



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION IX
CALIFORNIA

May 31, 2016

Dr. Charles Young
Superintendent
Benicia Unified School District
350 East K Street
Benicia, CA 94510

(In reply, please refer to # 09-15-1270.)

Dear Superintendent Young:

The U.S. Department of Education, Office for Civil Rights (OCR) has resolved the above-referenced complaint against Benicia Unified School District (District). The Complainants alleged that the District discriminated against the Student on the basis of race and sex.¹ Specifically, the Complainants alleged that the Student was subjected to harassment by other students based on race and sex, and the District failed to respond appropriately and effectively to notice of the harassment.

OCR investigated the complaint under the authority of Title IX of the Education Amendments of 1972 and its implementing regulation. Title IX prohibits discrimination on the basis of sex in programs and activities operated by recipients of Federal financial assistance. OCR also investigated the complaint under the authority of Title VI of the Civil Rights Act of 1964 and its implementing regulation. Title VI prohibits discrimination on the basis of race, color, or national origin by recipients of Federal financial assistance. The District receives funds from the Department and is subject to the above laws and regulations.

OCR gathered evidence by reviewing documents and correspondence provided by the Complainants and the District, and by interviewing the Complainants. Prior to OCR completing its investigation, the District voluntarily agreed to address the areas of concern identified by OCR with respect to the issues investigated. This letter summarizes the applicable legal standards, the relevant facts obtained during the investigation, and the terms of the resolution reached with the District.

¹ OCR previously provided the District with the identity of the Complainants and Student. We are withholding their names from this letter to protect their privacy.

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

Legal Standards

Harassment Based on Sex and Response

The regulations implementing Title IX, at 34 C.F.R. §106.31, prohibit discrimination based on sex by recipients of Federal financial assistance. School districts are responsible under Title IX and the regulation for providing students with a nondiscriminatory educational environment. Sexual or gender-based harassment of a student can result in the denial or limitation, on the basis of sex, of the student's ability to participate in or receive education benefits, services, or opportunities.

Under Title IX and the regulations, once a school district has notice of possible sexual or gender-based harassment between students, it is responsible for determining what occurred and responding appropriately. The district is not responsible for the actions of a harassing student, but rather for its own discrimination in failing to respond adequately. A school district may violate Title IX 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 district knew or reasonably should have known about the harassment; and (3) the district fails to take appropriate responsive action. These steps are the district's responsibility whether or not the student who was harassed makes a complaint or otherwise asks the district to take action.

OCR evaluates the appropriateness of the responsive action by assessing whether it was prompt, thorough, and effective. 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 district must also take steps to prevent the harassment from recurring.

In addition, the Title IX regulations establish procedural requirements that are important for the prevention and correction of sex discrimination, including adoption and publication of grievance procedures providing for the prompt and equitable resolution of complaints of sex discrimination (34 C.F.R. § 106.8[b]).

Harassment Based on Race and Response

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

A district violates Title VI and the regulations if the evidence shows that: (1) the alleged harassing conduct (physical, verbal, graphic, or written) on the basis of race, color, or national origin is sufficiently serious so as to limit or deny a student's ability to participate in or benefit

from the services, activities or privileges provided by a district; (2) the district had actual or constructive notice about the harassment; and (3) the district failed to take an appropriate, prompt, and effective responsive action that is within its authority to end the harassment, eliminate any hostile environment that has been created, prevent its recurrence, and, where appropriate, remedy the effects of the harassment on the student who was harassed.

OCR evaluates the appropriateness of the responsive action by assessing whether it was prompt, thorough, and effective. If a district's grievance procedures encompass race, color, and national origin discrimination, it must apply such procedures consistently and in a manner that does not constitute Title VI discrimination.

