



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1244 SPEER BLVD, SUITE 310
DENVER, CO 80204-3582

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November 30, 2017

K.J. Weihing
Vice President of Finance
Skyline Education, Inc.
2020 N. Arizona Ave., Ste 109
Chandler, AZ 85225

By email only to kjweihing@skylineschools.com

Re: South Valley Prep and Arts Academy
Case Numbers: 08-15-1083 and 08-15-1189

Dear Mr. Weihing:

On January 6, 2015, we received a complaint of discrimination against South Valley Prep and Arts Academy (School) [case number 08-15-1083]. Specifically, the complainant alleged that the School discriminated against her son (the Student) by subjecting him to different treatment in discipline on the basis of his race and sex, when he was suspended in December 2014. She also alleged that the Student was racially harassed by other students during the 2014-15 school year and the School did not take appropriate steps to address the harassment. Finally, she alleged the School retaliated against the student because she filed a complaint with the Arizona State Board for Charter Schools (Board) when the student's dance teacher refused to interact with and instruct him.

On April 14, 2015, we received a second complaint of discrimination against the School [case number 08-15-1189]. Specifically, the complainant alleged that the School retaliated against her for filing a complaint with OCR (case number 08-15-1083) when it sent her a "cease and desist" letter dated April 13, 2015, restricting her means of communication with School staff to email or voicemail.

We are responsible for enforcing Title VI of the Civil Rights Act of 1964 and its implementing regulation at 34 Code of Federal Regulations Part 100, which prohibit discrimination on the basis of race, color, or national origin in programs and activities that receive Federal financial assistance from the U.S. Department of Education; and Title IX of the Education Amendments of 1972 and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in education programs and activities that receive Federal financial assistance from the Department. In addition, individuals filing a complaint, participating in an investigation, or asserting a right under Title VI are protected from intimidation or retaliation by 34 C.F.R. § 100.7(e) and under Title IX by 34 C.F.R. § 106.71, which incorporates 34 C.F.R. § 100.7(e). As a recipient of Federal financial assistance from the Department, the School is subject to these laws and regulations.

During our investigation, we interviewed the complainant and reviewed documentation and other information provided by the complainant and the School. Through our investigation we found insufficient evidence to establish that the School subjected the Student to different treatment in discipline as alleged. With regard to the complainant's allegations that the Student was racially harassed by other students, that the School retaliated against her for filing an OCR complaint and the School retaliated against her son because she filed a complaint with the State Board, the School indicated its desire to voluntarily enter into an agreement to resolve these allegations pursuant to Section 302 of the Case Processing Manual. We reviewed this request and determined that it justified entering into an agreement without completing a full investigation of the allegations.

Background

The School opened in 2012 with the stated mission of providing children of low income and minority families the opportunity for a quality education and participation in sports and performing arts programs. In 2015, the School had 224 enrolled students of which 117 (52%) were Hispanic or Latino, 70 (31%) were African American and 36 (16%) were Caucasian. The remainder of the student population was composed of American Indian or Alaska Native students (7), Asian students (4), Native Hawaiian or Other Pacific Island students (3) and those students of two or more races (7).

The Student was an African American male enrolled in the XXXXX grade.

Alleged Different Treatment in Discipline

To determine whether the School treated the Student differently under Title VI and its implementing regulation at 34 C.F.R. § 100.3 (a) and (b) and Title IX and its implementing regulation at 34 C.F.R. § 106.31 (a) and (b) we must determine: 1) what action was taken against the Student, 2) whether the School followed its policies and procedures, and 3) how similarly situated students were treated compared to the Student. If the School did not follow its policies or if the Student was treated differently, then we determine whether there was a legitimate, non-discriminatory reason for the different treatment, and whether the reason was a pretext for discrimination.

The complainant alleged that the Student received an out-of-school suspension on December 3, 2014, after he was involved in a name-calling incident with a white, female student. The complainant asserted that the female student was not disciplined for the incident.

The School responded that the Student was not disciplined in December 2014¹. The School stated that during its investigation of the complainant's internal complaint made to School staff alleging harassment/bullying of the Student, School staff learned that the Student and a white female student appeared to have engaged in mutual misconduct toward one another. Because the misconduct seemed to be mutual, the School stated that neither student was disciplined. Instead,

¹ Although not at issue in this case, the School noted that the student received a five-day in-school suspension on October 27, 2014, and a three-day out-of-school suspension on January 13, 2015.

the School asked that both students and their parents sign a “no contact order” which it described as an agreement that the students will have no contact with one another. The School noted that the female student and her parents signed the agreement and the School changed her class schedule to ensure she would not have contact with the Student. The School stated the complainant refused to sign the agreement and would not allow the Student to sign it.

