



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VII
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March 27, 2018

Sent via email only to matthew.seebaum@k12.sd.us

Dr. Matthew Seebaum
Rapid City Area School District
300 Sixth Street, Ste. 310
Rapid City, South Dakota 57701

Re: Rapid City Area School District #51-4
OCR Case Number: 07-17-1262

Dear Dr. Seebaum:

On September 7, 2017, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint against the Rapid City Area School District #51-4 (District), Rapid City, South Dakota alleging discrimination on the basis of race, color, or national origin. This letter is to confirm that the District has voluntarily submitted a Resolution Agreement (Agreement) to resolve the complaint.

The Complainant alleged that the District failed to adequately respond to her complaint of race-based peer harassment of the Complainant's son (the Student). The Complainant alleged that she filed an internal grievance with the District in response to an incident where another student called the Student a racially derogatory name during a XXXXX XXXX event in XXXXX XXXX. OCR investigated whether the District discriminated against the Student by failing to adequately respond to race-based peer harassment of which the District had or should have had notice and which was sufficient to constitute a hostile environment, in violation of 34 C.F.R. § 100.3(a) and (b).

OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964 (Title VI), 42 United States Code (U.S.C.) § 2000d, and its implementing regulation, 34 Code of Federal Regulations (C.F.R.) Part 100. As a recipient of Federal financial assistance from the Department, the District is subject to the provisions of Title IV.

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

Legal Standard

A violation of Title VI may be found if a recipient has created or is responsible for a racially hostile environment i.e., harassing conduct (e.g., physical, verbal, graphic, or written) that is 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

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

recipient. A recipient has subjected an individual to different treatment on the basis of race if it has effectively caused, encouraged accepted, tolerated or failed to correct a racially hostile environment of which it has actual or constructive notice (as discussed below).

Under this analysis, an alleged harasser need not be an agent or employee of the recipient, because this theory of liability under Title VI is premised on a recipient's general duty to provide a nondiscriminatory educational environment.

To establish a violation of Title VI under the hostile environment theory, OCR must find that: (1) A racially hostile environment existed; (2) the recipient had actual or constructive notice of the racially hostile environment; and (3) the recipient failed to respond adequately to redress the racially hostile environment. Whether conduct constitutes a hostile environment must be determined from the totality of the circumstances, with particular attention paid to the factors discussed below.

Severe, Pervasive or Persistent Standard

To determine whether a racially hostile environment exists, it must be determined if the racial harassment is severe, pervasive or persistent. OCR will examine the context, nature, scope, frequency, duration, and location of racial incidents, as well as the identity, number, and relationships of the persons involved. The harassment must in most cases consist of more than casual or isolated racial incidents to establish a Title VI violation. Generally, the severity of the incidents needed to establish a racially hostile environment under Title VI varies inversely with their pervasiveness or persistence.

When OCR evaluates the severity of racial harassment, the unique setting and mission of an educational institution must be taken into account. An educational institution has a duty to provide a nondiscriminatory environment that is conducive to learning. In addition to the curriculum, students learn about many different aspects of human life and interaction from school. The type of environment that is tolerated or encouraged by or at a school can therefore send a particularly strong signal to, and serve as an influential lesson for, its students.

Under Title VI and its implementing regulation at 34 CFR § 100.3, no individual may be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination on the ground of race, color, or national origin under any program or activity that receives FFA from the Department. Recipients may violate Title VI and its implementing regulations when harassment of students based on race, color, or national origin is sufficiently serious that it creates a hostile environment, and such harassment is encouraged, tolerated, not adequately addressed, or ignored by recipient employees. Harassing conduct may take many forms, including verbal acts and name-calling; graphic and written statements, which may include use of cell phones or the internet; or other conduct that may be physically threatening, harmful, or humiliating. Harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents. Harassment creates a hostile environment when the conduct is sufficiently severe, pervasive, or persistent so as to interfere with or limit a student's ability to participate in or benefit from the services, activities, or opportunities offered by a recipient.

