



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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CHICAGO, IL 60604

REGION V  
ILLINOIS  
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MINNESOTA  
NORTH DAKOTA  
WISCONSIN

May 28, 2020

Dr. Christopher Himself  
Superintendent  
Northwest Allen County Schools  
Sent via email to: [Chris.Himself@nacs.k12.in.us](mailto:Chris.Himself@nacs.k12.in.us)

Re: OCR Docket # 05-20-1020

Dear Dr. Himself:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its complaint resolution activities in connection with the above-referenced complaint filed against the Northwest Allen County Schools (District) alleging discrimination on the basis of race.

The complaint alleged the following:

1. The District discriminated against a black high school student (Student A) on the basis of race when beginning in August 2019, other students subjected Student A to racial harassment and the District was aware of the harassment but failed to take appropriate action; and
2. The District treated Student A differently on the basis of race when a staff member verbally reprimanded Student A on XXXXXXXXXXXXXXXXXXXX, Student A was held from class for two hours after an altercation on XXXXXXXXXXXXXXXXXXXX, and Student A received a XXXXXXXXXXXXXXXXXXXX for the XXXXXXXXXXXXXXXXXXXX altercation.<sup>1</sup>

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. Title VI 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 the investigation, OCR reviewed information provided by the Complainant and the District, and conducted interviews with Student A and his parent, District personnel, and one other District student. Prior to OCR making a finding regarding Allegation #1, the District expressed interest in resolving the allegation in accordance with Section 302 of OCR's *Case*

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<sup>1</sup> The complaint initially alleged that the verbal reprimand was on XXXXXXXXXXXXXXXXXXXX and the altercation was on XXXXXXXXXXXXXXXXXXXX, but information provided to OCR during the investigation established that the incidents in question occurred on XXXXXXXXXXXXXXXXXXXX and XXXXXXXXXXXXXXXXXXXX, respectively.

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

*Processing Manual* (CPM). The District executed the enclosed Resolution Agreement (Agreement) on May 15, 2020 that, when fully implemented, will address the allegation investigated and OCR will monitor the implementation of the Agreement. As to Allegation #2, based on the investigation OCR determined that there is insufficient evidence to establish a violation of Title VI as alleged. The basis for this determination is explained below.

### **Legal Standards**

The Title VI implementing regulation, at 34 C.F.R. § 100.3(a), provides, in relevant part, that no person shall, on the basis of race, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance from the Department.

In determining whether a recipient subjected an individual to discrimination on the basis of race, OCR considers whether the recipient treated similarly situated individuals 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 in a manner that is inconsistent with its established policies, practices, and procedures or whether any other evidence of discrimination based on race exists.

Racial harassment that creates a hostile environment is a form of discrimination prohibited by Title VI. Racial harassment is intimidation or abusive behavior toward a student based on race that creates a hostile environment by interfering with or denying a student's participation in or receipt of education benefits, services, or opportunities in the recipient's program. If a racially hostile environment existed and the recipient had notice of the hostile environment, the recipient must respond adequately to address the hostile environment. The school is responsible for remedying the effects of the harassment on the student, as well as for ending the harassment and preventing its recurrence.

OCR considers the totality of the circumstances to determine whether a hostile environment has been created (i.e., whether the harassing conduct is sufficiently severe, persistent, or pervasive that it interferes with or limits a student's ability to participate in or benefit from the school's program). These circumstances include the context, nature, scope, frequency, duration, and location of the harassing incidents, as well as the identity, number, and relationships of the persons involved. OCR considers the conduct in question from both an objective perspective and the subjective perspective of the alleged victim of harassment.

OCR enforces the requirements of Title VI consistent with the requirements of the First Amendment of the U.S. Constitution. The laws that OCR enforces protect students from discrimination but are not intended to restrict the exercise of protected speech in violation of the First Amendment.

Pursuant to longstanding OCR policy, OCR will refrain from assessing the appropriateness of the pedagogical decisions of educational institutions. Instead, OCR gives significant deference to the professional judgment of educational institutions with respect to academic or pedagogical

decisions and does not substitute its judgment for that of the educational institution with respect to those decisions.

### **Allegation #1**

#### **Facts**

Student A was a XXXXXXXXXXXXXXXXXXXX at XXXXXXXXXXXXXXXXXXXX (School) in the XXXXXXXXXXXXXXXXXXXX school year. Information from the District and from Student A and his parent identified 12 specific incidents of alleged racial harassment of Student A by other XXXXXXXXXXXXXXXXXXXX grade students from XXXXXXXXXXXXXXXXXXXX, through XXXXXXXXXXXXXXXXXXXX at school, all of which were reported to District personnel. The incidents included multiple uses of the N-word in the hallway, during class, and in the lunchroom. Students also purportedly engaged in racial songs or chants at athletic events and showed violent images as a form of intimidation.

