



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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March 14, 2017

Ms. Charie Wallace
Superintendent
Coolidge Unified School District
450 North Arizona Blvd
Coolidge, Arizona 85128

Re: Coolidge Unified School District
Case Number: 08-16-1041

Dear Superintendent Wallace:

We are writing to inform you that we have completed our investigation of the above-referenced case. We investigated whether the District subjected the Complainant's daughter (Student) to racial harassment when a teacher called the Student "ghetto" and failed to take steps reasonably calculated to eliminate the racially hostile environment. In addition, we investigated whether the District retaliated against the Student by removing the Student from the alleged harassing teacher's class for the remainder of the Student's time at the school and placing the Student in a special education classroom.

We are responsible for enforcing Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulation, which prohibit discrimination on the bases of race, color, or national origin in programs and activities that receive funds from the U.S. Department of Education. Individuals filing a complaint, participating in an investigation, or asserting a right under Title VI are protected from retaliation or intimidation by 34 C.F.R. § 100.7(e). Additionally, we enforce Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 Code of Federal Regulation Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the U.S. Department of Education; and Title II of the Americans with Disabilities Act of 1990 and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department, the District is subject to these laws and regulations.

During our investigation, we carefully considered information provided by the Complainant, documents submitted by the District, and the District's response to the complaint. We also interviewed the Complainant, the Student, another student, and District witnesses with information relevant to the allegations.

Our investigation found insufficient evidence to support a determination that the District subjected the Student to racial harassment. Also, OCR found insufficient evidence to support a determination that the District retaliated against the Student by removing the Student from the alleged harassing teacher's class for the remainder of the Student's time at the school and placing

the Student in a special education classroom. However, the evidence showed that the District discriminated against the Student on the basis of disability by failing to follow appropriate procedures before making a significant change in her special education placement in violation of 34 CFR §104.35. The District has agreed to enter into an Agreement to address the violation. This letter explains our findings.

Allegation 1: The District subjected the Student to racial harassment

Legal Standard

Under Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulations, 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 Federal funds. Racially based conduct that has such an effect and that consists of different treatment of students on the basis of race by recipients' agents or employees, acting within the scope of their official duties, violates Title VI. In addition, the existence of a racially hostile environment that is created, encouraged, accepted, tolerated or left uncorrected by a recipient also constitutes different treatment on the basis of race in violation of Title VI.

When considering allegations of racial incidents carried out by employees of a recipient, OCR first applies a different treatment analysis. A recipient violates Title VI if one of its agents or employees, acting within the scope of his or her official duties, has treated a student differently on the basis of race in the context of an educational program or activity without a legitimate, nondiscriminatory reason so as to interfere with or limit the ability of the student to participate in or benefit from the services, activities or privileges provided by the recipient. In applying this standard different treatment analysis, we address the following questions:

- (1) Did an official or representative (agent or employee) of a recipient treat someone differently in a way that interfered with or limited the ability of a student to participate in or benefit from a program or activity of the recipient?
- (2) Did the different treatment occur in the course of authorized or assigned duties or responsibilities of the agent or employee?
- (3) Was the different treatment based on race?
- (4) Did the context or circumstances of the incident provide a legitimate, nondiscriminatory, nonpretextual basis for the different treatment?

Where, based on the evidence obtained in the investigation, questions 1–3 are answered “yes” and question 4 is answered “no,” OCR will conclude that there was discrimination in violation of Title VI under this standard different treatment analysis. If questions 1, 2 or 3 are answered “no,” or if questions 1 through 4 are answered “yes,” OCR will find no violation under this theory. If warranted by the nature and scope of the allegations or evidence, OCR will proceed to determine whether the agent's or employee's actions established or contributed to a racially hostile environment.

Facts

Complainant's position

The Complainant states that on September 23, 2015, the Student came home from school and informed her that herXXXX teacher (Teacher) called her “ghetto” after she requested permission to use the restroom. The Student informed the Complainant that she asked for permission the first time and was told no, the Student asked for permission again, and was again told no. The Student and her friend walked by the teacher and the Teacher said “just ghetto.” The Complainant states that the Student reported the name calling to the Principal immediately and also reported that her friend was with her and witnessed the name calling. The Student remained in her XXX Teacher’s class for the remainder of the day.

