



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1999 BRYAN ST., 1620
DALLAS, TX 75201-6810

REGION VI
LOUISIANA
MISSISSIPPI
TEXAS

September 29, 2020

Dr. Kent Paredes Scribner, Superintendent
Fort Worth Independent School District
100 North University Drive
Fort Worth, Texas 76107

RE: OCR Case No. 06-10-1552
Fort Worth Independent School District

Dear Superintendent Paredes Scribner:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed against the Fort Worth Independent School District (District) alleging discrimination on the basis of race and national origin.

Specifically, the complainant alleged that, during the XXXX-XXXX school year, the FWISD discriminated against black and Hispanic students at XXXX XXXX XXXX (XXXX) on the bases of race and national origin in the administration of suspensions, discipline for an incident in XXXX XXXX, and truancy referrals, by sanctioning them with more severe penalties than white students (Allegation 1). The complainant also alleged that, during the XXXX-XXXX school year, the FWISD discriminated against black students at XXXX on the basis of race by treating them less favorably than white students with respect to allowing “excused” absences (Allegation 2).

OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d *et seq.*, and its implementing regulation, 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin by recipients of Federal financial assistance from the Department. As a recipient of Federal financial assistance from the Department, the District is subject to Title VI.

Legal Standards

The Title VI regulations, at 34 C.F.R. §100.3(a) and (b), provide that a school district may not deny an individual an opportunity to participate in a program through the provision of services or otherwise afford him an opportunity to do so which is different from that afforded others based on race, color, or national origin. Evidence of racially discriminatory intent can be either direct or circumstantial. Circumstantial evidence is evidence that allows OCR to infer discriminatory intent from the facts of the investigation as a whole, or from the totality of the circumstances. If there is evidence of different treatment, OCR examines whether the school district provided a nondiscriminatory reason for its actions and whether there is evidence that the stated reason is a

pretext for discrimination. To find a violation, the preponderance of the evidence must establish that the school district's actions were based on the student's race.

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.

OCR's Investigation

OCR investigated whether the FWISD during the XXXX-XXXX school year discriminated against black and Hispanic students at XXXX on the bases of race and national origin in the administration of suspensions, discipline for an incident in XXXX XXXX, and truancy referrals (Allegation 1), and discriminated against black students on the basis of race by treating them less favorably than white students with respect to allowing "excused" absences (Allegation 2), in violation of Title VI at 34 C.F.R. §100.3.

OCR investigated the complaint by interviewing the complainant, students, staff and District administrators, and reviewing information submitted by the Complainant and FWISD.

Allegation 1

OSS

For the purpose of determining different treatment in the administration of discipline, OCR reviewed discipline policies and procedures and the discipline records of all 9th through 12th grade students at XXXX who received OSS as for their first disciplinary offense of the XXXX-XXXX school year, and then compared, by race, the disciplinary action taken by the XXXX. With respect to OSS, OCR identified all students who received OSS for their first disciplinary offense of the school year and analyzed three of the most frequent offenses: failing to follow directives, profane/offensive language directed at an employee, and fighting.

OCR identified all students who were disciplined for failing to follow directives as their first disciplinary offense of the year and then compared, by race, the conduct and disciplinary sanctions given. With respect to this discipline category, OCR determined that the evidence was insufficient to establish that black students and Hispanic students were treated differently than similarly situated white students. For example, OCR determined thirteen students (five black, five white, three Hispanic) were disciplined for failing to turn over their cell phones and each was given the same discipline (XXXX XXXX XXXX).

OCR identified all students who were disciplined for profane/offensive language directed at an employee as their first disciplinary offense of the year and then compared, by race, the conduct and disciplinary sanctions given. With respect to this discipline category, OCR determined that the evidence was insufficient to establish that black students and Hispanic students were treated differently than similarly situated white students. For example, OCR determined eleven

students (seven black, one Hispanic, and three white) were disciplined for use of profane/offensive language directed at an employee and given the same discipline (XXXX XXXX XXXX), while two students (one black and one white) were given the same discipline (XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX).

OCR identified all students who were disciplined for fighting as their first disciplinary offense of the year and then compared, by race, the conduct and disciplinary sanctions given. With respect to this discipline category, OCR determined that the evidence was insufficient to establish that black students and Hispanic students were treated differently than similarly situated white students. For example, OCR determined eleven students were disciplined for “fighting” (five black, four Hispanic, and two white) and each was given the same discipline (XXXX XXXX XXXX).

Accordingly, OCR determined that the evidence was insufficient to establish that black students and Hispanic students were treated differently than similarly situated white students.

Incident

OCR also reviewed an incident identified by the complainant. Specifically, the complainant alleged that black and Hispanic students were disciplined for their involvement in a fight that occurred in XXXX XXXX, but white students were not referred for any discipline for their involvement in the events that precipitated the fight.

OCR reviewed the disciplinary records for all students who were disciplined for involvement in the incident and found that eight black students and six Hispanic students were given XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX. According to District witnesses, several white students were involved in the events leading up to the fight.¹

The principal indicated to OCR that the reason that the white students were not referred for discipline was because the Assistant Principal (AP) was unable to identify any of them. However, a letter written by one of the teachers shortly after the incident and sent to the principal identified three of the white students; further, during interviews conducted by OCR, the AP and two teachers stated that several of the white students had been identified to the principal. The AP, who was present during the incident, also told OCR that the behavior of the white students involved during this incident violated multiple provisions of the Code of Conduct, including prohibitions against “provoking [] fights, creating a disturbance . . . and racial harassment.”²

¹ Witnesses told OCR that a group of white XXXX XXXX students XXXX XXXX XXXX XXXX XXXX XXXX directly at a group of XXXX XXXX Hispanic students.