OCR's investigation revealed that the Principal and Assistant Principal did not consistently investigate the reported incidents of alleged racial harassment. In particular, they did not always identify witnesses or review video, when available, in investigating reports. In some cases, they could not recall whether an investigation occurred, and the District had no documentation suggesting staff responded to the complaints. When it did investigate, the District disciplined students when the racial harassment was found to have occurred. The District explained that under some circumstances, it could not discipline anyone because students were not identified, or the incidents could not be corroborated by witnesses.

Documentation provided by the District demonstrates that the School administrators met with Student A and his parent on XXXXXXXXXXXXXXXXXXXX, as a result of the reports of racial harassment. At the meeting, the School identified the Assistant Principal as a "trusted adult" to whom Student A could report any incidents of racial harassment. The Assistant Principal said that he regularly checked in with Student A, and Student A confirmed that this occurred. However, no counseling or other remedies were provided or offered to Student A following substantiated incidents and the District did not consistently document whether efforts were made to separate students or monitor their interactions. Further, the District did not document to OCR that it implemented training for students or staff regarding the ongoing racial harassment or engaged in any other responses to the repeated reports of racially offensive language.

#### **Analysis and Conclusion**

In accordance with Section 302 of OCR's CPM, a complaint may be resolved at any time when, before the conclusion of an investigation, the recipient expresses an interest in resolving the complaint. OCR has concerns about the District's responses to several reported incidents of racial harassment. In particular, the evidence suggests that the District did not always take adequate steps to investigate circumstances to determine whether a hostile environment existed, including gathering information as to the context, nature, scope, frequency, duration, and location of the alleged harassing incidents, as well as the identity, number, and relationships of the persons involved. Additionally, the District did not consistently interview relevant witnesses or review relevant video footage or document when it conducted investigations of the reported

harassment. Additionally, the District did not escalate its responses in view of the repeated complaints about racially offensive comments or take other efforts reasonably designed to prevent future harassment from occurring.

The District expressed interest in resolving the allegation. OCR has determined that it is appropriate to resolve this allegation under Section 302 of the CPM. On May 15, 2020, the District executed the enclosed Agreement, which when fully implemented, will address the concerns regarding this allegation. The provisions of the Agreement are aligned with the allegation and the information obtained during OCR's investigation, and are consistent with the applicable regulations. OCR will monitor the implementation of the Agreement.

## **Allegation #2**

### **Facts**

The complaint alleged that the District discriminated against Student A on the basis of race in discipline, specifically when a staff member verbally reprimanded Student A on XXXXXXXXXXXXXXXXXXXX, Student A was held from class for two hours after an altercation on XXXXXXXXXXXXXXXXXXXX, and Student A received a XXXXXXXXXXXXXXXXXXXX for the XXXXXXXXXXXXXXXXXXXX altercation.

According to Student A, on XXXXXXXXXXXXXXXXXXXX, a white male XXXXXXXXXXXXXXXXXXXX grade student (Student B) called Student A the N-word in English class, and the teacher removed Student A from the classroom to talk. Student A said that the teacher yelled at him to not to repeat the N-word<sup>2</sup> and verbally reprimanded him for causing a disturbance in class but did not yell at or reprimand Student B. He said that she remained in the hallway with him for about 5-7 minutes.

The English teacher denied yelling at Student A or reprimanding him. The teacher's aide said the English teacher used a raised voice, but she would not characterize the teacher as yelling at Student A. The aide did not hear what the teacher told Student A in the hallway. The teacher indicated in a statement that she called both students into the hallway and reminded them of a previous warning to use appropriate language. Her statement indicated that after the students returned to the classroom, Student A continued to use the N-word, so she called him into the hallway again and told him not to continue to repeat the N-word. The teacher's statement also said that Student A told her that she could not understand him because she is white and said he was called the N-word every day but did not tell her who said this because he did not want to be a "snitch."

The Assistant Principal said that he was not present to hear the exchange; however, he said that the teacher did not reprimand Student A, but rather counseled Student A about dealing with the stressful situation. The Principal also said that based on what the investigation revealed, the teacher did not discipline Student A; rather, she redirected Student A to calm down. Student A's

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<sup>2</sup> Student A denies that he used the N-word other than his report to the Teacher that Student B had used the racial slur in his presence.

disciplinary records did not reflect a verbal reprimand or any discipline on XXXXXXXXXXXXXXXXXXXX.