The Complainant states that upon arriving home the Student explained what occurred with the Teacher earlier that same day. The Complainant then called the Principal, and the Complainant and Principal agreed to meet that same day. The meeting attendees included the Complainant, Student, Complainant’s brother-in-law, the School psychologist, the Principal, the assistant Principal and the Teacher. The Complainant states she explained to the meeting participants that the Student was called “ghetto” by the Teacher earlier in the day and requested that the Teacher receive disciplinary action. The Complainant stated that the Principal informed her that he could not send the matter to HR without more investigation. The Complainant states she waited three weeks, and after not hearing anything from the School about the investigation, she then attempted to submit a written complaint at the District office. The Complainant states that the District office staff would not accept her complaint. The Complainant then submitted the written complaint to the Principal. The written complaint submitted by the Complainant stated that the Student was called “ghetto” by the Teacher and requested disciplinary action. The Complainant states that soon after she made the written complaint to the Principal, the School removed the Student from the Teacher’s classroom.

District's Position

The District states that the Complainant called the School on September 23, 2015, and reported to the Principal that the Teacher called the Student “ghetto.” The Principal agreed to a meet with the Complainant later that afternoon. The District reported that the Principal, assistant principal XXX, the Teacher, the Student, and a couple of family members attended the meeting. The District states that the Principal informed the Complainant that he would investigate the allegation.

The Principal states that he investigated the allegation, which included talking to the Teacher, a friend of the Student identified as having witnessed the statement first-hand (“Student A”), and other students in the classroom at the time the statement was allegedly made. The Principal states that the Teacher denied calling the Student “ghetto.” The Principal stated to OCR that Student A corroborated that she heard the teacher call the Student “ghetto.” The District also stated to OCR that Student A had a reputation for lack of candor and unreliable reporting, based on earlier situations where Student A’s stories did not align with those of other students. Regarding the Student, District witnesses stated to OCR that she had a history of making unsubstantiated racism accusations. The Principal indicated to OCR that his interviews of other

students who were nearby revealed that the other students did not hear the Teacher say anything to the Student. Based on the interviews he conducted and his credibility determinations of the individuals involved, the Principal's investigation resulted in a determination of "inconclusive."¹ The Principal stated to OCR that he then verbally reported his investigative findings to the Complainant during a telephone call.²

OCR's investigation

In addition to reviewing the District's investigation, OCR independently investigated the alleged incident. Our investigation included an interview of the Student regarding the alleged harassing statement. The Student stated to OCR that she asked to use the bathroom and the Teacher said no. She then asked again, and the Teacher again said no. As she turned around to walk away, she heard him call her "ghetto." The Student stated to OCR that the only person that would have heard the statement was her friend, Student A. OCR attempted to interview Student A, but was unable to locate her.³ OCR attempted to contact other students who were nearby when the Teacher allegedly made the comment. Only one student⁴ responded to our inquiries, and that student did not hear the Teacher call the Student a name.

OCR also attempted to interview the Teacher. The Teacher, who is no longer an employee of the District, declined to participate in the investigation. During our interviews of other staff members, a District witness reported to OCR that she heard the Student raise racism claims up to 10 times per week that the witness knew to be unfounded.⁵

Analysis and Conclusion

In determining whether the District's conduct violated Title VI, we first must determine whether the Teacher treated the Student differently in a way that interfered with or limited her ability participate in or benefit from the District's programs or activities.

In making a determination regarding compliance, OCR must often weigh conflicting evidence and determine whether the preponderance of the evidence substantiates the allegation. The facts regarding whether the Teacher made the alleged statement are in dispute. Based on the conflicting witness statements and lack of independent corroborating witnesses, OCR is unable to find sufficient evidence to establish that the Teacher made the statement as alleged. Consequently, OCR must conclude that there is insufficient evidence to find that the District subjected the Student to racial harassment in violation of Title VI.

¹ The District determined that the veracity of the corroborating student witness was questionable based on staff members' prior interactions with the student. OCR did not note any prior disciplinary infractions in the corroborating student witness's records that involved truthfulness.

