



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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February 3, 2020

Dr. Jeffrey A. Hendrix  
Superintendent  
School Town of Munster  
8616 Columbia Ave.  
Munster, IN 46321

Re: OCR Docket #05-19-1433

Dear Dr. Hendrix:

This is to notify you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed against the School Town of Munster (District) alleging retaliation.

Specifically, the complaint alleged that, beginning in XXXXXX, the District subjected the parent of a XXXXXX (the Parent) to retaliation for filing a complaint of race discrimination with OCR in XXXXXX, in that the District instituted a no-trespass order at XXXXXX (School) against the Parent.

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. This law also prohibits retaliation. As a recipient of Federal financial assistance from the Department, the District is subject to this law.

During the investigation, OCR reviewed documentation provided by the District and interviewed the Parent and District personnel. Prior to OCR making a finding, the District signed the enclosed Voluntary Resolution Agreement (Agreement) to resolve the complaint allegation.

### **Legal Standards**

The regulation implementing Title VI of the Civil Rights Act of 1964, at 34 C.F.R. § 100.7(e), provides that no recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title VI, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under Title VI.

A recipient engages in unlawful retaliation when it takes an adverse action against an individual either in response to or for the purpose of interfering with the exercise of a protected activity. To find a *prima facie* case of retaliation, each of the following three elements must be established: (1) an individual engaged in a protected activity; (2) an individual experienced an adverse action

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caused by the recipient; and (3) there is some evidence of a causal connection between the protected activity and the adverse action.

If all of the elements of a *prima facie* case of retaliation are established, then OCR considers whether there is a facially legitimate, non-retaliatory reason for taking the adverse action, and whether the facially legitimate non-retaliatory reason for the adverse action is a pretext for retaliation.

### **Facts**

On XXXXXX, the Parent filed a complaint with OCR alleging that her son (Student A) was discriminated against based on race (XXXXXX) when two staff members and a student subjected him to racial harassment that created a hostile environment for him, and the District was aware of the hostile environment, but failed to take appropriate action in response. OCR notified the District of the complaint by letter dated XXXXXX. On XXXXXX, OCR issued letters of findings to the parties informing them that the evidence was insufficient to establish a violation of Title VI.

In the 2019-2020 school year, Student A was a XXXXXX at the School.<sup>1</sup> The Parent told OCR that, after she received OCR's letter of findings, she approached the School's Assistant Principal on XXXXXX, during student pick-up to tell her that she could not speak to Student A under any circumstance and that the Assistant Principal would be held accountable for discriminating against Student A.

The Assistant Principal told OCR that, as she was supervising the School's North parking lot during dismissal on XXXXXX, the Parent approached her and said that she wanted to make clear that she was not to socialize with Student A this year, returned to her car, and then approached her a second time and said she "did not care what the decision of the OCR was" and that she "knows or would prove that [the Assistant Principal] is a racist."

The Assistant Principal said she felt intimidated and wanted to go to the main entrance to get help. The Assistant Principal said the Parent followed her to the main entrance, calling her "evil," and said she "would make sure the investigation proved that [the Assistant Principal] was a racist." The Assistant Principal said that she then radioed for assistance.

The District's administrative guideline entitled "Reporting Threatening and/or Intimidating Behavior" provides that any staff member can report incidents of threats or intimidation and the Principal or Superintendent will investigate. The guideline states, "If the investigation reveals the complaint is valid, then prompt, appropriate, remedial and/or disciplinary action will be taken to prevent the continuance of the threat or its recurrence."

The Assistant Principal filed an incident report on XXXXXX, and the School's Principal investigated the report. The Principal said he spoke to the Assistant Principal about what happened and watched video footage of the incident, then met with the Parent to get her version of the events. He said the Parent admitted approaching the Assistant Principal twice and making

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<sup>1</sup> XXXXXX

the comments, but she denied that her behavior was threatening. The District provided OCR with videos with footage of the incident, but there was no sound on the videos.

On XXXXXX, the Principal issued the Parent a no-trespass order (with no end date) under which she could not come to the School unless she made prior arrangements with the Principal. He said that he issued the order because he did not think the Parent's behavior would cease because she did not understand what she did was wrong; however, he acknowledged that she did not act in a similar way in the past. The Principal said he issued one other no-trespass order this school year to a black grandparent who was alleged to have chased a group of students on campus and made threatening remarks. The Principal also recalled one instance six years ago in which he issued a no-trespass order at another school against a parent<sup>2</sup> for a threatening remark against a secretary. The District did not indicate whether either of these individuals had previously engaged in a protected activity.

The District does not have a formal written policy regarding the issuance of no-trespass orders, the duration of the orders, and how individuals can appeal the orders. The District indicated that no-trespass orders are rarely issued, so there are no specific practices or procedures that apply to them.

The District provided documentation of a similar incident at XXXXXX in the 2019-2020 school year. The parent, a white man, yelled at staff members during pick-up on two occasions. The District provided this parent a warning that, if he did not comply with the school's safety procedures, the District would issue a no-trespass order; the District did not indicate whether this parent had previously engaged in a protected activity.

### **Analysis and Conclusions**

The complaint alleged that the District subjected the Parent to retaliation for filing a complaint of race discrimination with OCR in XXXXXX, in that the District instituted a no-trespass order at the School against the Parent. The District expressed interest in resolving this matter as it acknowledged that it did not have a written policy regarding when it can impose no-trespass orders, the duration of the orders, and how individuals can appeal the orders.

OCR determined that this allegation is appropriate to resolve under Section 302 of the *Case Processing Manual*, and the District subsequently signed the enclosed Agreement. OCR will monitor the implementation of the Agreement.

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

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<sup>2</sup> The Principal did not identify the race of this parent.

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 the cooperation the District extended to OCR in its investigation of this complaint. In particular, we wish to thank Mr. Philip Zimmerly, counsel for the District. If you have any questions about this letter, please contact Sunita Kini-Tandon, Senior Civil Rights Attorney, at [Sunita.Kini-Tandon@ed.gov](mailto:Sunita.Kini-Tandon@ed.gov) or at 312-730-1452.

Sincerely,

Jeffrey Turnbull  
Team Leader

Enclosure

cc: Mr. Philip Zimmerly