



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

50 BEALE ST., SUITE 7200
SAN FRANCISCO, CA 94105

REGION IX
CALIFORNIA

July 10, 2015

Dr. Juanita Perea
Director, Oasis Charter Public School
1135 Westridge Parkway
Salinas, California 93907

(In reply, please refer to # 09-15-1150.)

Dear Dr. Perea:

On January 27, 2015, the U.S. Department of Education, Office for Civil Rights (OCR), notified you of a complaint against Oasis Charter Public School (School). The Complainant alleged discrimination on the basis of his race (African American).¹ Specifically, OCR investigated whether the School:

1. treated the Complainant differently than other parents based on his race (African American), including by requiring him to complete a background investigation in order to volunteer at the School, and restricting his ability to visit the School; and,
2. failed to respond adequately to the Complainant's internal complaint of race discrimination.

OCR investigated these allegations under the authority of Title VI of the Civil Rights Act of 1964 (Title VI), and its implementing regulations. Title VI prohibits discrimination on the basis of race, color, or national origin in programs and activities operated by recipients of Federal financial assistance. The School is chartered by Alisal Union School District (District) which receives funds from the Department and is a public education entity, and therefore is subject to Title VI and its implementing regulations.

OCR gathered evidence through interviews with the Complainant and current and former School staff, and through a review of documents provided by the Complainant and the School. OCR has completed its investigation of both issues. With respect to the first issue, OCR determined that there was insufficient evidence to support a conclusion of noncompliance with the regulations implementing Title VI. However, with regard to issue number two, OCR determined there was sufficient evidence to support a conclusion of noncompliance. OCR informed the School of its findings, and without admitting any violation of the law, the School has agreed to enter into a Resolution Agreement (attached), to address OCR's finding of noncompliance with respect to issue two. The applicable legal standards, relevant facts gathered during our investigation, and reasons for our determination are summarized below.

¹ OCR previously notified the District of the Complainant's identity. OCR is withholding his name from this letter to protect his privacy.

Issue 1: Whether the District treated the Complainant differently than other parents based on his race, including by requiring him to complete a background investigation in order to volunteer at the School, and restricting his ability to visit the School.

Legal Standards

Under the Title VI regulations at 34 C.F.R. § 100.3(a) and (b), a school may not treat individuals differently on the basis of race, color, or national origin with regard to any aspect of services, benefits, or opportunities it provides. Section (b)(1) states that a school may not, directly or through contractual or other arrangements, on the basis of race, color or national origin, restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit, or deny an individual an opportunity to participate, or afford an opportunity to participate which is different from that afforded others.

To determine whether a parent has been discriminated against on the basis of race under Title VI, OCR looks at whether there is evidence that the parent was treated differently than parents of other races under similar circumstances, and whether the treatment has resulted the denial or limitation of services, benefits, or opportunities. If there is such evidence, OCR examines whether the school provided a nondiscriminatory reason for its actions and whether there is evidence that the stated reason is a pretext for discrimination. For OCR to find a violation, the preponderance of the evidence must establish that the school's actions were based on the parent's race.

Findings

School Policies

The School's policies encourage parent involvement, but also request that parents schedule appointments to confer with their child's teacher about the educational program and arrange times to volunteer in class ahead of time. For safety reasons, the School keeps track of who is on campus at all times, and thus requires all adults visiting the campus to sign in and sign out. In addition, the School's written policies require that "any adult volunteer who will be with children outside of the direct supervision of a member of the [School's] staff" or who volunteer to drive on a field trip "must" have their "fingerprint clearance on file" with the School.

Complainant and Staff Interactions

The Complainant's child is a student at the school. The Complainant visited the school on several occasions during the 2012/2013 school year to observe his child in the classroom and learn more about the school's expectations of students. During his first few visits the Complainant spoke to various classroom teachers about the curriculum (including teachers who did not work directly with his child), asked for information about parent meetings, and for a space to spend classroom time with his child. Staff generally described these interactions as odd, but not threatening.

On August XX, 2012, the Complainant met the School's Executive Director (Director) for the first time when he visited the school to see his child during the school day. The Director asked to

speak to the Complainant in her office. The Director told the Complainant that some of the teachers were uncomfortable with his questions about the curriculum, and the Director asked that in the future the Complainant direct those questions to his child's classroom teacher or to the Director. The Director also attempted to give Complainant a packet of information that included a parent handbook and information about volunteering with the school, which included a background check and fingerprinting forms. The Complainant did not take the information packet, and believed the Director was trying to discourage him from visiting the school. The Director claimed that she offered the background check and fingerprint forms to the Complainant as a matter of course. Both the Complainant and the Director described this meeting as a heated exchange. OCR found that during the same time frame, the School requested at least one other parent who engaged in concerning behavior, and who was not African American, to complete a background check. The School also had other African American parents and students, as well as parents and students of other races, who volunteered in the presence of staff during this time period and who were not asked to complete such a background check.

