



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

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March 20, 2020

Dr. Bruce Hibbard
Superintendent
Franklin Township Community School Corporation
6141 S. Franklin Road
Indianapolis, IN 46259

VIA E-MAIL at bruce.hibbard@ftcsc.org

Re: OCR Docket #05-20-1003

Dear Dr. Hibbard:

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 Franklin Township Community School Corporation (Corporation) alleging discrimination on the basis of race.

Specifically, the complaint alleged that, on XXXXXX, the Corporation subjected a middle school student (Student A) to discrimination based on race (black) when a staff member XXXXXX harassed Student A based on race, creating a hostile environment for him, and the Corporation failed to take appropriate action in response.

OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d, 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 Corporation is subject to this law.

During the investigation, OCR reviewed documentation provided by the Corporation and interviewed the Parent and Corporation personnel. Prior to OCR making a finding, the Corporation 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.

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

Racial harassment that creates a hostile environment is a form of race discrimination prohibited by Title VI. A racially hostile environment is harassing conduct that is sufficiently serious (i.e., severe, persistent or pervasive) as to limit or deny a student's ability to participate in or benefit from an educational program provided by a recipient. Once a recipient has notice of a racially hostile environment, the recipient has a duty to take reasonable steps to eliminate it.

Relevant Policies

The Corporation's Nondiscrimination and Anti-Harassment Policy¹ prohibits discrimination and harassment based on race and other protected classes. The Policy provides that any person may file a complaint through its informal or formal complaint procedures and the Corporation will address the complaints. The Policy provides that, if the Corporation determines that discrimination or harassment occurred, the Corporation "will take prompt and effective steps reasonably calculated to stop the harassment or discrimination, remedy the harassment or discrimination, and prevent the harassment or discrimination from recurring."

Facts

In the 2019-2020 school year, Student A is a XXXXXX at Franklin Township Middle School East (School). The Parent told OCR that, on XXXXXX, Student A was XXXXXX. XXXXXX (Teacher A), who is white, told Student A that he XXXXXX. The Parent and Student A believe that Teacher A made this comment because Student A is black. The Parent said Student A immediately texted her about the comment and she called to speak to Teacher A. She said she asked Teacher A if he made the comment and he confirmed that he did. She said the Assistant Principal witnessed the conversation between her and Teacher A. She said that she and her mother filed informal verbal complaints with the Assistant Principal the same day alleging race discrimination. The Parent said that the School has done nothing in response to their complaints.

The Parent said that this incident has affected Student A's school environment. She said Student A thinks that all the teachers are against him; that the School is racist; and that the School treats black students differently than white students. She said that Student A's grades have declined.² She said she had a meeting with the Principal in XXXXXX to discuss Student A's grades. She said that she brought up the incident as a reason for Student A's decline in grades and the Principal would not comment about the incident. The Parent said that the School has not offered any counseling and Teacher A has not apologized for his comment.

The Corporation provided OCR a copy of a video of the incident. In addition to Teacher A and Student A, there is XXXXXX when Teacher A made the remark to Student A. Teacher A asked Student A to put his phone away and XXXXXX. Student A's response is inaudible on the video. Teacher A then engaged Student A about his plans for the future. Student A said he was not going to work for anyone. Teacher A asked Student A to put his phone away again and, when he

¹ https://s3-us-east-2.amazonaws.com/franklinschoolcorp/A100-Non-Discrimination_-_Anti-Harassment-Procedure.pdf

² The Corporation denied that Student A's grades declined because of this incident and despite repeated requests, the parent did not provide OCR documentation supporting any such decline in Student A's grades after XXXXXX.

did not, Teacher A called for an administrator. Teacher A said he was trying to have a serious discussion with Student A and asked him what he plans to do if he is not going to work for someone. Student A said he was not going to work for anyone and did not need to tell him. Teacher A said something else that is inaudible on the video, and then said, XXXXXX. Student A then walked out of the room, upset, and said, XXXXXX.