² The XXXX Discipline Management Chart in effect at the time of the incident defined “provoking a fight” as “action or words that contribute to creating a violent atmosphere” and provided that the sanction for “provoking a fight” was from 1 to 3 days of OSS. The District’s policies in effect at the time of the incident defined harassment to include physical, verbal, or nonverbal conduct based on the student’s race, color, national origin that is so severe, persistent, or pervasive that the conduct creates an intimidating, threatening, hostile, or offensive educational environment.

Another employee stated that the principal did not act upon the information provided by teachers about the four white students.

The principal later stated to OCR that the “instigators” were disciplined but that it did not happen immediately because Texas Assessment of Knowledge Skills (TAKS) testing was taking place on campus at that time. The principal also stated to OCR that, because the “instigators” did not actually fight, she decided that they should be suspended but not XXXX XXXX XXXX XXXX XXXX and instructed the assistant principals to discipline the students. However, there were no records of discipline administered to the four students, and the AP told OCR the principal never gave such an instruction. Also, one employee recalled that the principal stated a reason to not punish one of the white students -- “Oh that’s [student], he’s harmless; I know him.”

Based on the foregoing, OCR has concerns that the Principal’s statement that she referred white students involved in the incident is not supported by the District’s documentation or witness accounts.

Truancy

For the purpose of comparing similarly situated students who were marked for truancy, OCR reviewed the FWISD truancy policy and the attendance records of all 9th through 12th grade students at XXXX who were truant 10 or more days during the XXXX-XXXX school year (i.e., those who accumulated ten or more unexcused absences within a 6 month period in a school year) and then compared, by race, the records of truancy court actions that were initiated against 9th through 12th grade students at XXXX.

There were nine dates on which the XXXX filed truancy charges against both Hispanic and black students but did not file truancy charges against any white students, although there were white students who had reached or exceeded ten unexcused absences within the same time period. For instance, on November 10, XXXX, the XXXX filed truancy charges against two Hispanic students who had each accumulated 20 unexcused absences, and one black student who had accumulated ten unexcused absences, but failed to file charges against six white students who had accumulated ten unexcused absences within the same time period. Also, on February 9, XXXX, the XXXX filed truancy charges against three black students who had accumulated 20 unexcused absences, and one Hispanic student who had accumulated ten unexcused absences, but failed to file charges against two white students who had accumulated ten unexcused absences, two white students who had accumulated 20 unexcused absences, and one white student who had accumulated 30 unexcused absences within the same time period. On April 16, XXXX, the XXXX filed truancy charges against one Hispanic student who had accumulated 50 unexcused absences, two Hispanic students who had accumulated 30 unexcused absences and two students (one black, one Hispanic) who had accumulated 20 unexcused absences, but failed to file against one white student who had accumulated 40 unexcused absences, four white students who had accumulated 20 unexcused absences, and three white students who had accumulated ten unexcused absences within the same time period. Moreover, there were no days

in which one or more white students were charged with truancy while no Black or Hispanic students were charged.

Based on the foregoing, OCR has concerns that black and Hispanic students may have been treated differently than white students with respect to the District's referral of students for truancy proceedings.

Allegation 2

OCR reviewed XXXX attendance records to determine whether black students were treated differently than white students in their opportunity to change "unexcused" absences to "excused." OCR randomly selected five school days on which to conduct an initial review of unexcused absences that occurred at XXXX. The evidence showed that a total of 163 black students and 220 white students were initially marked "unexcused" during the five selected school days. The evidence indicated that 21 black students and 59 white students submitted a documented explanation for their unexcused absence that occurred on one of the five selected days, and each of these unexcused absences was approved to be changed to excused or removed from the unexcused absence list. The evidence also showed that 142 black students and 161 white students did not submit a documented explanation for their absence and each of these 303 absences were initially marked as "unexcused," but 55 of them were later excused although there was no evidence of a documented explanation for the change. Of these 55 students, OCR found that both black students (24) and white students (31) records were changed.

Accordingly, OCR determined that the evidence was insufficient to establish that black students were treated differently than white students in their opportunity to change "unexcused" absences to "excused."

Conclusion

Based on its investigation, OCR has concerns that the Principal's statement that she referred white students involved in the incident is not supported by the District's documentation or witness accounts. OCR also has concerns that black and Hispanic students may have been treated differently than white students with respect to the District's referral of students for truancy proceedings. In addition, OCR has concerns that the District in some instances did not maintain records to enable OCR to ascertain its compliance with Title VI. On October 24, 2018, OCR secured the attached Resolution Agreement (Agreement) from the District to resolve these concerns. OCR has determined that the Agreement, when fully implemented, will resolve the concerns under Allegation 1 of this complaint.

This concludes the investigation stage of this complaint and should not be interpreted to address the FWISD's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. Accordingly, as of the date of this letter, the investigation of this complaint is closed; however, OCR will actively monitor the District's implementation of the Agreement.

Regarding Allegation 2, the complainant has a right to appeal OCR's determination 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.

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

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 complainant 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, it 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.

If you have any questions about this letter, you may contact, Tiffany Gray, OCR Attorney, at 214-661-9611, Tiffany.Gray@ed.gov, or Adriane P. Martin, Team Leader, at 214-661-9678, Adriane.Martin@ed.gov.

Sincerely,

Aaron Romine
Acting Regional Director
OCR Dallas Office

Enclosure