



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

500 WEST MADISON ST., SUITE 1475  
CHICAGO, IL 60661-4544

**REGION V**  
ILLINOIS  
INDIANA  
IOWA  
MINNESOTA  
NORTH DAKOTA  
WISCONSIN

May 3, 2019

Mr. Les Huddle  
Superintendent  
Lafayette School Corporation  
2300 Cason Street  
Lafayette, IN 47904

RE: OCR Docket #05-19-1057

Dear Mr. Huddle:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed against Lafayette School Corporation (Corporation) alleging discrimination based on race and disability.

Specifically, the complaint alleged the following:

1. in fall 2018, the Corporation subjected a junior high school student (Student A) to discrimination on the basis of disability (ADHD) when it failed to implement provisions of his Section 504 plan, thereby denying him a free appropriate public education; and
2. in fall 2018, the Corporation subjected Student A to discrimination on the basis of race (white) by disciplining him for use of a racial slur while not disciplining black students who use the same slur.

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 prohibits discrimination on the basis of race, color or national origin by recipients of Federal financial assistance from the Department. OCR is also responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibits discrimination on the basis of disability by recipients of Federal financial assistance. In addition, OCR is responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131 - 12134, and its implementing regulation at 28 C.F.R. Part 35, which prohibits discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department and a public entity, the Corporation is subject to these laws.

During the complaint investigation, OCR reviewed documents provided by Student A's parents and the Corporation, and interviewed Student A, Student A's parents, and Corporation personnel. Prior to OCR making a finding, the Corporation signed a Resolution Agreement (Agreement) to resolve allegation #1. OCR has determined that there is insufficient evidence to establish a

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

violation of the applicable regulations with regard to allegation #2. The reasons for OCR's determinations are discussed below.

### **Allegation #1**

#### **Legal Standards**

The standards adopted by Title II were designed not to restrict the rights or remedies available under Section 504. OCR has determined that the Title II regulations applicable to the issues raised in this complaint do not provide greater protection than the applicable Section 504 regulations. Therefore, OCR has applied the relevant Section 504 standards in its analysis of this complaint.

The regulation implementing Section 504, at 34 C.F.R. § 104.4(a), provides that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a recipient, or be subjected to discrimination by a recipient of Federal financial assistance.

The Section 504 implementing regulation, at 34 C.F.R. § 104.33(a), states that a recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate public education (FAPE) to each qualified person with a disability who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. The Section 504 regulation, at 34 C.F.R. § 104.33(b)(1), defines an appropriate education as the provision of regular or special education and related aids and services that are designed to meet individual educational needs of persons with disabilities as adequately as the needs of non-disabled persons are met. The development and implementation of a Section 504 plan is one means by which a FAPE may be provided.

#### **Facts and Analysis**

Student A is in 8<sup>th</sup> grade at Tecumseh Junior High School (School) in the 2018-2019 school year. Student A has ADHD and has a Section 504 Plan dated August 9, 2018, in place. The plan identifies four modifications: (1) preferential seating; (2) extra time on testing; (3) small group testing; and (4) use of a calendar/planner provided by the parent to keep track of assignments. The plan does not identify the individuals responsible for implementing the particular provisions. Student A's father said the Corporation failed during 2018-2019 to implement the provisions regarding testing modifications and the daily planner.

According to Student A's counselor, the intent of the plan was for the testing modifications to be available if Student A needed them, and for Student A to ask his teachers for modifications. The counselor also said it was Student A's responsibility to show the planner to the teachers and ask the teachers to initial it. However, no language in Student A's plan specifically places this responsibility on Student A.

Testimony revealed that teachers were inconsistent in their implementation of these items. In particular, some of Student A's teachers only implemented the provisions of Student A's Section

504 plan regarding testing upon Student A's request and all but one of his teachers only signed the planner when it was presented by Student A; they did not routinely follow up with Student A to ensure that he had entered homework assignments correctly in the planner.

OCR's investigation identified specific concerns about the Corporation's implementation of Student A's Section 504 plan in several classes. Prior to OCR making a finding regarding whether Student A was denied a FAPE, the Corporation expressed interest in resolving the allegation and signed the enclosed Agreement that will, when fully implemented, address the issues raised in this allegation. OCR will monitor the Corporation's implementation of the Agreement.

## **Allegation #2**

### **Legal Standards**

The regulation implementing Title VI, 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 or activity by a recipient of Federal financial assistance from the Department. Pursuant to 34 C.F.R. §100.3(b)(1)(i)–(iv), a recipient may not, on the basis of race, deny any service or benefit, provide a different service or benefit or provide it in a different manner, subject an individual to separate treatment, or restrict an individual in the enjoyment of a benefit or service.

In determining whether the recipient subjected a student to discrimination on the basis of race, OCR considers whether the recipient 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 recipient for the different treatment are legitimate or a pretext for unlawful discrimination. Additionally, OCR examines whether the information shows that the recipient treated the individual student or 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 Corporation's student discipline policy identifies racial harassment as among the types of misconduct that may result in suspension or expulsion. The Corporation's racial harassment policy says a substantiated charge of racial harassment will result in discipline, potentially including suspension or expulsion. The School's principal said the typical sanction for a first offense of racial harassment is an in-school suspension (ISS). He and the assistant principal both told OCR that the context in which a racial slur is used affects the discipline given, but the race of the student using the slur does not; for example, use of the slur in a way that is not directed toward another individual may result in addressing the comment as obscenity rather than racial harassment.