Recipient's Response

Once a recipient has notice of a racially hostile environment, the recipient has a legal duty to take reasonable steps to eliminate it. Thus, if OCR finds that the recipient took responsive action, OCR will evaluate the appropriateness of the responsive action by examining reasonableness, timeliness, and effectiveness. The appropriate response to a racially hostile environment must be tailored to redress fully the specific problems experienced at the institution as a result of the harassment. In addition, the responsive action must be reasonably calculated to prevent recurrence and ensure that participants are not restricted in their participation or benefits as a result of a racially hostile environment created by students, employees, or non-employees.

In evaluating a recipient's response to a racially hostile environment, OCR will examine disciplinary policies, grievance policies, and any applicable anti-harassment policies. OCR also will determine whether the responsive action was consistent with any established institutional policies or with responsive action taken with respect to similar incidents.

Examples of possible elements of appropriate responsive action include imposition of disciplinary measures, development and dissemination of a policy prohibiting racial harassment, provision of grievance or complaint procedures, implementation of racial awareness training, and provision of counseling for the victims of racial harassment.

Preliminary Investigative Findings

The Student, an XXXXX XXXXX male, attended XXXXX grade at XXXXX XXXXX during the 2016-17 school year. Prior to the start of the 2017-18 school year, the Student was enrolled in XXXXX grade at XXXXX XXXXX and was participating in the XXXXX XXXXX XXXXX program. The Complainant filed an internal grievance with the District regarding an incident that occurred at a XXXXX XXXXX XXXXX XXXXX event on XXXX XX, XXXX. On XXXX XX, 2017, following the incident and prior to the first day of the 2017-18 school year, the Student transferred from XXXXX XXXXX to XXXXX XXXXX. The District's first day of the 2017-18 school year was on August 30, 2017. In late XXXXX or XXXXX 2017, the Student withdrew from the District.

On XXXXX XX, 2017, the Complainant notified an assistant coach (Assistant Coach) that another student athlete (Student B) had shoved the Student and called the Student a racial epithet several times earlier that day at XXXXX XXXXX XXXXX. The District provided OCR copies of email correspondence between the Complainant and the District. The Complainant memorialized her verbal report concerning peer racial harassment in an email sent to coaching staff and school administrators during the early morning hours of XXXXX XX, 2017. In this email, the Complainant characterized the incident as racial discrimination and requested that the District address the incident pursuant to District Policy AC ("Discrimination and Harassment") and District Policy JFC ("Student Conduct").

OCR requested documentation detailing the actions taken to investigate Complainant's report of racial harassment of the Student by his peers. The District provided OCR the School Athletic Director's summary of the investigation ("Summary"). The Summary indicates the School

Athletic Director was notified on XXXXX XX, 2017, of an incident that allegedly occurred between the Student and Student B. Sentence redacted. On August 19, 2017, a meeting was convened with the Head Coach, Assistant Coach, Student B and his parents, the Student and his parents, and the School Athletic Director present. The Student provided his recollection of the incident. Student B indicated that he had confronted the Student about posts the Student had made on social media, but denied using any racial slurs. At this meeting, the Student provided the names of three potential witnesses to the incident. The District provided OCR witness statements obtained from the three student XXXXX XXXXX the Student identified, as well as a statement from Student B. Sentence redacted.

The District provided an August 22, 2017 email from the School Athletic Director to the Complainant. The School Athletic Director wrote, in relevant part, in his email to the Complainant:

In response to the allegation made by [the Student] against another student-athlete, we met on Saturday, August 19 with [Student B] and his parents, as well as coaches, to discuss the matter. I appreciate your willingness to meet with the other party. Sentence Redacted. [Student B] denied making the remarks to [the Student] and provided the names of witnesses he said would corroborate his allegation against the other boy. Three names were given. I met with all three witnesses that you requested I interview. I asked all three to write statements. Each one of the witnesses stated that they did not see or hear what [the Student] is alleging took place. [Student B] maintains that he did not say the things he is being accused of. Due to the fact that we cannot prove the allegations brought forward by [the Student], due to [Student B] denying the actions took place and not having any witnesses to corroborate the allegations, we are not in a position to charge [Student B] with any violation of policy or conduct. The written statements from the student witnesses have been forwarded on to the Central Office Administration so their authenticity can be verified. This concludes my investigation into the matter.

