



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGION IX
CALIFORNIA

50 UNITED NATIONS PLAZA
MAIL BOX 1200; ROOM 1545
SAN FRANCISCO, CA 94102

January 18, 2017

Francisco Escobedo
Superintendent
Chula Vista Elementary School District
84 East J Street
Chula Vista, California 91910

(In reply, please refer to case no. 09-16-1410.)

Dear Superintendent Escobedo:

The U.S. Department of Education, Office for Civil Rights (OCR) has resolved the above-referenced complaint against the Chula Vista Elementary School District (District). The complainant¹ alleged that the District discriminated against the Student on the basis of race. Specifically, OCR investigated the following allegation:

- (1) Whether the Student was subjected to harassment by other students based on race at a District school, and the District failed to respond appropriately and effectively to notice of the harassment.

OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964 and its implementing regulation. Title VI prohibits discrimination on the bases of race, color, or national origin in programs and activities operated by recipients of Federal financial assistance. The District receives funds from the Department and is subject to Title VI and the regulation.

OCR began its investigation by gathering and reviewing documents and correspondence provided by the Complainant and the District, and by interviewing the Complainant and a District staff member. Prior to OCR completing its investigation, the District voluntarily agreed to address OCR's areas of concern with respect to the allegation investigated. This letter summarizes the applicable legal standards, the facts gathered to date during the investigation, and the terms of the resolution reached with the District.

¹ OCR previously provided the District with the identity of the Complainant and Student, and we are withholding their names from this letter to protect personal privacy.

Issue 1: Whether the Student was subjected to harassment by other students based on race at a District school, and the District failed to respond appropriately and effectively to notice of the harassment.

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

A district violates Title VI and the regulations if the evidence shows that: (1) the 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.

Under the Title VI and the regulations, once a district has notice of harassment of a student on the basis of race, color or national origin by another student that took place in a district program, it is responsible for determining what occurred and responding appropriately. The district is not responsible for the actions of the student, but rather for its own discrimination in failing to respond adequately. Once the district has notice of harassment, the responsibility to take appropriate and effective action is the school's responsibility whether or not the student who was harassed makes a complaint or otherwise asks the school to take action. So long as an agent or responsible employee of the school received notice, that notice will be imputed to the school.

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 district must promptly conduct an impartial inquiry designed to reliably determine what occurred. 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.

The response must be tailored to stop the harassment from recurring, eliminate the hostile environment, and remedy the effects of the harassment on the student who was harassed. The steps taken should be reasonable, timely, age-appropriate, tailored to the specific situation, and effective. A series of escalating consequences may be necessary if the initial steps are ineffective in stopping the harassment.

Facts Gathered to Date and Preliminary Analysis

- The Complainant stated to OCR that the Student and another female student (student A) attended the School and used to be friends. She wrote in her OCR complaint that on March XX, 2016, the Student went to school, and at the School, student A and another female student (student B) told the Student that she could not play with them anymore, and called the Student a racial slur. She stated to OCR that she did not know specifically where the students were at the School when this occurred, she did not know if other students heard or saw this incident, or whether she reported this to anyone at the School or District.
- The Principal stated in a declaration that during the week of April XX-XX, 2016, the Complainant visited the School, and that he spoke with her in the hallway. Prior to this meeting, he stated he had not met or interacted before with the Complainant. He stated that after she told him that student A was bothering the Student (using only the word “bothering” without any references to any one’s race, or any race-based conduct, comments, or slurs) the Principal stated that he told the Complainant that he was not previously aware of any concerns between the Student and student A, but that he would speak with the Student to try to learn more information about what happened.
- The Complainant stated to OCR in an interview that she could not recall when she visited the school and talked with the Principal about student A and the Student. She thought that the first time she brought it up with the Principal was May X, 2016 in an email. The Complainant stated that she could not be sure, but she thought she might have met in person with the Associate Principal about the Student being called the n-word by student B prior to either emailing the Principal on May X, 2016, or visiting the Principal.
- The Principal stated to OCR in an interview that he never heard from anyone at any time that student A and student B called the Student a racial slur. He stated that the Complainant did not mention this racial slur when he spoke with her in the hallway at School during the week of April XX-XX, 2016, or at any time before or after that encounter. He stated that when he spoke with the Student and with student A, neither student mentioned any racial slurs or name calling. Both students told him that they used to be friends, but had a falling out after a disagreement and no longer wanted to be friends. He stated that he told both students to treat each other with respect and to abide by School rules.
- The Complainant stated that on May X, 2016, another female (student C) pushed the Student off of the bench at lunchtime, and yelled at the Student that she could not sit next to student C. She stated to OCR that she did not know if other students heard or saw this, or whether she reported this to anyone at the School or District. Neither she nor the Student provided any more details to OCR about this incident, despite additional requests for such information. The Principal stated to OCR in an