Student A came back into the room about two minutes later. Teacher A tried to explain what he meant by the comment. Teacher A said, “you have a choice” and “believe it or not, people care about you.” The School Counselor was walking by the room and Teacher A asked her to come in. Teacher A explained that he was trying to help Student A. Student A said that Teacher A was not trying to help him but was making it worse by saying XXXXXX. Teacher A added, “by continuing to make poor choices.”

The School Counselor said to Student A, “you know what he is saying . . . you don’t need to be so dramatic about it . . . we just want you to make good choices . . . be good . . . have goals . . . go to college.”

OCR did not receive video footage of the conversation between Teacher A and the Parent.

Teacher A, who began working at the School in XXXXXX, told OCR that he first met Student A in XXXXXX. He said he believes he XXXXXX before the incident on XXXXXX. He said he did not know why Student A received XXXXXX on XXXXXX or any other time as he is not involved in XXXXXX.

Teacher A confirmed to OCR that he told Student A that XXXXXX. Teacher A denied that he made the comment because of Student A’s race and denied that he harassed Student A. Teacher A said he made the comment to explain the consequences of making poor choices. Teacher A said that he has not made the same comment to any other student. Teacher A said that he has supervised Student A XXXXXX and believes he has a positive relationship with Student A and that this conversation improved their relationship.

The Assistant Principal told OCR that he was walking by XXXXXX and heard a conversation between the Parent and Teacher A, in which the Parent was complaining about Teacher A telling her son, Student A, that XXXXXX. He said that, later the same day, the Parent and the Grandmother returned to the School to complain about the incident, alleging that Teacher A’s comment constituted race discrimination. He said that he did consider their complaints as “informal complaints” under the Corporation’s Nondiscrimination and Anti-Harassment Policy, but admitted that, in retrospect, it was probably his error not to process their complaint under the policy.

The Assistant Principal said he spoke to Student A about the comment; he confirmed that he did not offer counseling to Student A or his Parent.

The Corporation informed OCR that it provided Teacher A training on the Corporation’s Nondiscrimination and Anti-Harassment Policy and race sensitivity training.

Conclusion

The Corporation requested to resolve the allegation pursuant to Section 302 of OCR's *Case Processing Manual* 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 Corporation to take the following actions:

- The Corporation will provide all School administrators training relating to its Nondiscrimination and Anti-Harassment Policy.
- The Corporation will send a letter via certified mail to the Parent of Student A inviting Student A and his Parent to a meeting with Corporation legal counsel, at which the Corporation will provide them an opportunity to share concerns regarding their experiences with the Corporation's handling of their report of racial harassment and to share any ongoing effects, if any, resulting from the Corporation's response, or lack of response, to their report;³
- The Corporation will take steps calculated to ensure that Student A is not subjected to racial harassment on Corporation property and in Corporation sponsored programs and activities, including identifying a specific contact person to whom Student A should report incidents of discrimination if they occur, and checking in with Student A on a periodic basis to ascertain whether any instances of discrimination have occurred and taking prompt and appropriate responsive action if any discrimination has occurred.

When fully implemented, the resolution agreement will address the allegations investigated and OCR will monitor the implementation of the agreement.

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. 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 formal policy statements are approved by a duly authorized OCR official and made available to the public.

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, the individual may file a complaint alleging such treatment.

³ If Student A or his parent report in this meeting that Student A's grades in fact suffered as a result of the incident, the Corporation has agreed to provide academic support to Student A as well.

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 Corporation extended to OCR in its investigation of this complaint. In particular, we wish to thank Ms. Amy Matthews, counsel for the Corporation. If you have any questions about this letter, please contact Sunita Kini-Tandon, Senior Civil Rights Attorney, at Sunita.Kini-Tandon@ed.gov or at 312-730-1452.

Sincerely,

Marcela Sanchez-Aguilar
Supervisory Attorney

Enclosure

cc: Ms. Amy Matthews