The Complainant visited the School several more times that school year, and on a few occasions the Director attempted to give the Complainant the information packet, but he refused it. The Director stated that she continued to attempt to give the Complainant the information packet because the Complainant had filed a complaint with the school district requesting the information. In late August 2013, the Complainant visited the school and the Director again attempted to give the Complainant the information packet. The Complainant refused the packet and continued toward his child's classroom, ignoring the Director's request for him to stop. The Complainant ultimately called the police before leaving the school. The police arrived after the Complainant left, and discussed the possibility of obtaining a restraining order with School staff. Thereafter, the Director sought and obtained a temporary restraining order against the Complainant, and the Complainant has not visited the School since late August 2013.

Analysis

Under Title VI, schools and school districts may not treat individuals differently on the basis of race, color, or national origin with regard to any aspect of services, benefits, or opportunities it provides. To determine whether a parent has been discriminated against on the basis of race under Title VI, OCR looks at whether there is evidence that the parent was treated differently than parents of other races under similar circumstances, and whether the treatment has resulted the denial or limitation of services, benefits, or opportunities. If there is such evidence, OCR examines whether the school district provided a nondiscriminatory reason for its actions and whether there is evidence that the stated reason is a pretext for discrimination. For OCR to find a violation, the preponderance of the evidence must establish that the school district's actions were based on the parent's race.

In this case, OCR did not find, by a preponderance of the evidence, that the Complainant was treated differently on the basis of his race. The evidence established that the School's policy with regard to visiting and signing-in was applied to all parents. With regard to the background check and fingerprinting forms, OCR found evidence that the Director attempted to give these forms to the Complainant in response to his behavior, which some staff considered unusual and/or made them uncomfortable. OCR found that the School had reacted similarly to at least one other parent

(non-African American), in order to discourage him from visiting the school. Thus, OCR found that the School's presentation of background check documents to the Complainant was based on their reactions to his behavior, such as confronting teachers not working with his child about their curriculum and pedagogy, but was not based on his race. Finally, OCR also did not find, by a preponderance of the evidence, that the School sought the temporary restraining order because of the Complainant's race. The School provided that the temporary restraining order was sought based on the behavior and demeanor of the Complainant, in particular when he visited the School and did not heed the Director's requests, and not based on his race. Although OCR found some exaggerations in the restraining order documents submitted by the School, OCR did not find evidence to establish that the nondiscriminatory reasons the School gave for obtaining a restraining order were a pretext for racial discrimination.

Based on the evidence summarized above, OCR finds that the preponderance of the evidence does not establish that the School violated Title VI and its implementing regulations in connection with this allegation.

Issue 2: Whether the School responded adequately to the Complainant's internal complaint of race discrimination.

Legal Standards

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. School districts 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.

Under the Title VI and the regulations, once a school district has notice of possible discrimination on the basis of race, color, or national origin, it is responsible for determining what occurred and responding appropriately. OCR evaluates the appropriateness of the responsive action by assessing whether it was prompt, thorough, and effective. What constitutes a reasonable response to alleged discrimination will differ depending upon the circumstances. However, in all cases the District must conduct a prompt, thorough and impartial inquiry designed to reliably determine what occurred. If discrimination 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 discrimination, and remedy the effects of the discrimination on the impacted student or students.

Findings

The School is chartered by Alisal Union School District (District), and is run by a not-for-profit organization called Under Construction Education Network (UCEN). The charter approved by the District requires the School to resolve "all disputes among and between students, staff, parents, volunteers, advisors, partner organizations, and UCEN Board of Directors . . . following

the policies and processes developed by the school.”² This includes complaints sent to the District, which are to be referred to UCEN or the School’s Director of Education. The School’s Uniform Complaint Policies (UCP)³, reference complaints of “discrimination, or other violation[s] of state or federal laws,” and define such “unlawful” treatment as “discrimination on the basis of ethnic group identification, religion, age, sex, color, or physical or mental disability.” Discrimination based on race or national origin is not listed. The School’s UCP policies reference complaints made by students, employees, or other “individuals,” but do not discuss parent or community member complaints. For complaints alleging discrimination, the UCP states that “the Director will complete an investigation” within 60 days of receipt of the complaint. In addition, the UCP provides that the complainant or his/her representative shall have the opportunity to present evidence or information to support the allegations. After investigating, the “Director shall prepare a written decision,” which includes findings of fact; conclusions of law; disposition of the complaint; corrective actions, if any are warranted; and notice of the right to appeal and a description of the appeal procedures.