interview that he was unaware of this incident and that no one had ever told him anything about this incident.

- On May X, 2016, student B posted a video on a social media website. The short video starts with a screen showing the text: “Question ‘Who do you hate most in our class?’” and student B’s user name. The girl in the video, who the Complainant claimed is student B, states: “So, the person I hate the most would have to be [Student] and most of you guys know why most of you guys know what has been happening so yeah.” The Complainant stated that she talked with the Student’s teacher (Teacher) about the video on May X, 2016, and that the Teacher told her to send the video to the Principal, which she did by email May X, 2016. The Complainant stated that she could not recall whether she said anything to the Teacher about race, or racial slurs or comments involving the Student, or student A or B. In the Complainant’s May X, 2016 email to the Principal, attaching the video, she stated that the video was cyber bullying, that “two little girls” had the whole fifth grade involved against the Student, and that the girls were calling the Student “racial names”, and that the Principal and School employees were not taking the incident seriously.
- The Principal stated in a declaration that on May X, 2016, he received the email from the Complainant with the video, and that the video did not include any racial names and that he was unclear why the Complainant believed that the video was motivated by or involved race.
- The Principal stated in his OCR interview that he met with and told student B to be respectful and follow school rules, and that when he met with student B’s mother, he and student B’s mother discussed student B’s video post. The Principal stated that he offered to set up a meeting at School with student B’s mother and the Complainant, which could include a School Resource Officer (SRO), but student B’s mother did not want to meet with the Complainant. The Principal stated that in his conversation with student B’s mother, she did not mention race, racial slurs or comments of any kind and that he did not ask student B’s mother about race, racial slurs or comments.
- The Principal stated in a declaration that he addressed the Complainant’s claim that the School was not taking her concerns seriously by sending student B’s video to a SRO, SRO#1, on May X, 2016, and then asked SRO#1 to participate in a phone call with him and the Complainant.
- The Principal stated in a declaration that on Sunday May X, 2016 he received by email a copy of screenshots of messages posted on social media by a number of students, including student B and the Teacher’s son. The Complainant wrote in her email that the Teacher’s son was “bullying” the Student, but her email did not mention race, racial slurs or comments. OCR’s review of the student messages themselves showed that they contain no racial conduct, comments or slurs and have

comments such as “we won she lost” and “we won the war take that [Student] or her true name liar [*sic*].”

