



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

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CHICAGO, IL 60604

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July 14, 2020

Dr. Reggie Engebritson
Superintendent
Mountain Iron-Buhl Public School District #712
8659 Unity Drive
Mountain Iron, MN 55768

Re: OCR #05-20-1187
Mountain Iron-Buhl Public School District
Student A – XXXXX
Student B – XXXXX
Student C – XXXXX
Student D – XXXXX

Dear Dr. Engebritson:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the referenced complaint filed on January 27, 2020, against Mountain Iron-Buhl Public School District #712 (District) alleging discrimination on the bases of race and disability. Specifically, the complaint alleged the District discriminated against the Complainant's children, Merritt Elementary School students (Student A, Student B, Student C and Student D, collectively the "Students"), during the 2019 – 2020 school year as follows:

- 1.) From August 2019 through December 2019 the District discriminated against Student A based on disability (XXXXX) when students harassed Student A based on his disability and the District failed to take appropriate action to address the harassment.
- 2.) From August 2019 through January 2020, the District discriminated against Students A, B, C, and D, when students harassed them based on their race (XXXXX) and the District failed to take appropriate action to address the harassment.

OCR is 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. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance (FFA). OCR is also 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. Title II prohibits discrimination on the basis of disability by public entities. OCR is also 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. Title VI prohibits discrimination on the basis of race, color, or national origin by recipients of FFA. As a recipient of FFA from the Department

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

and a public entity, the District is subject to these laws. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

During its investigation, OCR reviewed information provided by the Complainant and the District and interviewed the Complainant (the Students' mother), the Complainant's spouse/the Students' father (Parent A), and District staff.

As explained below, OCR has determined the evidence is insufficient to establish a violation of the applicable regulations with regard to Allegation #1. Prior to the conclusion of OCR's investigation, the District expressed an interest in resolving Allegation #2. The basis for OCR's determination follows.

Background

The District's Merritt Elementary School (School) serves students in Kindergarten through sixth grade. In 2016, the Complainant began enrolling her children in the District. During the 2019-2020 school year, XXXXXXXXXXXXXXXXXXXXXXXXXXXX; Student A was in XXXXX, Student B was in XXX grade, Student C was in XXX grade, and Student D was in XXX grade.

District Policies and Procedures

The District's Student Disability Nondiscrimination Policy is located in its Information Handbook on its website.¹ The Handbook also includes the District's Equal Educational Opportunity policy, which prohibits discrimination and harassment on the basis of race, disability. Policy 413, the District's Harassment and Violence Policy also prohibits harassment on the basis of race, and disability. The Superintendent and School staff acknowledged that staff are not trained on any of the District's Discrimination and Harassment policies and procedures.

Applicable Legal Standards

Allegation # 1-Disability Harassment

The Section 504 implementing regulation 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 Title II implementing regulation provides, at 28 C.F.R. § 35.130(a), that no qualified individual with a disability may, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or subjected to discrimination by any public entity.

¹ https://www.mib.k12.mn.us/sites/mib.k12.mn.us/files/files/Private_User/cmaschka/19-20%20Informational%20Handbook.pdf

Harassment on the basis of disability is a form of discrimination prohibited by Section 504 and Title II. Disability harassment is intimidation or abusive behavior toward a student based on disability that interferes with or denies a student's participation in or receipt of benefits, services, or opportunities in the recipient's program. Harassing conduct may take many forms, including verbal acts and name calling, as well as nonverbal behavior, such as graphic and written statements, or conduct that is physically threatening, harmful, or humiliating. Whether the conduct in question is described as "bullying," "hazing," or "teasing," such labels do not determine how a recipient is obligated to respond. Rather, the nature of the conduct itself must be assessed for civil rights implications.

Once a recipient knows or reasonably should know of possible harassment, it must take immediate and appropriate action to investigate or otherwise determine what occurred. If an investigation reveals that harassment created a hostile environment based on disability, then the recipient is required to take immediate and appropriate action reasonably calculated to end the harassment, eliminate any hostile environment that has been created, prevent its recurrence and, where appropriate, remedy the effects of the harassment on the student(s) subjected to the harassment. These duties are a recipient's responsibility regardless of whether a student has complained, asked the recipient to take action, or identified the harassment as a form of discrimination.

Allegation #2-Racial Harassment

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.

Harassment based on race is a form of race discrimination prohibited by Title VI. Racial harassment is intimidation or abusive behavior toward a student based on race that interferes with or denies a student's participation in or receipt of benefits, services, or opportunities in the recipient's program. Harassing conduct may take many forms, including verbal acts and name calling, as well as nonverbal behavior, such as graphic and written statements, or conduct that is physically threatening, harmful, or humiliating.

To establish a violation of Title VI under a hostile environment approach, the evidence must establish that: (1) a hostile environment existed, i.e., harassing conduct (physical, verbal, graphic, or written) on the basis of race occurred that was sufficiently severe, pervasive, or persistent so as 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 actual or constructive notice of the hostile environment; and (3) the recipient failed to respond adequately to address the hostile environment.

