



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

1999 BRYAN STREET, SUITE 1620  
DALLAS, TEXAS 75201-6831

REGION VI  
ARKANSAS  
LOUISIANA  
MISSISSIPPI  
TEXAS

July 25, 2019

Mr. Charles Cook, CEO  
Founders Classical Academy at Flower Mound  
1301 Waters Ridge Dr.  
Lewisville, TX 75057

OCR Complaint No: 06-16-1485

Dear Mr. Cook:

This is to notify you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has resolved the above-referenced complaint, filed against the Founders Classical Academy (Academy), in Flower Mound, Texas. The Complainant alleged that the Academy discriminated against her daughter (the Student) on the basis of race (African American) when, during the 2015-2016 school year, it failed to address repeated race-based comments made to the Student at school by her peers (Allegation 1). The complaint also alleged that the Academy retaliated against the Complainant when the school principal refused to XX---to end of phrase---XX after she reported that the Student was being racially harassed at the school and the school failed to respond to reports of the racial harassment (Allegation 2).

This agency is responsible for determining whether entities that receive or benefit from Federal financial assistance, either from the Department or from an agency that has delegated investigative authority to the Department, are in compliance with Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulation at 34 C.F.R. Part 100. Title VI prohibits discrimination based on race, color, or national origin. In addition, the Title VI regulations, at 34 C.F.R. §100.7(e) prohibit school districts from intimidating, coercing, or retaliating against individuals because they engage in activities protected by these regulations. The Academy is a recipient of Federal financial assistance from the Department and is a public entity. Therefore, OCR has jurisdictional authority to process allegations of discrimination and retaliation against the Academy pursuant to Title VI.

Based on the allegations and OCR's jurisdictional authority, OCR opened the following legal issues for investigation:

1. Whether the Academy discriminated against the Student on the basis of race by failing to adequately respond to racially harassing conduct by other students (i.e., XX---to end of phrase---XX), which was sufficient to constitute a hostile environment, of which it had notice during the 2015-2016 school year, in violation of Title VI, at 34 C.F.R. § 100.3; and
2. Whether the Academy retaliated against the Complainant when the principal refused to XX--to end of phrase ---XX after the Complainant reported that the Academy failed to address the racial harassment of the Student, in violation of Title VI, at 34 C.F.R. § 100.7(e).

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

A finding that a recipient has violated one of the laws that OCR enforces must be supported by a preponderance of the evidence (i.e., sufficient evidence to prove that a particular proposition is more likely than not). When there is a significant conflict in the evidence and OCR is unable to resolve that conflict (for example, due to the lack of corroborating witness statements or additional evidence), OCR generally must conclude that there is insufficient evidence to establish a violation of the law.

In reaching our compliance determination, OCR reviewed documents provided by the Complainant and the Academy. In addition, OCR interviewed the Complainant and another parent. With respect to Issue 1, OCR approved the Academy's request to resolve the issue prior to the conclusion of the investigation pursuant to Section 302 of OCR's *Case Processing Manual* (CPM). With respect to Issue 2, based on our review and analysis of the information obtained, OCR has determined that there is insufficient evidence to support a conclusion of noncompliance with Title VI. The basis for OCR's determination is explained below.

### **Issue 1**

The evidence gathered indicates that the Complainant raised ongoing concerns regarding racial harassment of the Student during the 2015-2016 school year. The Academy denies that it created or subjected the Student to a racially hostile environment and asserts that it investigated each incident of racial harassment of which it was aware. The Academy provided OCR with documentation evidencing its responses to some of the Complainant's concerns. While the Academy asserts that it investigated every complaint of racial harassment or incident of which it was aware, the evidence obtained indicates that it did not respond to all of the incidents alleged. Based on the available information, OCR has concerns with the Academy's lack of response to all the alleged racial harassment of the Student.

Section 302 of OCR's CPM provides that a complaint may be resolved at any time when, prior to the conclusion of an investigation, the recipient expresses an interest in resolving the allegation. The provisions of the resulting resolution agreement will be aligned with the complaint allegations or the information obtained during the investigation, and will be consistent with applicable regulations. OCR approved the Academy's request to resolve Issue 1 prior to the conclusion of the investigation.

On July 25, 2019, the Academy submitted the enclosed signed Resolution Agreement (Agreement) to OCR. When fully implemented, the Agreement will resolve Issue 1 in the complaint.

In light of the commitments the Academy has made in the Agreement, OCR finds that Issue 1 is resolved, and OCR is closing its investigation as of the date of this letter. OCR will monitor the Academy's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively. OCR may request additional information as necessary to determine whether the Academy has fulfilled the terms of the Agreement and is in compliance with Title VI with regard to the issues raised.