The School acknowledged that the complainant sent an email to the Vice Principal on December 2, 2014, naming numerous students she believed were bullying the Student. The School stated that the Vice Principal initiated an investigation upon receiving the complainant’s email. According to the School, the complainant expressed concerns about the Student’s safety in her email to the Vice Principal. Responding to her concerns, School administrators suggested, and the complainant agreed, that it would be in the Student’s best interest to remain home the next day, December 3, while the Vice Principal interviewed the alleged perpetrators. The School asserted that the Student was welcome to attend school on December 3rd had the complainant wanted him to; the Student was not suspended. We found that the Vice Principal sent an email to the Principal on December 7, 2014, stating that she had suggested to the complainant that the Student stay home on December 3 so she could investigate the complainant’s claims.

The complainant asserted that the Student was prohibited from attending classes on December 3. The complainant stated that in all of her emails and conversations with School staff regarding the incident at no time was the Student’s safety mentioned. The complainant said she repeatedly used the word “discipline” and mentioned the other student’s discipline in her emails with the Vice Principal but not once did the Vice Principal correct the complainant and make clear that the Student was to stay home for his safety. The complainant stated that she was so upset by the discipline handed out to the Student that the Vice Principal said she would not make a written record of the discipline in order to placate her. Alternately, the complainant claimed that the Vice Principal refused to put the Student’s out-of-school suspension in writing.

We reviewed the complainant’s emails from this time period and found that she did use the words “punishment” and “discipline” in reference to the students the School found had tried to get another student in trouble and the discipline they were to receive. We noted the complainant sent an email to the Arizona State Board for Charter Schools on December 10, 2014. In that email, she stated that the Vice Principal called her on December 2, 2014, “telling me **my student would need to stay home** on 12/03/2014 as she was going to perform an investigation” of the complainant’s complaint that the Student had been bullied [emphasis in original].

In response to the complainant’s claims of harassment, the Vice Principal interviewed the students involved and found that the Student had been the one to initiate the misconduct toward other students including name calling, insulting students’ mothers and families and threatening other students. The School stated that no students were disciplined as a result of the investigation. Instead, School administrators decided it would be in the Student’s best interest to facilitate a resolution with the other students.

Based on the available evidence, we found insufficient evidence to confirm the complainant’s assertion that the Student was disciplined in December 2014. Therefore, we conducted no

further analysis of her allegation that the School subjected the Student to different treatment in discipline.

Alleged Failure to Respond to Racial Harassment and Retaliation against the Student and Complainant

As noted earlier, the complainant alleged that the Student was racially harassed by other students during the 2014-15 school year and the School did not take appropriate steps to address the harassment. She further alleged the School retaliated against the Student because she filed a complaint with the State Board when the student's dance teacher refused to interact with and instruct him. Additionally, the complainant alleged that the School retaliated against her for filing a complaint with OCR (case number 08-15-1083) when it sent her a "cease and desist" letter dated April 13, 2015, restricting her means of communication with School staff to email or voicemail.

The School acknowledged that the complainant raised concerns with School staff regarding interactions between the Student and his peers. While these incidents were addressed by staff, the School denied that the complainant mentioned any concern over race-based harassment. The School also denied that the Student's dance teacher retaliated against him because the complainant filed a complaint with the State Board. According to the School, the Student's classroom teachers were unaware the complainant had filed a complaint with the State Board and, therefore, could not have retaliated against the Student. Regarding the complainant's allegation that the School retaliated against her for filing an OCR complaint, the School asserted that it had not received notice of the OCR complaint prior to providing the complainant with the April 13, 2015 letter. During our investigation and prior to collecting sufficient evidence to make a determination regarding these allegations, the School requested to enter into the attached Agreement to resolve the remaining allegations raised in case numbers 08-15-1083 and 08-15-1189.

On November 15, 2017, the School submitted the enclosed signed resolution agreement (the Agreement) to OCR. OCR is closing the investigative phase of these cases effective the date of this letter. These cases are now in the monitoring phase. The monitoring phase of these cases will be completed when OCR determines that the School has fulfilled all of the terms of the Agreement. When the monitoring phase of these cases is complete, OCR will close case numbers 08-15-1083 and 08-15-1189 and will send a letter to the School, copied to the complainant, stating that these cases are closed.

This letter sets forth OCR's determination in individual OCR cases. 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.

Individuals filing a complaint or participating in the investigation process are protected from retaliation by Federal law.

Under the Freedom of Information Act, we may release this document and related correspondence and records upon request. If we receive a request, we will protect personal information to the extent provided by law.

We thank the School for your continued cooperation throughout this process. If you have questions, please contact XXXXXXXXXXXX, at XXXXXXXXXXXX or me at 303-844-5927.

Sincerely,

/S/

Thomas M. Rock
Supervisory General Attorney

Enclosure

cc: Denise Lowell-Britt, School representative, via email only

cc (w/o enclosure): Diane Douglas, State Superintendent of Public Instruction, via email only