Student A and a white male XXXXXXXXXXXXXXXXXXXX grade student (Student C) engaged in an altercation on XXXXXXXXXXXXXXXXXXXX, which Student A said started because Student C directed a racial slur toward Student A; according to Student A, the administrators investigating the incident isolated him for a longer time than they did Student C, because they interviewed him for about 20-25 minutes before they interviewed Student C. The Assistant Principal and the Dean said Student C made the report about Student A, so Student A was interviewed first and remained out of class while they interviewed Student C second. Student A's parent told OCR that the difference in time the two students were out of class was two hours, but the Assistant Principal and the Dean both said the difference in time was no more than 15 to 30 minutes. Both said that both students were removed from class for the investigation.

As for the discipline imposed on XXXXXXXXXXXXXXXXXXXX, the Assistant Principal stated that both students were given a XXXXXXXXXXXXXXXXXXXX because they both engaged in physical aggression.<sup>3</sup> Discipline records from the District indicated that Student C hit Student A in the head and that Student A responded by punching Student C in the arm and pushing Student C to the ground. The District's discipline policy specifies that students who engage in physical aggression will receive "suspension or expulsion depending on the severity and number of occurrences." There is no distinction in imposition of discipline based on who initiated the fight.

The District provided documentation indicating that there were seven incidents of physical aggression that resulted in discipline in addition to the XXXXXXXXXXXXXXXXXXXX incident. Five of the seven students involved in these incidents are white students, one is black, and one is Hispanic. The white students received discipline ranging from XXXXXXXXXXXXXXXXXXXX to XXXXXXXXXXXXXXXXXXXX, the black student received a XXXXXXXXXXXXXXXXXXXX, and the Hispanic student received a XXXXXXXXXXXXXXXXXXXX. The Dean and the Assistant Principal told OCR that the difference in the discipline sanctions was based on the level of the physical aggression during the incident.

Student A's parent identified as support that the discipline of Student A was discriminatory actions by the Dean on XXXXXXXXXXXXXXXXXXXX; he said the Dean threatened Student A with XXXXXXXXXXXXXXXXXXXX and also inquired of a white female student (Student D) if Student A had XXXXXXXXXXXXXXXXXXXX her. The Dean said she did not threaten to have Student A XXXXXXXXXXXXXXXXXXXX. The Dean told OCR that she interviewed Student D and acknowledged asking if Student A had XXXXXXXXXXXXXXXXXXXX; the Dean explained to OCR that in view of a reported gap in Student D's recollection of the events that day, she suspected that Student D may have been afraid to tell her what she recalled about the incident itself. The Dean sought to ascertain whether Student A may have XXXXXXXXXXXXXXXXXXXX Student D. The Director of Secondary Education investigated the situation and counseled the Dean about asking such a question of Student D.

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<sup>3</sup> The Assistant Principal said he interviewed the witnesses identified by Student A and Student C but that no student witnesses corroborated that Student C used a racial slur, and Student C denied using the slur.

### Analysis and Conclusion

In making a determination regarding compliance, OCR must often weigh conflicting evidence and determine whether the preponderance of the evidence substantiates the allegation. In this case, the evidence was insufficient to establish that Student A was disciplined in connection with the incident on XXXXXXXXXXXXXXXXXXXX. In addition, the evidence was insufficient to establish that Student A was isolated for slightly longer than Student C on XXXXXXXXXXXXXXXXXXXX based on Student A's race. Finally, Student A and Student C received the same discipline for the XXXXXXXXXXXXXXXXXXXX incident as the District determined they had engaged in similar conduct.

The information shows that the District treated Student A in a manner that is consistent with its established policies, practices, and procedures and with its treatment of similarly situated students. While the parent identified the Dean's conduct toward Student A XXXXXXXXXXXXXXXXXXXX as evidence of racial animus, OCR found that the discipline of Student A was based on his conduct and not his race. Based on the above, OCR determined that the evidence is insufficient to establish a violation of Title VI regulation, at 34 C.F.R. § 100.3(a), regarding discrimination on the basis of race in disciplinary treatment.

### Overall Conclusion

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

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 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 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 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.

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

OCR would like to thank the District for the cooperation and courtesy extended to OCR during our investigation. In particular, we wish to thank Mr. Mark Scudder, Counsel for the District. If you have any questions regarding this matter, please contact Ms. Anastasie Sénat, OCR Attorney, at 312-730-1628 or by email at [Anastasie.Senat@ed.gov](mailto:Anastasie.Senat@ed.gov).

Sincerely,

Jeffrey Turnbull  
Team Leader

Enclosure

cc: Mr. Mark Scudder (sent via email to [Mark.Scudder@btlaw.com](mailto:Mark.Scudder@btlaw.com))