



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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February 5, 2018

VIA EMAIL ONLY

XXXXX XXXXX
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XXXXX, XXXXX XXXXX

Re: Académie Lafayette School
OCR Case Number 07-16-1053

Dear Ms. XXXXX:

On November 18, 2015, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint against the Académie Lafayette School (School), Kansas City, Missouri, alleging discrimination on the bases of sex and race. This letter is to confirm that the District has voluntarily submitted a Resolution Agreement (Agreement) to resolve Allegation 1. For the reasons set out below, OCR determined there is insufficient evidence to conclude the School discriminated against the Complainant's son as alleged in Allegation 2. OCR is administratively closing Allegation 3.

OCR investigated whether the School:

1. subjected the Complainant's daughter (Student A) to harassment on the basis of sex (insults, derogatory expression) by staff members and failed to adequately respond to complaints the Complainant made alleging sex-based harassment during the 2014-15 school year;
2. discriminated against the Complainant's son (Student B) on the basis of race by disciplining him differently and more harshly than similarly situated white students; and
3. discriminates against African American students by disciplining them more frequently and more harshly on the basis of race than similarly situated white students.

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

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, 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 (FFA);
- Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681, and its implementing regulation, 34 C.F.R. Part 106. Title IX prohibits discrimination on the basis of sex in any education program or activity operated by a recipient of FFA.

As a recipient of FFA from the Department, the School is subject to these laws. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

To protect individuals' privacy, the names of employees, witnesses, and other parties also were not used in the letter.

OCR applies a preponderance-of-the-evidence standard to determine whether the evidence is sufficient to support a particular conclusion. Specifically, OCR examines the evidence in support of and against a particular conclusion to determine whether the greater weight of the evidence supports the conclusion or whether the evidence is insufficient to support the conclusion.

In reaching a determination in this complaint, OCR considered documentation the Complainant and the School submitted, including contemporaneous emails and records and School policies and procedures. OCR interviewed the Complainant, the Principal, and the Vice Principal. The legal and factual bases for OCR's determination are set forth below.

Allegation 1

The Complainant alleged the School subjected Student A to harassment on the basis of sex by staff members and failed to adequately respond to complaints the Complainant made alleging sex-based harassment during the 2014-15 school year.

Legal Standard

The Title IX regulation at 34 C.F.R. § 106.31 provides generally that, except as provided elsewhere in the regulation, no person shall on the basis of sex be excluded from participation in, denied the benefits of, or subjected to discrimination in education programs or activities operated by recipients of Federal financial assistance.

Under Title IX, schools that receive FFA are responsible for providing students with a nondiscriminatory educational environment. Sexual harassment that creates a hostile environment is a form of sex discrimination prohibited by Title IX. Sexual harassment is unwelcome conduct of a sexual nature. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, such as sexual assault or acts of sexual violence. Sexual harassment of a student creates a

hostile environment if the conduct is sufficiently serious that it interferes with or limits a student's ability to participate in or benefit from the recipient's program.

OCR considers a variety of related factors to determine if a sexually hostile environment has been created and considers the conduct in question from both an objective and a subjective perspective. Factors examined include the degree to which the misconduct affected one or more students' education; the type, frequency, and duration of the misconduct; the identity of and relationship between the alleged harasser and the subject or subjects of the harassment; the number of individuals involved; the age and sex of the alleged harasser and the subject of the harassment, the size of the school, location of the incidents, and the context in which they occurred; and other incidents at the school. The more severe the conduct, the less the need to show a repetitive series of incidents; this is particularly true if the harassment is physical. A single or isolated incident of sexual harassment may, if sufficiently severe, create a hostile environment.

Once a school knows or reasonably should know of possible sexual harassment, it must take immediate and appropriate action to investigate or otherwise determine what occurred. If an investigation reveals that sexual harassment created a hostile environment, a school must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment, prevent the harassment from recurring and, as appropriate, remedy its effects. If a school delays responding to allegations of sexual harassment or responds inappropriately, the school's own action may subject the student to a hostile environment. If it does, the school will be required to remedy the effects of both the initial sexual harassment and the effects of the school's failure to respond promptly and appropriately.

Findings of Fact

The School is a public charter school serving students in kindergarten through eighth grade. The School uses a French language immersion program in educating students. Student A was an eighth grade student at the School during the 2014-15 school year. The Complainant told OCR that School staff made two sexually harassing statements to Student A and the School failed to respond to the Complainant's concerns when he raised them with School staff.

The Complainant told OCR that the first comment occurred on or about June 5, 2015, when Student A was conversing with a few female classmates while seated on the hallway floor. The Vice Principal passed the group of girls, and told the group, in French, to get up, and asked if they were "looking to sell their bodies for money." Student A and her peers took this as a reference to prostitution. The Complainant stated the Vice Principal also passed a group of male students sitting on the floor, but did not make a similar comment.

OCR reviewed a statement from Student A dated June 1, 2015, where she recounted the above incident. Her account did not mention a group of male students, but added that she and the other female students reported this incident to their science teacher.