Student A's father said Student A was accused of using a racial slur (the N-word) on October 2, 2018, in connection with an incident in which Student A was physically assaulted. Student A's

father said the School's assistant principal, in an initial contact with Student A's mother, said another student punched Student A and that Student A did not do anything wrong. The assistant principal told OCR that in this initial contact, he told Student A's mother that he did not know if Student A had done anything wrong but that another student (Student B) hit Student A and that he was going to investigate the incident.

Student A's mother said that the next day, the assistant principal informed her that another student witnessed Student A directing the N-word at a student, so the School assigned Student A an ISS for racial harassment. The assistant principal said he found one student witness who always sits with Student A to be credible; she said that she heard Student A call Student B the N-word. The School's principal said that the assistant principal, during his investigation, learned that Student B had hit Student A because Student A called him the N-word. Records indicated that Student B was disciplined for hitting Student A, but did not specify the disciplinary sanction. The principal said that because the investigation established that Student A had directed the slur toward Student B, he received an ISS.

The principal said that because Student A's parents disputed whether the conduct occurred and were displeased with the discipline imposed, he said he would re-investigate the incident between the two students. Student A provided the names of witnesses that the principal interviewed. After considering the additional evidence, the principal determined that Student A used the N-word toward Student B. The Corporation provided OCR with statements from three student witnesses who indicated that Student A used the N-word. The principal said the three students were all present at the time of the utterance.

The principal called Student A's father and informed him of his decision to uphold the ISS. Student A's father appealed the ISS by email dated October 4, 2018, and a School Board hearing was held on October 29, 2018.

Student A's father asserted to OCR that many black students in the School use the N-word, but are not disciplined; he said that other than Student B, Student A did not know the names of other students who had engaged in this conduct. The principal said that the father made this assertion during the October 29 School Board meeting. The principal subsequently learned that Student B had used the N-word on a different day as part of a conversation in the same classroom where Student A had used the word and that the teacher had not referred the student to an administrator. The principal said that as the incidents involved the same students in the same class, the discipline of Student A and Student B should be comparable. Thus, he assigned Student B a detention for his use of the slur and assigned Student A a detention, which was lighter than the original consequence for Student A. The principal noted that while Student A could still have received an ISS because he directed the slur toward Student B, he believed the reduced sanction was appropriate under the circumstances considered.

By email dated November 6, 2018, the Superintendent informed Student A's father that while the Board upheld the one-day ISS, the principal was reducing Student A's discipline to a detention because Student A had engaged in the conduct and the principal had identified another student who also received a detention for using the slur.

The Corporation provided details regarding other instances of use of the N-word at the School in fall 2018, which included Student B and one other black student (Student C), as well as two white students other than Student A (Student D and Student E). Student C was disciplined with a conference with the assistant principal for calling another student the N-word while arguing in the hallway. The Corporation indicated that because the situation involved two students cursing at each other, it was categorized as a peer conflict rather than racial harassment. Student D received a 1-day ISS for using the N-word to others in class. Student E, a student with a disability, was sent to the refocus room and then sent home for repeatedly bragging in class about calling a student the N-word.

### Analysis and Conclusions

The evidence established that the Corporation determined, through corroborating witness statements, that Student A had directed a racial slur to Student B. Consistent with its policies, School administrators originally issued Student A an ISS for this conduct. However, the School reduced Student A's sanction when it first became aware of another instance of a student using the same slur in the same classroom. The Corporation sanctioned both students who used the slur with a detention regardless of race.

While Student A's father asserted that Student A was treated differently because black students are not routinely disciplined for use of the N-word, he did not identify specific incidents where that was the case and OCR's investigation did not support this assertion. The Corporation indicated that its practice in assigning consequences is to consider the context of the use of the term, and not the race of the students involved. Further, the evidence indicated that at least one other student of a different race than Student A received the same discipline for use of the same word. Thus, OCR determined that the evidence is not sufficient to establish that the Corporation subjected Student A to discrimination based on race in issuing him a detention for use of a racial slur. Accordingly, OCR has determined that the evidence is insufficient to establish a violation of Title VI regarding this allegation.

### Overall Conclusions

This concludes OCR's investigation of the complaint and should not be interpreted to address the Corporation's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. 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.

The complainant has a right to appeal OCR's determination regarding allegation #2 within 60 calendar days of the date indicated on this letter. In the appeal, the complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit to OCR a response to the appeal. The

recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

Please be advised that the Corporation 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, that individual 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 lawsuit in Federal court regardless of whether OCR finds a violation.

We wish to thank you and Corporation personnel for the cooperation and courtesy extended to OCR during its investigation. If you have any questions, please contact me at (312) 730-1611 or by email at [Jeffrey.Turnbull@ed.gov](mailto:Jeffrey.Turnbull@ed.gov).

Sincerely,

Jeffrey Turnbull  
Team Leader

Enclosure