



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII
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January 3, 2017

Mr. Robert Lombardi, Superintendent
Northland Preparatory Academy
3300 Sparrow Avenue
Flagstaff, Arizona 86004

Re: Northland Preparatory Academy
OCR Case Number: 08-16-1335

Dear Superintendent Lombardi:

We are writing to advise you of the resolution of the above-referenced complaint that was filed with our office against Northland Preparatory Academy (Academy). The Complainant alleged that the Academy discriminated on the basis of race. The issue that OCR accepted for investigation was whether his son was racially harassed during the 2015-2016 school year, and the Academy failed to take appropriate steps to stop the harassment.

OCR is 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. As a recipient of Federal financial assistance from the Department, the Academy is subject to this law and regulation.

During our investigation, we interviewed the Complainant and reviewed documentation and other evidence provided by the Academy. During the course of our investigation, the Academy indicated its desire to voluntarily enter into an agreement to resolve all of the Complainant's allegations pursuant to Section 302 of our *Case Processing Manual*. We reviewed this request and determined that it was appropriate. This letter details our factual findings and the status of our investigations prior to receiving the Academy's request to enter into an agreement to resolve the allegations in this case.¹

Legal Standard

The regulations implementing Title VI, at 34 C.F.R. §100.3(a) and (b), prohibit discrimination based on race, color or national origin by recipients of Federal financial assistance. Recipients are responsible under Title VI and the regulation for providing students with a nondiscriminatory educational environment. Harassment of a student based on race, color or national origin can result in the denial or limitation of the student's ability to participate in or receive education benefits, services, or opportunities.

¹ During the course of negotiating the Resolution Agreement in this case, in response to observations from OCR, the Academy submitted a brief supplemental position statement, but it was submitted after discussions of the Resolution Agreement had begun and does not fully address the outstanding issues detailed in this letter.

Under Title VI and the regulations, once a recipient has notice of possible harassment between students on the basis of race, color or national origin, it is responsible for determining what occurred and responding appropriately. The recipient is not responsible for the actions of a harassing student, but rather for its own discrimination in failing to respond adequately. A recipient may violate Title VI and the regulations if: (1) the harassing conduct is sufficiently serious to deny or limit the student's ability to participate in or benefit from the educational program; (2) the school knew or reasonably should have known about the harassment; and (3) the school fails to take appropriate responsive action. These steps are the recipient's responsibility whether or not the student who was harassed makes a complaint or otherwise asks the recipient to take action.

In determining whether a hostile environment based on race, color or national origin has been created, OCR evaluates whether or not the conduct was sufficiently serious to deny or limit the student's ability to participate in or benefit from the school's program. OCR examines all the circumstances, including: the type of harassment (e.g. whether it was verbal or physical); the frequency and severity of the conduct; the age, race, and relationship of the parties; the setting and context in which the harassment occurred; whether other incidents have occurred; and other relevant factors.

OCR evaluates the appropriateness of the responsive action by assessing whether it was prompt, thorough, and effective. What constitutes a reasonable response to harassment will differ depending upon the circumstances. However, in all cases the recipient must conduct a prompt, thorough and impartial inquiry designed to reliably determine what occurred. If harassment is found, it should take reasonable, timely, age-appropriate, and effective corrective action, including steps tailored to the specific situation. The response must be designed to stop the harassment, eliminate the hostile environment, and remedy the effects of the harassment on the student who was harassed. The recipient must also take steps to prevent the harassment from recurring, including disciplining the harasser where appropriate. A series of escalating consequences may be necessary if the initial steps are ineffective in stopping the harassment. Other actions may be necessary to repair the educational environment. These may include special training or other interventions, the dissemination of information, new policies, and/or other steps that are designed to clearly communicate the message that the recipient does not tolerate harassment and will be responsive to any student reports of harassment. The recipient also should take steps to prevent any retaliation against the student who made the complaint or those who provided information.

OCR's Investigation

The Complainant alleged, and the Academy does not dispute, two incidents of racially harassing language that occurred during the 2015-2016 school year at the Academy. Both involved the same Caucasian high school student, using the harassing language against African-American students XXX. In the first incident, Student A used the "N word" against Complainant's son (Student 1), who is African-American, during XXX at school on XXX, 2016. In the aftermath, Student A revealed to school staff that he had used the "N word" against Student 1 in XXX 2015. On XXX, 2016, Student A again made a racially harassing statement in XXX class with a

female African-American student, Student 2, and others, to the effect of “I have Black people in my family. They are hanging from trees.” It is also undisputed that within about a week of the second incident, a mediation was held with the Principal and the three sets of parents of all students involved.