The Complainant told OCR the second sexually harassing comment was made on or about June 10, 2015, when Student A's Spanish teacher told her that she would be socially rejected if she was a lesbian.

OCR reviewed a statement from Student A dated June 1, 2015, where she recounted the above incident. Her account stated that during Spanish class:

[Name redacted] and I were playing in class and were touching and smacking and laying on each other doing handshakes etc. and the teacher then notified us at the end of class that we would have to talk with her after class. So when class ended we went up to her and she was asking us what high school we were attending and how we are going to be questioned about our behavior towards each other. [Name redacted] and I responded with "um, alright" she was saying good luck at going to those high schools and we said ok.

The Complainant told OCR he emailed the School about these incidents, and subsequently he and his wife met with the principal. The Complainant stated he waited several weeks to hear back from the School. When he did not, he sent an email asking School staff about the status of the investigation. He said he was told by School staff that because he had not provided additional information the School requested, the School never started the investigation. The Complainant told OCR that the Principal later confirmed receipt of the information, but no investigation occurred.

The Principal told OCR that on May 18, 2015, he received a letter from the Complainant dated May 14, 2015, that very generally referenced inappropriate sexual remarks made by staff in the School, and requested a swift response. The Principal stated that he emailed the Complainant that day to set up a meeting to get more details so that he could investigate the matter. The Complainant responded four days later that he was available the following week to meet regarding the allegations of the letter. The Principal to OCR he was surprised by the Complainant's response because it seemed from the letter that the matter was extremely urgent.

The Principal stated that he met with the Complainant and his wife on May 28, 2015. At that meeting, the Complainant gave the Principal details regarding the two incidents alleged above. The Principal stated he requested the names of the other girls who were present during the first incident so that he could proceed with an investigation. The Principal asked that the Complainant provide the information as soon as possible because the last day of school (June 1, 2015) was just a few days later and once school was no longer in session, an investigation would be very difficult. The Complainant emailed the Principal the requested information on June 1, 2015, however the Principal did not see it until later in the day, when the eighth graders had already been dismissed for the day to prepare for graduation ceremonies.

The Principal told OCR that he was unable to investigate the first incident due to the delay in receiving the information, and the fact that the girls involved in the incident graduated and dispersed to different high schools. The Principal told OCR that he did not investigate the second incident because the Spanish teacher's contract was not renewed and she did not come to the School from May 28 through June 1, 2015.

The Principal told OCR that after the June 1, 2015 email, he next heard from the Complainant about the incidents in October or November 2015. The Complainant contacted him about a different matter, and followed up on the status of the investigation. The Principal informed the Complainant that he had not completed an investigation for the reasons stated above.

The Vice Principal told OCR that he first learned that an allegation of sexual harassment was made against him in November 2015. He stated that he was shocked and surprised at the allegation, and the fact that he was first hearing of it so many months after it allegedly occurred. The Vice Principal denied making the alleged comment to Student A and her classmates.

Before OCR completed its investigation, the School requested to resolve Allegation 1 pursuant to Section 302 of OCR's *CPM*. On February 2, 2018, the School submitted to OCR the enclosed Resolution Agreement that, when fully implemented, will resolve the allegation.¹ Specifically, the Agreement requires the School to: (1) revise its notice of non-discrimination, grievance procedures, and its designation of a Title IX coordinator as appropriate; and (2) conduct internal training with relevant School administrators and staff regarding the revisions.

Allegation 2

The School discriminated against Student B on the basis of race by disciplining him differently and more harshly than similarly situated white students.

Legal Standards

Under Title VI and its implementing regulation at 34 C.F.R. § 100.3(a), no person shall, on the basis of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program receiving Federal financial assistance. The regulation, at 34 C.F.R. § 100.3(b)(1)(i)-(vi) further states, in relevant part, that a recipient may not, on the basis of race, deny an individual any service or benefit of its programs; provide any service or benefit to an individual which is different or provided in a different manner than that provided persons of other races; subject an individual to segregation or separate treatment in any matter related to receipt of any service or other benefit under the programs; restrict an individual in the enjoyment of any benefits of its programs; treat an individual differently from persons of other races in determining whether he or she satisfies any admission, enrollment, eligibility, or other requirement or condition to be provided any service or other benefit in its programs; or deny an individual an opportunity to participate in a program through the provision of services or otherwise or afford an individual an opportunity to do so which is different from that afforded persons of other races under the program. The regulation, at 34 C.F.R. § 100.3(b)(2), also provides, in relevant part, that a recipient may not utilize criteria or methods of administration that have the effect of subjecting individuals to discrimination on the basis of race, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race.

¹ During the investigation, OCR identified concerns in the School's published notice of nondiscrimination, grievance procedures and use of Title IX coordinator. The Agreement does not provide an individual remedy to Student A. Student A graduated from the School in 2015, before the complaint was filed.