In an email sent shortly after the School Athletic Director's email containing the determination, the Complainant disagreed with the outcome and challenged aspects of the District's investigation, including the manner in which witness statements were collected from the other students and how the District made credibility determinations. The Complainant indicated that the Student and Student B had another confrontation that included the same racial slur earlier in the summer at a non-school sponsored event, but that the incident was not reported. The Complainant concluded by requesting a copy of all documentation obtained by the District during the course of its investigation. The Complainant told OCR that she did not appeal the outcome of the investigation.

As part of its investigation, OCR reviewed relevant District policies and procedures. The District's Policy AC "Discrimination and Harassment Policy and Procedure" (effective June 2017) directs students to report all incidents of discrimination, including race harassment to a school-level counselor, teacher, or principal. Specifically, Policy AC states:

Discrimination is defined as conduct including words, gestures, and other actions which disadvantages a person (or group) based upon the person's or group's age, citizenship, color, creed, disability, ethnic background, national origin, political affiliation race, retaliation, sex (including pregnancy), sexual origination, veteran status, or any other protected characteristic under applicable federal or state law.

District Policy AC states that if the matter is not resolved at the building level within ten days, the student is to follow the procedures set forth in District Policy KL "Public Complaint Policy and Procedure". District Policy AC directs parents to follow the procedures set forth in District Policy KL. District Policy AC also directs employees who receive a complaint of harassment from a student to the school principal. Additionally, District Policy AC directs employees who witness harassment or discrimination to notify the Public Complaint Coordinator/Director of Human Resources.

District Policy KL outlines the formal resolution process for responding to complaints alleging "violations or misinterpretations of District Policies" and provides timeframes for filing complaints, a process for impartial investigation, and notice of the outcome of the investigation to the policy KL also identifies the process for complainants who are dissatisfied with the outcome to appeal the decision through the Superintendent and ultimately to the District's Board of Education.

The District's 2017-18 High School Activity Handbook (Activity Handbook) provides a "Public and Student Grievance Procedure" which is applicable to "constructive complaints/or ideas concerning school personnel, the curriculum, instructional materials, or concerning school services and school facilities." The policy is not applicable to complaints of race discrimination or harassment. The 2017-18 Activities Handbook also includes a section titled "Racial Harassment, Violence, and Taunting in SDHSAA Sponsored Athletic and Fine Arts Activities." This section contains a general prohibition on racial discrimination and harassment in South Dakota High School Activities Association-sponsored activities and states that it is a violation for a participant in SDHSAA activities to engage in "racial harassment, racial violence, and taunting."

Resolution

On January 29, 2018, the District expressed to OCR an interest in engaging in resolution negotiations pursuant to Section 302 of OCR's *Case Processing Manual (CPM)*.¹

Prior to the completion of OCR's investigation into the complaint, the District submitted a signed Agreement (copy enclosed) on March 27, 2018, that, when fully implemented, will address the complaint allegations. Pursuant to the Agreement, the District will make certain revisions to its Discrimination and Harassment policies and procedures and provide training to staff on those policies and procedures. Additionally, if the Student reenrolls in the District during the 2017-18 or 2018-19 school years, the District will provide written notice to the Complainant stating that the District will take any steps necessary to ensure that the Student is not subjected to

¹ The *Case Processing Manual* is available on OCR's website at <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

harassment, including race-based harassment, or a hostile environment on the basis of race, color, or national origin on District grounds and in District-sponsored activities. Please consult the Agreement for further details.

OCR considers the complaint allegations resolved effective the date of this letter and will monitor the District's implementation of the Agreement. When OCR concludes the District has fully implemented the terms of the Agreement, OCR will close the complaint. If the District fails to carry out the Agreement, OCR may resume its investigation.

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, please be advised that 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 personal privacy.

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.

If you have any questions, please contact XXXXX X 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,

Kelli Douglas
Supervisory Attorney

Enclosure