The Complainant alleges that, after the first incident, he received a phone call from the school alerting him to the incident and assuring him that it was being addressed, but without specifics because of the Family Educational Rights and Privacy Act (FERPA). The Complainant alleges that the mediation that occurred thereafter was ineffective, in that no course of action was agreed upon, and that the school had not followed up or otherwise responded to him or his son since. The Complainant alleges that the school could not have addressed the first incident sufficiently, because nearly immediately, it recurred in that Student A again used racially harassing language against Student 2. The Complainant also expressed his desire that the Academy create a systemic response or remedy to this incident to enable it to respond better and more consistently in the event of recurrence. The Academy’s notes from the meeting show that Student 2’s mother expressed that Student 2 was “worried about provoking [Student A] in class” and did not “want her child to be in a learning environment where she has to worry about provoking anyone.” OCR has no evidence that the Academy followed up with either Student 1 or 2, or either’s parents, after the mediation was held.

The Academy asserts that the two incidents were isolated incidents and not reflective of any type of pattern or atmosphere of discrimination at the school. The Academy further asserts that it took appropriate action and enforced appropriate disciplinary consequences against Student A. Those consequences were, in response to the first incident, a XXX suspension, an assignment to write (and then rewrite) a paper on racism in America, and a written and in-person apology to Student 1, and in response to the second incident, XXX and XXX suspension and being barred from a school trip and forfeiting \$XXX which had been raised to pay for the trip. The Academy notes that Student A’s father was to chaperone the trip, but declined to do so after his son was not attending, and therefore the school sent and paid for an employee to attend and hired a substitute for that employee.

In addition to these two undisputed incidents of racially harassing language, documents submitted to OCR by the Academy establish two additional uses of the “N word” by two separate lower-grade students during the 2015-2016 school year: one on XXX, 2015 and one on XXX, 2016. The XXX incident was reported by another student and the XXX incident started with two students rough-housing over one’s use of the word. Thus, the Academy was aware of at least four incidents involving the use of racially harassing language this last school year, the XXX incident coming after the two incidents relating to the Complainant. In the XXX incident, the student was accused of and admitted to using the word several times at school. Neither student who used the word was disciplined in response to the incident, although in each incident, the student’s parents were informed, and it appears the student was threatened with a detention if he used the word again. During the course of negotiating the Resolution Agreement in this case, in response to observations from OCR, the Academy indicated that the students involved in these incidents are Caucasian.

At the point when OCR approved negotiation of the voluntary Resolution Agreement, additional investigation was needed to reach a compliance determination in this case. OCR would need further investigation into the two incidents where the user of the “N word” admitted to using the word previously at school. OCR would need to determine if the school investigated and responded to those incidents and, if so, if the response was appropriate to remedy the harassment and prevent its recurrence. OCR would also need further investigation into the circumstances of the four incidents related above, as the incident pertaining to Complainant’s son occurred at XXX, the second incident involving the “trees” comment occurred in a classroom, and the XXX 2016 incident involving the lower-grade student came after a rough-housing incident. OCR would need to assess the circumstances to determine if any other students were involved or overheard the language used (for example, in the lunchroom or in class), if the school made that same assessment, and if so, if it took appropriate action to remedy the harassment and prevent its recurrence. OCR would also need further investigation as to whether the school addressed the concern relayed by her parents suggesting that Student 2 was uncomfortable around Student A, and whether it investigated and took remedial action with respect to Student A, Student 1, and any other students involved in Student A’s use of the “N word” against Student 1 in XXX 2015.

Pursuant to one of the terms of the Resolution Agreement, the Academy will convene a school assembly that addresses (but is not necessarily limited to) the Academy’s prohibition on the use of racial epithets, including disciplinary consequences for using racial epithets. OCR commends the Academy for its willingness to convene this assembly, as well as for its indication in its initial monitoring report that it intends to conduct a short climate survey of students related to discriminatory language at school. OCR encourages the Academy to continue similar school-wide events and programs in the future.

Conclusion

A copy of the signed Resolution Agreement is enclosed. When the Agreement is fully implemented, the allegations will be resolved consistent with the requirements of Title VI and its implementing regulation. OCR will monitor implementation of this Agreement through periodic reports, including the initial report already submitted, demonstrating that the terms of the Agreement have been fulfilled. We will provide written notice of any deficiencies regarding implementation of the terms of the Agreement and will promptly require actions to address such deficiencies. If the Academy fails to implement the Agreement, we will take appropriate action, as described in the Agreement.

This concludes OCR’s investigation of this complaint and should not be interpreted to address the Academy’s compliance with any other regulatory provision or to address any issues other than those addressed in this letter. The case is now in the monitoring phase. The monitoring phase of this case will be completed when OCR determines that the Academy has fulfilled all terms of the Agreement. When the monitoring phase of this case is complete, OCR will close this case and will send a letter to the Academy, copied to the Complainant, stating that the case is closed.

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.

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

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, personal information, which if released, could constitute an unwarranted invasion of privacy.

Thank you for the courtesy and cooperation you extended to us during the investigation of this case. If you have any questions, please contact XXX, Attorney, at XXX, or me at XXX.

Sincerely,

/s/

XXX
Supervisory General Attorney

Enclosure: Resolution Agreement

cc (w/enclosure): XXX, counsel for Academy

cc (w/o enclosure): Honorable Diane Douglas, Arizona Department of Education