Title VI prohibits districts from intentionally disciplining students differently based on race. Enforcement of a rule or application in a discriminatory manner is prohibited intentional discrimination. When similarly-situated students of different races are disciplined differently for the same offense, discrimination is one explanation for the different treatment. Intentional discrimination in the administration of student discipline can take many forms, however, and can be proven even without the existence of a similarly-situated student. Additionally, a district's adoption of a facially neutral policy with an invidious intent to target certain races is prohibited intentional discrimination.

Title VI protects students from discrimination on the part of entities the district exercises some control over, whether through contract or some other arrangement. This includes contracts or arrangements for another entity to be responsible for aspects of a district's student safety or student discipline program. Schools cannot divest themselves of responsibility for the non-discriminatory administration of school safety and student discipline by relying on school resource officers, school district police officers, "contract" law enforcement companies or other contractors or law enforcement personnel over whom the school can exercise some control.

OCR looks at whether there is evidence that the student was treated differently than students of other races under similar circumstances, and whether the treatment has resulted in the denial or limitation of educational services, benefits or other opportunities. OCR will determine 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.

Findings of Fact

Student B was a seventh grader at the School during the 2015-16 school year, the academic year relevant to allegation 2. The Complainant told OCR Student B is multi-racial, white and African American. The Complainant told OCR that in October or November 2015 Student B got into an altercation with a white student (Student C) while his class was at a park. The Complainant stated that the altercation was initiated by Student C, who used racial slurs when referencing Student B. The Complainant learned that the School was imposing the same punishment on both Student B and C. The Complainant stated he immediately contacted the Vice Principal by email and copied the Principal on the message to express his concern that the two students were being disciplined similarly, although Student C used racial slurs and Student B did not.

The Vice Principal told OCR that the altercation between Student B and C occurred in a local park following Student B's school-sponsored trip to UMKC to take a French exam. He told OCR that he is the administrator who imposes discipline in the School. He was not at the park when the altercation occurred but one of the teacher chaperones reported the altercation to him. The teacher chaperone told him that Students B and C were physically fighting but did not report that Student C used racial slurs. Because he understood the conduct of both students involved to be

identical, he imposed one day of out-of-school suspension (OSS) on both students.² The Vice Principal told OCR that after he was informed that Student C used racial slurs he conducted additional investigating, interviewing several student witnesses, and concluded Student B had in fact used racial slurs against Student B. As a result, he imposed an additional day of OSS on Student C.

OCR reviewed contemporaneous documentation of the incident. Based on the behavior report forms and emails reviewed, OCR determined the altercation occurred on November 5, 2015. The Vice Principal imposed the initial OSS on both students on November 6, 2015, to be served on November 10, 2015. On November 9, 2015, the Complainant emailed the Vice President and Principal expressing concern that the same penalty was imposed on both students, though one student used a racial slur and the other did not. That same day, the Vice Principal interviewed student witnesses and obtained written statements regarding what transpired during the altercation. OCR reviewed two student statements, one of which confirmed Student C had used a racial slur. On November 11, 2015, the Vice Principal discussed the racial slur aspect of the altercation with Student C and his parent, and imposed a second day of OSS on him, to be served on November 16, 2015.

Legal Analysis and Conclusion

As the Complainant alleges different treatment on the basis of race, OCR initially analyzed whether there was any direct evidence of race discrimination. In order to find direct evidence of discrimination, OCR must find that an adverse action was motivated by a specific intent to discriminate. OCR did not find evidence of any biased or discriminatory statements by the School against Student B during the discipline process, nor did OCR discern a clear discriminatory motive behind Student B's treatment. Therefore, OCR determined there was no direct evidence of race discrimination in the instant case and turned to a *prima facie* case analysis.

OCR next determined whether there was evidence that Student B was treated differently than students of other races under similar circumstances, and whether the treatment resulted in the denial or limitation of educational services, benefits or other opportunities. OCR determined that on November 6, 2015, the Vice Principal determined Student B and Student C involved in the altercation engaged in identical conduct and imposed identical disciplinary measures against both students. Subsequently, when the Vice Principal received information that showed Student C used a racial slur, he investigated and determined additional discipline was appropriate for Student C, which he imposed. OCR finds by a preponderance of the evidence that the School did not treat Student B differently than a similarly situated of a different race. Consequently, OCR is closing Allegation 2 as of the date of this letter.

² The Vice Principal told OCR the School does not differentiate between a student who initiates the fight and the other student who is involved, as the School is trying to teach all students to avoid fighting, even if it means stepping away from a fight someone else started.

Allegation 3

By letter dated January 22, 2016, OCR notified the School that OCR had received a complaint alleging discrimination based on sex and race. That letter advised the School that in addition to the individual allegations of the complaint, OCR would be investigating whether the School discriminates against African American students by disciplining them more frequently and more harshly on the basis of race than similarly situated white students. OCR has concluded that this allegation should be closed pursuant to Section 110(o) of OCR's CPM.

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 School 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, 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, please contact XXXXX XXXXX, Attorney, at (816) 268-XXXX (voice) or (877) 521-2172 (telecommunications device for the deaf), or by email at XXXXX.XXXXX@ed.gov.

Sincerely,

Anne Bradley
Acting Supervisory Attorney

Enclosure