This concludes OCR's investigation of Issue 1. However, if the Academy fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce the Agreement, OCR shall give the Academy written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

**Issue 2**

*Legal Standard*

Title VI, at 34 C.F.R. § 100.7(e), prohibits recipients from intimidating or retaliating against individuals who engage in an activity protected under Title VI, including complaining of discrimination based on race, filing a race discrimination complaint with OCR, or participating in an OCR investigation. OCR interprets the regulations it enforces to require satisfaction of the following three elements to find a *prima facie* case of retaliation:

- (1) The individual experienced an adverse action caused by the recipient; and
- (2) The recipient knew that the individual engaged in a protected activity or believed the individual might engage in a protected activity; and
- (3) There is some evidence of a causal connection between the adverse action and the protected activity.

If any one of these elements cannot be established, then OCR finds insufficient evidence of a violation. If, however, all of the aforementioned elements are established, OCR inquires as to whether the recipient can identify a legitimate, non-retaliatory reason for taking the adverse action. If so, OCR considers whether the reason given is merely a pretext for retaliation; in other words, whether the reason is not credible or believable.

*Findings and Analysis*

The Complainant alleged that the Academy retaliated against her when XX---to end of phrase ---XX after she reported that the Student was being racially harassed at the school and the school failed to respond to reports of the racial harassment.

The evidence indicates that the Complainant engaged in ongoing protected activities during the 2015-2016 school year. Documentation shows she sent several emails to Academy staff/administrators and otherwise openly voiced her concerns about the racial climate at the Academy when the Student attended.

- XX ---to end of phrase ---XX

A review of the Academy’s XXXXXXXXXXXXXXXX indicates, in relevant part that –

XX ---to end of phrase ---XX

The evidence indicates that the Complainant frequently XXXXXXXXXXXXXXXX Student’s classes and XX---to end of phrase ---XX which, the Student’s teacher felt XX---to end of phrase ---XX. The Academy does not deny that, on XX---to end of phrase ---XX, it placed XX ---to end of phrase ---XX but asserts that the XX--- to end of phrase ---XX learning environment. For example, documentation indicates that in XXXXXXXX the Complainant arrived at the school XX---to end of sentence ---XX. The Academy provided OCR with XX---to end of sentence ---XX. In particular, documentation shows that the Complainant XX---to end of sentence ---XX. Documentation also shows concerns XX---to end of sentence ---XX. Finally, the Academy explained that the XX---to end of sentence ---XX. The Academy told OCR that it XX---to end of sentence ---XX.

It is undisputed that the Complainant engaged in ongoing protected activities during the 2015-16 school year of which the Academy was aware. It is also undisputed that the Academy XX ---to end of sentence ---XX. Based on the above, OCR finds that the evidence establishes a prima facie case of retaliation. Having established a prima facie case of retaliation, OCR next considered whether the Academy articulated a legitimate, non-retaliatory reason for imposing XX---to end of sentence ---XX. OCR determined that the weight of the evidence supports the Academy's reasons for its actions. OCR carefully considered whether there was any evidence that the Academy's explanation was a pretext for discrimination. As noted above, OCR found documentation XX---to end of phrase ---XX which comported with the Academy's proffered reason for its action. OCR also found that the Academy took the same action with XX---to end of sentence ---XX. OCR provided the Complainant the opportunity to respond to the Academy's assertions regarding this issue. While she denied that XX---to end of sentence ---XX. Based on the weight of the evidence, OCR finds the Academy's articulated reasons to be legitimate and non-discriminatory. OCR did not find evidence that the Academy's explanation was a pretext for discrimination.

- XX ---to end of phrase ---XX

While the Complainant alleged to OCR that the Academy XX---to end of sentence ---XX Documentation shows that the XXXXXXXXXXXX explained to the Complainant that XX---to end of sentence ---XX. In a rebuttal response to OCR, the Complainant again acknowledged that XX---to end of sentence ---XX. Based on the above, OCR finds the weight of the evidence does not support a finding that the alleged adverse action occurred as alleged. Based on the information above, OCR finds that there is insufficient evidence to support a conclusion of noncompliance with Title VI with respect to Issue 2.

The Complainant has a right to appeal OCR's determination with regard to Issue 2 within 60 calendar days of the date indicated on this letter. An appeal can be filed electronically, by mail, or fax. The Complainant must either submit a completed online appeal form at <https://wdcrobcolp01.ed.gov/CFAPPS/OCR/ocrAppealsForm.cfm>, or mail a written statement of no more than ten (10) pages (double-spaced, if typed): if submitted by mail, please send to the Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue SW, Washington, D.C. 20202. If submitted via e-mail, send to [OCR@ed.gov](mailto:OCR@ed.gov); if submitted via fax, please send to 202-453-6012. The filing date on an appeal is the date the appeal is postmarked, submitted electronically or submitted via fax. In the appeal, the Complainant must explain why she believes 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. OCR will forward a copy of the Complainant's appeal form or written statement to the recipient. The recipient has the option to submit to OCR a response to the Complainant's appeal.

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

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.

If you have any questions regarding this letter, please contact Linda Floyd, the attorney assigned to this complaint, at (214) 661-9657, or linda.floyd@ed.gov. You may also contact me at (214) 661-9600.

Sincerely,

/s/

Melissa Malonson  
Supervisory Attorney/Team Leader  
Office for Civil Rights  
Dallas Office

Enclosure

Cc: XX---to end of phrase---XX