



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION VIII
ARIZONA
COLORADO
NEW MEXICO
UTAH
WYOMING

October 19, 2018

Dr. James P. Lee, Ed. D.
Superintendent
Paradise Valley Unified School District
15002 North 32nd Street
Phoenix, Arizona 85032

By e-mail only to: jimlee@pvschools.net

Re: Paradise Valley Unified School District
OCR Case Number: 08-17-1386

Dear Superintendent Lee:

On July 18, 2017, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint of discrimination against Paradise Valley Unified School District (District). The Complainant alleged that during the 2016-2017 school year, her son (Student) was subjected to harassment by his peers based on race/color and gender at XXXX (School). The Complainant further alleged that she complained to School personnel about her son being harassed by his peers, but they failed to respond to her complaints of discrimination.

We are responsible for enforcing Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulation at 34 Code of Federal Regulations (C.F.R.) 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 Department; and Title IX of the Education Amendments of 1972 (Title IX) 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. As a recipient of Federal financial assistance from the Department, the District is subject to these laws and regulations.

In reaching a determination, OCR reviewed documents submitted by the District and interviewed the Complainant and District staff. After carefully considering all of the information obtained during the investigation, OCR found insufficient evidence of a violation of Title VI regarding the Complainant's allegation of peer harassment based on race/color. However, the investigation also revealed that the Complainant informed School staff about the Student being harassed by his peers on the basis of gender, but the District failed to appropriately respond to her complaint of discrimination.

Overview

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

The Complainant alleged that during the 2016-2017 school year, the Student's peers constantly told him that he is too white to go to their school and that he is too white to hang out with them. The Complainant further alleged that the Student's peers constantly told him that he is a girl, that he looks like a girl, and that he is too girly to go to their school. The Complainant alleged that the harassment primarily occurred in the Student's English classroom, and that she reported the harassment to school personnel, including a secretary in the office, but they failed to respond to her complaints of discrimination. In response to the Complainant's allegations, the District stated to OCR that school staff did not know of the alleged harassment until the end of the school year. The Student's English teacher denied any knowledge of the identified events.

Title VI Legal Standard and Analysis

To establish a violation of Title VI under the hostile environment theory, OCR must find that: (1) A racially hostile environment existed 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 recipient; (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.

First we examined whether the Student was subjected to a hostile environment based on his race, national origin, or color by his peers. According to the Complainant, a majority of the harassment occurred in the Student's English classroom. We interviewed the Student's English teacher regarding the alleged harassment. The Student's English teacher stated that she did not observe the Student being harassed based on his race/color in her classroom.

Documentation obtained during the investigation revealed that the Complainant met with the Student's English teacher at least two times during the school year to discuss the Student's behavior and school work, but did not show that a discussion was held about the Student being harassed by his peers. In addition, the Complainant and the Student's English teacher communicated via email numerous times throughout the school year, but the email communications did not show that the Complainant raised the issue of harassment to the Student's English teacher in any of the email communications.

We also interviewed the school Principal, Interim Principal, and the Student's Physical Education Teacher regarding the alleged harassment. During the interviews, staff members stated that they did not observe the Student being harassed by his peers based on his race, national origin, or color. Staff members also stated that they did not receive complaints from the Student or Complainant about harassment based on race, national origin, or color. OCR received signed statements from two school secretaries regarding the alleged harassment. The statements indicated that the two school secretaries did not recall any conversations with parents about a student being harassed. In response to the District's evidence and statements, the Complainant was not able to provide any evidence to corroborate that the Student was harassed based on his race, national origin, or color. Absent corroborative evidence to support the Complainant's

allegation of racial harassment, we are unable to conclude that the Student was subjected to a racially hostile environment that required a District response.

During our interviews and document review, there was ample evidence that the Student had been bullied and teased by his peers. As further discussed below, some of the bullying was captured in a video. However, OCR found insufficient evidence to establish that the bullying was related to his race, national origin, or color. Based on the evidence, OCR is unable to conclude that a racially hostile environment existed, or that the District had knowledge of any such environment. Accordingly, we conclude that there is insufficient evidence to establish that the District discriminated in violation of Title VI as alleged.

Title IX Legal Standard and Analysis

The regulation implementing Title IX, at 34 C.F.R. Section 106.31(a), provides that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity operated by a recipient of Federal financial assistance. Sex harassment that creates a hostile environment is a form of sex discrimination prohibited by Title IX. Sex harassment of a student creates a hostile environment if the conduct is sufficiently serious that it denies or limits a student's ability to participate in or benefit from the recipient's program.

When responding to alleged sex harassment, a recipient must take immediate and appropriate action to investigate or otherwise determine what occurred. The recipient should undertake these steps promptly once it has notice of a sex harassment allegation. If an investigation reveals that discriminatory harassment has occurred, a recipient must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring. Pending the outcome of an investigation, Title IX requires a recipient to take steps to avoid further harassment as necessary, including taking interim steps before the final outcome of the investigation.