On August XX, 2014, Complainant filed a complaint with the District alleging racial discrimination by School staff. The Complainant specifically alleged different treatment on the basis of race related to his interactions with the Director and other School staff, including that he was unlawfully requested to complete a background check in order to visit and/or volunteer at the School. Consistent with the School’s charter, the District forwarded the complaint to the School for investigation. The Director investigated the complaint, and presented her findings to the UCEN Board of Directors who oversee the School on November XX, 2014. The Director told OCR that her investigation consisted of conversations with several staff members. The Director did not meet with the Complainant, or otherwise give him an opportunity to provide evidence or witnesses, other than what was provided in his complaint, to support his allegations of race discrimination. Based on the Director’s findings, the Board concluded that the Complainant was not the subject of racial discrimination. On December XX, 2014, Complainant received an unsigned letter from the Oasis Charter Public School stating that “the President of Oasis’ Governing Board has concluded the investigation and has found no evidence of discrimination, harassment, or violation to your parental rights to be in school ground [sic] in support of your child’s education.”

Analysis

Under Title VI, schools and school districts must respond promptly and equitably to notice of racial discrimination. The law requires that, upon notice of a potential racial discrimination, the school must conduct a thorough and timely investigation designed to discover whether racial discrimination has occurred, and take immediate action to effectively correct any problems it discovers. An adequate investigation allows the school to reach reliable factual conclusions and, where allegations are substantiated, to assess the impact on the person subject to the discrimination and the educational environment and determine what steps are necessary to repair the situation.

² Oasis Charter Public School Revised Charter, 2011-2012, Element N. The District approved the charter for five years, beginning on July 1, 2011.

³ See Board Policies #1 and #2.

Here, the School's investigation consisted of the Director interviewing various members of her staff. As stated above, in addition to being prompt and thorough, a School's process must be equitable. This means the investigative and resolution process must provide the complainant with a fair opportunity to present, and have the School consider, her or his side of the story, relevant witnesses, and other evidence. OCR's investigation showed that at no point in the School's process did it give the Complainant a fair opportunity to present his side of the story. Moreover, the investigation was conducted by a non-neutral party—the Director who was the subject of the complaint, and the direct supervisor of each of the interviewees. Finally, Complainant did not receive adequate notice of the findings of his Complainant. Specifically, the School's letter to the Complainant explaining its disposition of his complaint did not include any findings of fact, nor did it clearly explain its conclusions of law. It also did not provide notice of or information about an appeal process. The unsigned, two paragraph letter provided no information about the substance of the investigation or how the Board reached the conclusion that he had not been discriminated against, and it did not include the name or title of any individual who the Complainant could contact for questions or further information (the signature line read "Oasis Charter Public School").

Conclusion

For the reasons explained above, OCR determined that there is insufficient evidence to support a conclusion of noncompliance with Title VI with respect to issue one, but there is sufficient evidence to support a conclusion of noncompliance with Title VI with respect to issue two. After OCR notified the School of its conclusions, without admitting to any violation of law, the School entered into a signed Resolution Agreement (Agreement) that, when fully implemented, will resolve the issues in this complaint. Pursuant to the Agreement, the School will: 1) revise its UCP to ensure a prompt and equitable process for resolving complaints of discrimination, including complaints of discrimination based on race, color, or national origin; and, 2) develop and issue written guidance and provide professional development for staff regarding processing complaints of discrimination, including identifying such complaints, providing an impartial and adequate investigation, and providing adequate written notice of findings. The signed Agreement is enclosed with this letter. OCR will monitor the School's implementation of the Agreement.

This concludes OCR's investigation of the complaint and should not be interpreted to address the School's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. OCR is notifying the Complainant concurrently.

Please be advised that the School 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.

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.

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, it will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

OCR would like to thank the School for its cooperation in resolving this case. If you have any questions, please contact OCR staff attorneys Brian Lambert, at (415) 486-5524 or Brian.Lambert@ed.gov, or Abony Alexander at (415) 486-5590 or Abony.Alexander@ed.gov.

Sincerely,

/s/

Zachary Pelchat
Team Leader

Enclosure

cc: Jennifer McQuarrie, Law Office of Jennifer McQuarrie (email)