or shortly after the XXXXX encounter in the cafeteria. OCR reviewed multiple e-mail exchanges in which the School, including the Principal, was put on notice that Student A was being racially harassed and that her parents wanted the harassment to stop. Although the

Principal received notice of the racial harassment, she did not notify administrators or advise the Complainant that she could file a formal complaint with the Superintendent.

The evidence establishes that the District failed to take effective action to immediately stop the harassment, prevent its recurrence, and remedy its effects on Student A. The District did not disregard reports of harassment, and took some steps after each report. It responded promptly, and often in a concerned and caring fashion. However, viewed cumulatively, the District's interventions were not effective. They did not put an end to the harassment or prevent it from recurring. The District did not launch a formal investigation of the harassment until XXXXX, when the Complainant announced her intention to withdraw Student A from school. The District's policies require the District to investigate written or verbal complaints of harassment, and there is no requirement that a complaint take any particular form. The Complainant's e-mails should have prompted the District to open an investigation weeks sooner. When the Superintendent did conduct a formal investigation, he did not interview any students, instead speaking to the teacher, Principal and Counselor, and then refuting, point by point, the Complainant's allegations. He offered no resources for the District to remedy the effects of the harassment on Student A.

OCR concludes that that steps the District took in response to the Complainant's reports of harassment were not effective. Student A continued to face harassment that continued over the course of the semester until the Complainant felt obliged to remove her from school. For example, District staff offered to bring Student A together with her harassers, either on the XXXXXXXXXXXXXXX. These interventions, while perhaps pedagogically indicated XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX were not appropriate responses to reports of repeated racial harassment that had undermined a XXXX student's sense of self over a period of months. Nor was it appropriate to expect Student A to XXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX.

Similarly, the District's attempt to offer counseling to Student A was intended not to help her overcome the effects of the harassment, but to teach her self-esteem and self-advocacy. The District at no time imposed discipline on the students who harassed Student A, nor considered moving her most persistent harasser, Student B, XXXXXXXXXXXXXXX. While the District is correct that such a move would have been disruptive to Student B, it suggested as an alternative that Student A be moved, notwithstanding the potential disruption in her educational opportunities. In any event, whether or not it was necessary to discipline Student B or move one of the students to another class, Title VI obliges the District to take effective steps to put an end to racial harassment of which it has notice and the steps it took were not effective in that regard.

### Conclusion

For the reasons set out above, OCR finds the District has violated Title VI by failing to respond effectively to a hostile environment on the basis of race of which it had actual notice. The enclosed agreement, when fully implemented, will remedy the violation of Title VI.

The 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. The Complainant may file a private suit in federal court whether or not OCR finds a violation.

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 privacy.

OCR wishes to thank the District, and particularly Mr. Richard Verstegen, counsel to the District, for its cooperation and courtesy during OCR's investigation. If you have questions about this letter, you may contact Ms. Catherine Martin, Equal Opportunity Specialist, at 312-730-1592 or [catherine.martin@ed.gov](mailto:catherine.martin@ed.gov).

Sincerely,

Dawn R. Matthias  
Team Leader

cc: Richard Verstegen, esq.

Enclosure