² The Complainant maintains that she was not notified of the outcome of the investigation at this time. OCR noted that the District did not follow its policies and procedures regarding the provision of discrimination complaint findings in writing, or otherwise document that the Complainant was notified of the outcome.

³ Neither the Complainant nor the District were able to provide current contact information for the witness. OCR unsuccessfully attempted to contact the witness at her last known contact number.

⁴ The interview with the student was conducted with parental permission.

⁵ For example, the witness indicated to OCR that the student would say, "that's racist" if a teacher would select a blue marker instead of a black marker, or if the class would read a book about a black horse.

Allegation 2: The District failed to take steps reasonably calculated to end the racial harassment

The Complainant further alleged that after she reported the alleged harassment, the District failed to take steps reasonably calculated to end the racial harassment. Specifically, the Complainant believes that the District should have taken disciplinary action against the Teacher. We need not address whether the District should have taken disciplinary action against the teacher for making the alleged comment because we could not establish that the Teacher made the comment as alleged.

Allegation 3: The District retaliated against the Student

Legal Standard

Under the implementing regulation, recipients are prohibited from retaliating against any individual for the purpose of interfering with any right or privilege protected by Title VI. In analyzing a retaliation claim, we determine whether: the individual experienced an adverse action caused by the recipient; the recipient knew the individual engaged in an activity protected by Section 504 or Title II or believed the individual might engage in an activity protected by Section 504 and Title II in the future; and a causal connection existed between the adverse action and the protected activity. If OCR determines that a causal link exists between any adverse action and any protected activity, we next determine whether the recipient has a legitimate, non-retaliatory reason for its action and whether such reason is a pretext for retaliation. An adverse action is an action that adversely affects a person's work, education, or well-being in a serious, lasting, and usually tangible manner – something that is more than a transient, unpleasant incident, or that had a deterrent effect. Applying this legal standard, we will analyze the Complainant's retaliation allegation.

Facts

The Complainant states that after she made the written complaint to the Principal of racial harassment by the Teacher, the School removed the Student from the Teacher's classroom, social studies, and the Student did not receive social studies instruction for the rest of her time at the school. The Complainant believes this action was done in retaliation for her complaint of racial harassment. The Complainant acknowledges that she requested that the Student be moved from the Teacher's classroom, as she felt the Teacher had racially harassed the Student.

The District denies that it moved the Student in retaliation for the Complainant's complaint of racial harassment. The Principal stated that the Student was moved because the Complainant requested that the Student not be in the Teacher's classroom. In an email dated October 19, 2015, the Principal explained to the Superintendent that:

[The Student's] mother is insistent that [the Student] not have any interaction with [the Teacher]. searching for a solution our amazing resource teacher made mention that [the Student's] time needs to be increased. So we will kill two birds with one stone. . . .

Later that day, October 19, 2015, in an email the Superintendent emails the Principal and the XXXX Human Resources to explain:

“I talked with her [Complainant] and told her the following:

Her child would no longer be in [the Teacher’s] class but would be in [the XXX teacher’s]. [The Student] needed more minutes for special education and this is a legal, ethical, and best interest for the transfer”

Analysis and Conclusion

The Complainant alleged and District emails and interviews confirm that the Student was removed from her social studies classroom with her nondisabled peers and placed in a special education classroom to receive instruction from her XXX Teacher. This change in placement without convening an IEP meeting, to determine the individualized special education needs of the Student, is adverse, as it placed the Student in a more restrictive environment away from the Student’s nondisabled peers for a larger percentage of her school week.⁶ It is undisputed that the District was aware that the Complainant engaged in a protected activity under Title VI when the Complainant made a verbal and written complaint of racial harassment to the Principal. OCR can infer a causal connection due to the nearness in time between the Complainant’s written complaint and the Student’s placement in a more restrictive environment. The District provided its non-retaliatory reason for moving the Student out of the Teacher’s classroom. Specifically, the District indicated its actions were based on the Complainant’s general request to move the Student out of the Teacher’s classroom. The Complainant agrees that she requested the Student be moved from the Teacher’s classroom. District emails and interviews support that the District’s reason for moving the Student was to address the Complainant’s requests. The District pointed out that it did not have any other sixth grade general education social studies teachers. The District’s proffered rationale is supported by the Complainant, and OCR found no evidence that the rationale was a pretext for retaliation. Consequently, we find that there is insufficient evidence to support a finding that the District’s action was retaliatory.⁷