Factual Background

- The Student is an African-American female, and during the 2014-2015 school year, she attended a middle school in the District (School).
- According to Complainants, on January XX, 2015, the Student's math class was taught by a substitute teacher. The substitute placed Male Student A in the same group as the Student despite a prior incident in the fall of 2014 where the School determined that Male Student A had made inappropriate racial comments to the Student, and as a result, Male Student A was not to be grouped with the Student. The Student and another African-American female student in the group reported that during class that day, Male Student A and another white male student (Male Student B) made derogatory comments about their race and gender, including incendiary racial epithets and slang pejoratives.
- The Student's parents initially informed the School of the incident by letter and email on January XX, 2015. The Principal² spoke with the Student's mother that same day and informed her that the students responsible for the racial slurs would not be in class for the remainder of the week. The Principal asked the Student's parent if the Student would be comfortable remaining in her math class with Male Students A & B separated on the opposite side of the room, or if she would prefer to be moved to a different class. The Student's parent objected to those options and requested that Male Student A be removed from the class and the Student be allowed to stay, since she was the one who was harassed and should not be punished by being removed from her class.
- Due to their continued concerns about the School's handling of the January XX, 2015 incident, the Complainants filed a complaint under the District's Uniform Complaint Procedure (UCP) on January XX, 2015 alleging race and sex discrimination.
- The District provided a written response to the Student's parents' UCP on February X, 2015. Although the documentation of the District's investigation shows that some action was taken in response to the January XX, 2015 incident, it is not clear whether the District made a finding as to whether the two male students used racial or sexist slurs or whether the

² The Principal left the School after the 2014-15 school year and a new principal is now assigned.

District used the proper legal standard to make that determination and to issue appropriate consequences. Both male students denied using racial or sexist slurs.

- As part of its review in this case, OCR also analyzed the District's grievance policies and procedures under Title IX and has concerns that the policies and procedures may not adequately address the District's duty to respond to harassment that occurs outside of District programs and activities but which may have an impact on such programs or activities and may not provide equivalent notice of the outcome to both parties.
- The District has a new superintendent for the 2015-2016 school year. The new superintendent told OCR that he met with the Complainants, and expressed an interest in resolving any outstanding concerns they may have. The Complainants confirmed that they spoke with the new superintendent and that they also desired to resolve outstanding individual issues concerning the Student.

Analysis and Resolution

Based on the facts gathered to date, OCR had concerns about whether the District adequately investigated and addressed the incident of harassment and applied the proper legal standards in assessing the evidence and making its findings. The facts gathered also raised concerns as to whether the District's relevant policies and procedures provide for a prompt and equitable response.

Prior to concluding its investigation and to address the concerns raised in OCR investigation of the complaint, the District, without admitting to any violation of law, entered into the enclosed resolution agreement which is aligned with the complaint allegation and the information obtained by OCR during its investigation.

Under the agreement, the District will provide training to staff on racial and gender-based harassment including on how to address and reduce the use of racial and gender-based slurs by students, as well as training for relevant staff on investigating complaints of discrimination. The District will provide annual training to students at the School on racial and gender-based harassment. The District will revise its nondiscrimination and grievance policies and procedures to assist it in responding appropriately to future allegations of discrimination and will offer to meet with the Complainants to discuss any related ongoing concerns that they or the Student may have and determine if the Student needs any additional supports as a result of the events underlying the complaint.

Conclusion

Based on the commitments made in the enclosed resolution agreement, OCR is closing the investigation of this complaint as of the date of this letter, and notifying the Complainants concurrently. When fully implemented, the resolution agreement is intended to address all of OCR's compliance concerns in this investigation. OCR will monitor the implementation of

agreement until the District is in compliance with the statutes and regulations, which were at issue in the case.

This concludes the investigation of this complaint. OCR's determination in this matter 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 Complainants may have the 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.

Please be advised that 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 Complainants may file another complaint alleging such treatment.

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 the law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

OCR wishes to thank the District for its assistance and cooperation in resolving of this complaint. If you have any questions, please contact me at 415-486-5542.

Sincerely,

/s/

Zachary Pelchat
Team Leader

Enclosure