- The Principal stated in his interview with OCR that after he received and reviewed the screenshots, he called the Complainant on May X, 2016 and told her he would look further into the screenshots. He stated that during the telephone call, the Complainant only referred to bullying taking place, and did not mention race, or racial slurs or comments, nor did he ask her what she meant in her May X, 2016 email to him in which she referred to “racial names” the Student was allegedly being called.
- The Principal stated in a declaration that he and SRO#1 called the Complainant together on May X, 2016 and started the conversation by expressing their view that the video and screenshots did not contain racial conduct, which he stated upset the Complainant, who raised her voice, used profanity, and became uncooperative and hung up. He stated in his OCR interview that the telephone call lasted between three and four minutes before the Complainant hung up.
- The Principal initially stated in his OCR interview that during the May X, 2016 call with the Complainant, SRO#1 might have asked the Complainant about the “racial names” that the Student was allegedly being called, after which the Complainant yelled at SRO#1 and used profanity. He later stated in his interview that he was very confident that SRO#1 asked the Complainant about racial names. In response to SRO#1’s questions, the Principal did not recall that the Complainant mentioned the racial slur allegedly used by student B, or any other racial slurs or comments that the Complainant alleged to OCR were used by the Student’s peers.
- The Complainant stated to OCR in an interview that during the May X, 2016 phone call with the Principal and SRO#1, she did get upset about what they were saying to her, that she used profanity, and that she hung up the telephone on them because SRO#1 was nonchalant and rude to her when she said that bullying was serious and that “kids kill themselves every day over bullying.” She stated that she thought that SRO#1 was not taking the situation seriously.
- The Principal stated that when he had conversations with the Complainant, she did not provide to him any examples of racial slurs or comments of any kind, or any other conduct that was based on race, involving the Student, student B, student A, or any other student. He also stated that he did not ask the Complainant in a conversation, or in an email or letter, what she meant in her May X, 2016 email to the Principal when she referred to “racial names,” or who was using them.
- The Principal wrote in his declaration that the District’s investigation, which included conversations with parents and students, did not provide any evidence of bullying, or of conduct that was based on race. He stated to OCR that he spoke with the Student, student A, student B and their parents, and also to the Teacher (who was the Student’s and student B’s teacher) who all said that the Student and student B

had a falling out, but that no individual mentioned anything about race, and he did not ask about race. He stated that when he spoke with the Teacher, and specifically asked about racial slurs being used by students involving the Student, that the Teacher said she did not know what the Complainant was talking about regarding racial slurs. He stated he was alone with the Teacher for this conversation, and that he had no notes or other documents related to his conversation with the Teacher.

- The Principal stated that if someone alleges race or gender discrimination, he takes it seriously but that if he is interviewing someone as part of an investigation about alleged race or gender discrimination, he would not ask a witness a question such as, "What word did you say?" because, he explained, he has to investigate and not take sides.
- The Principal stated that despite what he described as the lack of evidence, and because of the Complainant's email, he and SRO#2 convened an all-student 5th grade assembly May XX, 2016, also attended by all 5th grade teachers, during which he and the SRO reminded students that the inappropriate use of social media would not be tolerated, and that negative comments about fellow students must stop immediately. He stated to OCR that race and racial slurs or comments were not mentioned during the May XX assembly.
- The District asserted that after the May XX, 2016 assembly, no new incidents occurred and no concerns were raised regarding the Student and any other students. The Principal stated in a declaration that after May XX, 2016, he considered the matter to be resolved. The Complainant stated that SRO#2, who participated in the 5th grade assembly and who spoke individually with her in person at some point, took bullying more seriously and was more concerned than any other District employee. She stated that after she met with the Principal and SRO#2 on May XX, 2016, she left the meeting and then observed the Principal and SRO#2 met with student B, who soon thereafter left the meeting crying and admitted that she called the Student racial names. She stated that she did not think that there were new incidents after the assembly. She stated that at the beginning of the new school year, student B tried to apologize to the Student.
- The Principal stated in his interview that he and SRO#2 met with student B on May XX, 2016, but that student B did not admit to calling the Student racial names.
- The Principal wrote in his declaration that he investigated the Complainant's concerns, determined that the Student and friends had a falling out, but that there was nothing that would amount to bullying or racial discrimination or harassment. He claimed that after he reached this conclusion, he called the Complainant to notify her but that he did not reach her. The Principal stated that after May XX, 2016 he asked the Student how everything was going, and that the Student reported to him that everything was fine and that she had no concerns.