Allegation 4: The District discriminated against the Student on the basis of disability⁸

Legal standard

Section 504 at 34 C.F.R. §104.34(a) requires recipients to provide for the education of, each qualified person with a disability in its jurisdiction with persons who are not disabled to the maximum extent appropriate to the needs of the disabled person. Generally 34 C.F.R. §104.34(a) prescribes standards which allow a person with a disability to be removed from the regular educational setting only where a recipient can show that the needs of the student would, on balance, be served by placement in another setting. Section 504 at 34 C.F.R. §104.35(a), requires recipients to evaluate any student who, because of disability, needs or is believed to need special

⁶ The Student is recognized as a student with a disability and receives services through an IEP. Due to the Student’s multiple disabilities, the Student was already receiving part of her education separate from her non-disabled peers. The further segregation of a student with disabilities may occur only if a recipient can show that the needs of the student would, on balance, be served by placement in the more restrictive environment.

⁷As addressed later in this letter, relying on a parent’s request does not excuse the District from its obligations to provide a student FAPE and comply with Section 504’s procedural and least restrictive environment requirements.

⁸Although this allegation was not included in the Complaint, OCR identified this issue as a potential compliance concern during the course of the investigation, consistent with the guidance discussed in Section 301(b) of our *Case Processing Manual*.

education or related aids and services before initially placing the student and before any subsequent significant change in placement. Section §104.36 requires school districts to provide procedural safeguards for parents and guardians of disabled students with respect to any action regarding the identification, evaluation or placement of the student.

Facts

According to the Complainant and the District, the Student was removed from the Teacher's classroom and placed in a self-contained special education classroom during the time the Student formerly attend the Teacher's social studies class. Interviews with District staff, District emails, and the Student's special education records indicate that the District did not convene an IEP team before changing the Student's schedule to include "more minutes for special education." Through interviews, the XXX Teacher acknowledged that she did not participate in an IEP meeting for the Student prior to the Student's schedule changing to include more time in the special education classroom. The District and the XXX teacher argue to OCR that while the Student was in the special education classroom and receiving instruction from the XXX teacher, the Student was not receiving specialized special education instruction, and therefore an IEP meeting was not necessary.

Analysis and Conclusion

It is undisputed that the Student was removed from her regular education social studies class and placed in the more restrictive environment of the self-contained special education classroom. The District's argument that the Student did not receive any special education services while being segregated from her non-disabled peers does not negate the fact that her placement was changed to a more restrictive setting without convening an IEP team. The District acknowledged that it did not convene an IEP team prior to changing the Student's schedule to include "an increase in minutes" in the special education classroom. Consequently, we find that the District discriminated against the Student on the basis of disability in violation of 34 C.F.R. §104.34(a) and 34 C.F.R. §104.35(a). The District has agreed to resolve these violation findings through the attached Resolution Agreement.⁹

OCR routinely advises recipients of Federal funds and public educational entities that Federal regulations prohibit intimidation, harassment, or retaliation against those filing complaints with OCR and those participating in a complaint investigation. Complainants and participants who feel that such actions have occurred may file a separate complaint with OCR. The complainant may also have a right to file a private suit in Federal court whether or not OCR finds a violation.

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.

⁹ The Resolution Agreement requires Section 504 and Title II training for the School special education staff and School administrators. Individual remedies to include compensatory services for the Student have been addressed in a signed Settlement Agreement dated February 27, 2017, between the Complainants and the District.

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

This concludes OCR's investigative phase of this complaint. We will continue to monitor the District's implementation of the Resolution Agreement. We thank you for the courtesy and cooperation provided throughout the investigation of this complaint. If you have any questions regarding this or other civil rights matters, please contact XXX, Equal Opportunity Specialist at XXX or by email at XXX.

Sincerely,

/S/

XXX

Supervisory General Attorney

Enclosure – Resolution Agreement

cc: Honorable Diane Douglas
Arizona State Superintendent of Public Instruction