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. Appropriate and

effective responsive action should be reasonably calculated to end the harassment, eliminate any hostile environment that has been created, prevent its recurrence, and, where appropriate, remedy the effects of the harassment on the student who was harassed. A series of escalating consequences may be necessary if the initial steps are ineffective in stopping the harassment.

Allegation 1 - Factual Summary

Parent A reported to OCR that Student A has a XXXXX and XXXXX and students picked on Student A because of his XXXXX. Parent A said that in December 2019, he complained to the Principal about Teacher A's ability to effectively teach Student A. Teacher A told OCR that she had some difficulty communicating with Student A and she sought guidance from the School's child study team on two occasions to improve her communications with Student A. Neither the Complainant nor Parent A provided documentary evidence indicating that they complained to District staff that students harassed Student A based on his disability. On XXXXXXXXXXXX, the XXXXXXXXXXXXXXXXXXXX the District.²

Teacher A reported to OCR that Student A had an Individualized Education Program for speech services only, and he received speech services two times per week from the School's Speech Therapist. Teacher A said Student A had some minor issues with peer conflicts during unstructured times such as recess and gym, but that she did not see – and Student A did not report to her – that any students harassed him based on his speech impairment or other communication skills. Teacher A stated that kindergarten age students are typically accepting of one another and there were several students with speech impairments in Student A's class.

Teacher A said that neither the Complainant nor Parent A reported to her that students were harassing Student A based on his disability or any other misconduct that could be attributed to Student A's disability status. The Dean and the Principal told OCR that they had several conversations with the Complainant and Parent A between August 2019 and December 2019, but that neither the Complainant nor Parent A reported that other students were harassing Student A based on his disability or because of his XXXXX.

On XX. On January 28, 2020, the Complainant emailed the Superintendent asking to meet with her to file a “discrimination complaint with the Merritt Elementary School.” On February 13, 2020, the Superintendent and a School Board member met with the Complainant, Parent A and Students A, B, C and D. The Superintendent told OCR that during the meeting, neither the Complainant, Parent A, nor the students, asserted that Student A had been harassed by other students based on his disability and OCR found no documentary evidence that the Complainant or Parent A made such an assertion.³

² According to the Complainant, she XXXXXXXX the District and XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXX

³ The Superintendent, Dean, and Principal indicated that the Complainant and Parent A reported concerns about a racial epithet directed at the Students, discussed in Allegation #2.

parent. According to the Dean, Student E received a few days of noon detention, but the Principal stated that Student E received no discipline. The Dean and the Principal agreed that formal discipline was not warranted in this instance because Student E was young, and they believed Student E was merely repeating something heard at home. The Dean acknowledged that he kept no notes of his investigation and that there were no disciplinary records related to the noon detentions, even though such disciplinary referrals are typically tracked in Infinite Campus, the School's electronic recordkeeping system.

The Superintendent stated that she did not follow up or investigate after the comment was reported to her on February 13, 2020, because she felt that the Dean had handled the situation appropriately.⁶ The District provided no documentation to show that the Principal or Dean responded to this report by initiating an investigation after the December text message. In addition, no documentation indicated that District personnel referred the Students' parents to the formal discrimination complaint procedure or offered any services to the Students.

Allegation 2 – Analysis and Conclusion

OCR's investigation identified concerns about the District's response to the Complainant's report of racial harassment. In particular, the District did not offer supportive services to any of the students; investigate or take action to stop and prevent recurrence of incidents of racial harassment; create and maintain documentation of its response to the complaint of racial harassment; and train staff on the District's Nondiscrimination or the Harassment and Violence Policy.

During its investigation and prior to OCR issuing a final determination, the District expressed an interest in resolving Allegation #2 under Section 302 of OCR's *Case Processing Manual*. OCR has determined that it is appropriate to resolve this complaint with a Voluntary Resolution Agreement (Agreement). On July 8, 2020, the District signed the enclosed Agreement, which, when fully implemented will address the compliance concerns raised by Allegation #2. The Agreement is aligned with the allegation and evidence obtained to date and is consistent with the applicable regulations. OCR will monitor the implementation of the Agreement until the District has fulfilled the terms of the Agreement. Upon completion of the obligations under the Agreement, OCR will close the case.

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 may have a right to file a private suit in federal court whether or not OCR finds a violation.

⁶ The District's 413 Harassment and Violence Policy states that the building principal is responsible for receiving oral or written reports of racial harassment or violence and forwarding it to the District's human rights officer. Policy 413 designates the Superintendent as the District's human rights officer who is to immediately undertake or authorize an investigation.

Dr. Engebritson
OCR # 05-20-1187
Page 7

The complainant has a right to appeal OCR's determination regarding Allegation #1 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 inaccurate, 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 recipient 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.

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 wishes to thank the District for the courtesy and cooperation extended to OCR during the investigation. If you have any questions about this letter, please contact Emily Martin, Senior Investigator, at 312-730-1505 or by email at emily.martin@ed.gov.

Sincerely,

A handwritten signature in blue ink that reads "Ann Cook-Graver". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Ann Cook-Graver
Supervisory Attorney

Enclosure