Regarding the alleged gender harassment in the classroom, we were unable to find evidence to establish that the Complainant or Student reported the harassment prior to XXXX, or that the District otherwise had knowledge of the harassment in the classroom.

However, the evidence shows that the Complainant provided notice of the alleged harassment at the end of the school year. Specifically, hand written notes from a school staff member confirm that XXXX, the Complainant visited the School office and complained about two students on a school bus yelling at the Student and showing him the middle finger. The Complainant identified the two students by their first names and the number of the school bus. The notes state that the Complainant has a video of the incident. In addition, the notes state that, "This has been going on for awhile [sic]." On XXXX, the Complainant called and visited with school staff regarding the Student being harassed. The Complainant stated that her son had been bullied and jumped at recess, in the bathroom, and on the way home from school, and that this has been going on all school year. The Complainant also stated that her son had been called a name ("xx-redacted-xx") during class and by peers on a school bus. Furthermore, school staff saw the video

mentioned by the Complainant during her visit at the School on XXXX. The video confirmed that students on a school bus harassed the Student as asserted by the Complainant on XXXX. After the meeting, the Complainant withdrew the Student from school.

The District asserted that because the report of harassment occurred at the end of the school year (one week left), there was no remedial action to be taken. The District also asserted that because the Complainant did not identify when these events occurred or who was involved, investigation of the allegations would have been difficult, if not impossible to conduct. However, the Principal notified the middle school principal of the Complainant's concerns and to take care of the Student if he enrolls for the 7th grade. The District further asserted that it had no duty to investigate the alleged sexual harassment because the Complainant withdrew the Student. However, the evidence demonstrates that the Complainant withdrew the student because of the bullying and harassment, and also that the District anticipated that the Student may have returned to the District for middle school. Moreover, the Student's withdrawal does not alter the fact that the offending conduct may have also created or perpetuated a sexually hostile environment for other students. The lack of investigation and response by the District also likely has the effect of conveying to students that sexually harassing conduct is acceptable and will not result in discipline. The District's inaction has the potential to perpetuate or nurture the development of a sexually hostile environment at the school.

Our investigation shows that on XXXX, the District was put on notice about the student being harassed by his peers. Specifically, the evidence shows that during the meeting on XXXX, school staff received information identifying incidents of harassment including the Student being called a name by his peers.¹ The evidence also shows that School staff knew the first names of the two students on the school bus that allegedly harassed the Student; the number of the school bus, and that at least one staff member viewed a video of the school bus incident.

The only action taken by the District in response to the alleged harassment was to notify the middle school principal of the Complainant's concerns, and requested that the principal look out for the Student if he attends the school. As stated above, the District indicated that it took no further action because the report of harassment occurred at the end of the school year (one week left).

Conclusion

The evidence supports that the Complainant spoke to school staff approximately a week before school ended about the Student being harassed by his peers, and provided information relating to name-calling by his peers. Based on a preponderance of the evidence, the District had notice of the alleged sexual harassment but failed to take immediate and appropriate action to investigate

¹ When OCR considers allegations of retaliation or discrimination, we must also consider the protections of the First Amendment of the U. S. Constitution and ensure that OCR's enforcement of regulations is consistent with the requirements of the First Amendment. Because OCR's responsibility is protecting students from discrimination, not regulating the content of speech or curriculum, OCR is sensitive to First Amendment concerns that may arise in the course of addressing harassment complaints and takes special care to avoid actions that impair First Amendment rights.

the Complainant's allegation of harassment, or remediate what allegedly occurred in violation of Title IX as alleged.

The District indicated its desire to voluntarily enter into an agreement to resolve the allegation. On October 15, 2018, we received the signed Resolution Agreement (Agreement), which is enclosed. When the Agreement is fully implemented, the allegation will be resolved consistent with the requirements of Title IX and its implementing regulations. OCR will monitor implementation of the Agreement through periodic reports demonstrating the terms of the Agreement have been fulfilled. We will provide written notice of any deficiencies regarding the implementation of the terms of the Agreement and will promptly require actions to address such deficiencies. If the District 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 District'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 the case will be completed when OCR determines that the District has fulfilled all of the terms of the Agreement. When the monitoring phase of the case is complete, OCR will close case number 08-17-1386 and will send a letter to the Complainant and the District stating that the case is closed.

This letter is a letter of findings and sets forth OCR's determination in an individual 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 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.

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.

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 reasonably be expected to constitute an unwarranted invasion of privacy.

Should you have any questions regarding this letter, please contact xxxx, Equal Opportunity Specialist and the primary contact for this case, at 303-844-xxxx.

Sincerely,

/s/

Sandra J. Roesti
Supervisory Attorney

cc: Diane Douglas, State Superintendent of Public Instruction, *via email only*

Carrie O'Brien, Esq., *via email only*