- The Complainant stated that prior to May X, 2016, the Student came home crying from School, said that she did not want to go to School, and did not want to eat lunch at the School because of what students said to her.
- In addition, the Complainant stated to OCR that she did not have the dates, or other details, but believed that a Hispanic boy told the Student at lunch to “get your Black hands off her,” while referring to the Student who had her arm around another student’s shoulder. The Complainant also stated that an unidentified student on the playground said to the Student, “I don’t mean to be racist, but is that your hair?” and that student B called the Student a racial slur. The Principal stated to OCR that he had never heard of any of these incidents from anyone.
- With regard to the different incidents of harassment that the Complainant described to OCR, despite numerous OCR attempts to contact the Complainant for further information, the Complainant has provided no further information about the incidents and did not respond to OCR’s requests to interview the Student.

Summary and Resolution

As described above, when OCR investigates whether a district responded appropriately to alleged peer harassment on the basis of race, color or national origin, OCR first examines whether the preponderance of the evidence establishes that the alleged harassment occurred and that it was sufficiently serious so as to limit or deny the student’s ability to participate in or benefit from the district’s programs. If OCR finds that discriminatory harassment occurred, and that the District had notice of the harassment or should have known of the harassment, OCR investigates whether the district promptly conducted an impartial inquiry designed to reliably determine what occurred, and whether the district took actions to stop the harassment from recurring, eliminate the hostile environment, and remedy the effects of the harassment on the student who was harassed.

In this case, the complainant emailed the Principal on May X, 2016 alleging that the Student was being bullied and called racial names by other students, specifically she stated that two girls were calling the Student racial names. OCR found that the School had notice of this communication. With respect to the other alleged incidents, namely that a Hispanic boy, in one instance, and another unidentified student on the playground in another instance, made racial comments to the Student, the Complainant has not made herself available to OCR to provide further information, and has not permitted OCR to interview the Student.² She stated that with respect to the racial name calling, she did notify someone at the School but did not provide specifics.

With respect to the May X email, the Principal stated that he talked with student B and told her to be respectful and follow school rules, but he did not ask student B for any details about possible racial name calling. However, the Principal acknowledged that

² OCR notes, however, that other peer-to-peer incidents alleged by the Complainant might be examples of bullying without civil rights implications.

he did not ask any questions about race-based behavior of witnesses, which raised a concern for OCR that School staff may not have sufficient training regarding how to respond appropriately and effectively to complaints of peer harassment based on race.

For OCR to determine whether, looking at the totality of the circumstances, all of the incidents alleged by the Complainant occurred and created a hostile environment on the basis of race and to determine whether the District had notice of such harassment, OCR would need to interview employees who may have overheard statements made and students alleged to have engaged in the bullying behavior on the basis of race for further details surrounding the alleged racial harassment by peers, and to interview the Student to understand whether any harassment impacted her ability to access her education. However, prior to the conclusion of OCR's investigation, the District indicated its interest in voluntary resolution. Pursuant to Section 302 of OCR's Case Processing Manual, allegations and issues under investigation may be resolved at any time when, prior to the conclusion of the investigation, the district expresses an interest in resolving the allegations and issues and OCR determines that it is appropriate to resolve them with an agreement during the course of the investigation.

On January 10, 2017, the District entered into the attached resolution agreement, which when implemented, is intended to resolve the concerns identified by OCR and the issue investigated in this case. Pursuant to the resolution agreement, the District agrees to provide training to school site staff and administrators responsible for responding to allegation of race discrimination. Based on this agreement, OCR is closing the investigation phase of this case.

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. Based on the commitments made in the Agreement, OCR is closing this complaint as of the date of this letter and notifying the Complainant concurrently.

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.

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 Complainant 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, we will seek to protect, to the extent provided by law, personally

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

Thank you for your cooperation in resolving this case. If you have any questions about this letter, please contact David Christensen at (415) 486-5554 or via email at david.christensen@ed.gov, or me at (415) 486-5555.

Sincerely,

/s/

Mary Beth McLeod
Team Leader

cc: XXXXXX XX XXXXXXXX (*via electronic copy only*)
District Counsel

Enclosure