



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII

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May 13, 2020

Dr. Deirdre Pilch
Superintendent
Greeley-Evans School District 6
1025 Ninth Avenue
Greeley, CO 80631

Sent via email only to dpilch@greeleyschools.org

Re: Greeley-Evans School District 6
Case Number: 08-20-1095

Dear Superintendent Pilch:

On November 20, 2019, the Department of Education (Department), Office for Civil Rights (OCR) received a complaint alleging that Greeley-Evans School District 6 (District), at Winograd K-8 School (School), discriminated against the Complainant's son (Student) on the basis of race and retaliated against the Student.

The Complainant alleged that the District discriminated against the Student when:

1. The Student was subjected to a racially hostile environment created by students and District employees and the District did not respond appropriately; and
2. The School retaliated by attempting to find reasons to discipline the Student and provide less support to him after the Complainant XXX XXX XXX XXX XXX.

OCR is 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 based on race, color, or national origin in programs and activities receiving Federal financial assistance from the Department. Title VI also prohibits retaliation against an individual for the purpose of interfering with any right or privilege secured by the regulation. The District is a recipient of Department funds and is subject to this law and regulations.

During the investigation of this complaint, before OCR had sufficient evidence to make findings regarding compliance, the District informed OCR that it wished to resolve the Complainant's allegations.¹ Pursuant to Section 302 of OCR's *Case Processing Manual*, complaint allegations may be resolved when, before OCR has concluded its investigation and issued a final

¹ OCR reviewed documentation provided by the District and the Complainant, reviewed District policies, and spoke with the Complainant, his wife, and counsel for the District. The District expressed an interest in resolving this case before OCR conducted interviews of District witnesses and received and reviewed additional data.

determination, a recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them. OCR has determined that the allegations in this complaint are appropriate for resolution through a Section 302 Agreement. The District has signed an agreement which, when fully implemented, will resolve the allegations raised by the complaint.

Legal Standards

Racial Discrimination

The Title VI implementing regulations, at 34 C.F.R. Section 100.3(a) and (b), provide that a recipient of Federal financial assistance may not, directly or through contractual or other arrangements, on the ground of race, color or national origin, exclude persons from participation in its programs, deny them any service or benefits of its programs, or provide any service or benefit which is different or provided in a different manner from that provided to others.

To determine whether a hostile environment based on race has been created, OCR evaluates whether the conduct was sufficiently serious to deny or limit the student's ability to participate in or benefit from the recipient's program. OCR examines all of 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, sex, gender, 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 adequacy of the responsive action. 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.

Retaliation

Title VI of the Civil Rights Act of 1964, at 34 C.F.R. § 100.7(e), prohibits a recipient or other person from intimidating, threatening, coercing, or discriminating against any individual because he or she made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under the regulation.

A recipient engages in unlawful retaliation when it takes an adverse action against an individual either in response to the exercise of a protected activity or to deter or prevent protected activity in the future. To find a *prima facie* case of retaliation: the recipient must have known that the individual engaged in a protected activity or believed the individual might engage in a protected activity in the future; an individual must have experienced an adverse action caused by the recipient; and there must be some evidence of a causal connection between the adverse action and the protected activity. If the elements of a *prima facie* case of retaliation are established, then OCR considers whether the recipient has presented a facially legitimate, non-retaliatory reason for taking the adverse action. If so, OCR considers whether the reason for the adverse action is a pretext for discrimination.

Background Information

The Student is a Black male. At the start of the 2019-2020 School Year (SY), the Student was in XXX grade at the School. X – sentence redacted – X.

The Complainant told OCR that he believed the Student experienced a hostile environment at the School because: (a) one of the Student's classroom teachers (Teacher) routinely seated him with other non-white students, away from white students, during instruction and did not provide the same level of academic support to the non-white students as she provided to white students; (b) an XXX (XXX) made the Student sit on a wall by himself on numerous occasions; (c) the XXX searched the Student in a way that violated District policy; and (d) the District took insufficient responsive action after the Student and Complainant reported racial harassment to the District.

The District denied that the Student experienced a hostile environment and that it retaliated against the Student. The District explained that the Teacher seated students by XXX level not by race. The District also explained that School staff may ask a student "to sit on the wall during lunch, recess, or a Vitamin D Break . . . when they have made a poor behavior choice" and that students may sit out during Physical Education (PE) for a number of reasons. The District noted it does not expect staff to create or maintain records as to the nature of a student's participation (or non-participation) in PE or recess activities on any given day. Although it is undisputed that on September 26, 2019, the XXX conducted a search of the Student's belongings in the hallway with no other adults present, the District denied that the Student's race was a factor in the search. Further, the District reported that it took responsive action to the reports of racial harassment that it received.

Conclusion

On March 6, 2020, the District contacted OCR to request to resolve this complaint through a voluntary resolution agreement. At that time, OCR had not yet conducted interviews, received and reviewed supplemental documentation from the District, or made any determinations regarding whether the District discriminated against the Student as the Complainant alleged. OCR determined that the allegations in the complaint are appropriate for resolution through a Section 302 Agreement. On May 8, 2020, the District signed an agreement which, when fully implemented, will resolve the allegations raised by the complaint.

OCR will actively monitor the District's implementation of the Agreement until the District has met the terms of the Agreement. If the District fails to implement the Agreement as specified, OCR may initiate administrative or judicial proceedings as described in the Agreement or resume its investigation of the initial allegation. A copy of the Agreement is enclosed. OCR will provide the Complainant with a copy of our monitoring letters.

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 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, the Complainant may file another complaint alleging such treatment. In addition, the Complainant may have the right to file a private suit in Federal court, regardless of whether OCR finds a violation.

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.

Thank you for the District's cooperation in this case. If you have any questions, please contact XXX XXX, the attorney assigned to this case, at XXX-XXX-XXXX or by email at XXX

Sincerely,

/s/

Angela Martinez-Gonzalez
Supervisory Attorney

Attachment: Signed Resolution Agreement

Cc: Melissa Barber, Counsel for the District
Dr. Katy Anthes, Colorado Commissioner of Education (without attachment)