



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

REGION IX  
CALIFORNIA

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MAIL BOX 1200; ROOM 1545  
SAN FRANCISCO, CA 94102

November 8, 2016

Dr. Maureen E. Latham  
District Superintendent  
Beaumont Unified School District  
350 Brookside Ave  
Beaumont, CA 92223

(In reply, please refer to case no. 09-16-1431.)

Dear Superintendent Latham:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against Beaumont Unified School District (District). The Complainant alleged that: (1) her daughter (the Student)<sup>1</sup> was subjected to harassment by other students and/or her Teacher based on race, and the District failed to respond appropriately and effectively to notice of the harassment;<sup>2</sup> (2) the District failed to provide the Student with a free, appropriate public education (FAPE) by failing to implement the Student's seating accommodation from her Individualized Education Program (IEP); and (3) the District retaliated against the Student after the Complainant complained about race-based harassment when her Teacher treated her differently than other students.

OCR investigated the complaint under the authority of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d, Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. §794, and their implementing regulations. Title VI prohibits discrimination on the bases of race, color, or national origin by recipients of Federal financial assistance. Section 504 prohibits discrimination on the basis of disability by recipients of federal financial assistance. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation, at 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities. As a recipient of federal financial assistance and as a public education system, the District is subject to Title VI, Section 504, Title II, and their implementing regulations.

To investigate this complaint, OCR reviewed documents and other information provided by the Complainant and the District, and interviewed the Complainant and the District Director of Student Services. Under Section 302 of OCR's Case Processing Manual, a complaint may be resolved at any time when, before the conclusion of an investigation, the district expresses an interest in

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<sup>1</sup> OCR previously provided the District with the identity of the Complainant and Student. We are withholding their names from this letter to protect their privacy.

<sup>2</sup> OCR's initial letter notifying the District of the instant complaint indicated that OCR was investigating whether the Student was subjected to harassment by her peers. During the investigation, OCR determined that Complainant's harassment allegations also included the Teacher's conduct. Accordingly, OCR expanded its investigation and provided the District notice of the amended allegation on November 2, 2016.

resolving the complaint.<sup>3</sup> During the course of OCR’s investigation process, the District expressed an interest in resolving the complaint. On November 7, 2016, the District submitted a Resolution Agreement which, when implemented, is intended to resolve OCR’s compliance concerns in this investigation with regard to the harassment allegations. For this reason, OCR did not complete its investigation or reach findings or conclusions as to whether the District had failed to comply with Title VI and its implementing regulations. However, with regard to the FAPE allegation, OCR has determined that there is insufficient evidence to support a conclusion that the District failed to comply with Section 504, Title II and their implementing regulations. Similarly, OCR has determined that there is insufficient evidence to conclude that the District retaliated against the Student under Title VI and the regulation.

The applicable legal standards, the facts gathered to date, and the reasons for OCR’s determinations are summarized below.

**Issue 1:** *Whether the Student was subjected to harassment by other students and/or her Teacher based on race, 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 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.<sup>4</sup>

Under 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 harassing student, but rather for its own discrimination in failing to respond adequately. Once the district has notice of harassment, the responsibility to

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<sup>3</sup> The Case Processing Manual is available on line at: <http://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>

<sup>4</sup> For further explanation, please see the 1994 Investigative Guidance entitled, “Racial Incidents and Harassment Against Students at Educational Institutions,” Part X, Federal Register, Vol. 59, No. 47, March 10, 1994, 11448-11454.

take appropriate and effective action is the district'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 district received notice, that notice will be imputed to the district.

In addition, if an employee who is acting, or reasonably appears to be acting, in the context of carrying out these responsibilities engages in harassing conduct (physical, verbal, graphic, or written) on the basis of race, color or national origin that is sufficiently serious to deny or limit a student's ability to participate in or benefit from the program, the district is responsible for the discriminatory conduct whether or not it has notice. If a student is harassed by an employee on the basis of race, color or national origin, the district 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 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.

Where the allegations filed with OCR have been investigated through a district's internal grievance procedures, OCR first thoroughly reviews all documentation of the district's investigation and resolution of the complaint to determine whether the district provided a resolution and remedy using legal standards that meet the requirements of Title VI and its implementing regulations, and a comparable process that meets OCR's requirements. If OCR finds that the recipient has met these requirements, OCR generally will not conduct its own independent investigation. If OCR finds that that the recipient has not met these requirements, OCR will conduct its own independent investigation or request that the recipient redo the investigation.

#### Facts Considered

- Around late March 2016, the Complainant raised concerns of bullying to the school-site administration. According to the District, the Complainant did not assert that the bullying was related to race. The Complainant told OCR that she did inform the District that the bullying was race-based.
- In May 2016, as part of an assignment completed by all third graders at the Student's school, a "Wanted" poster with the Student's picture was posted with the caption Awesome XXXX Wanted for putting African apes in a zoo in April." The caption was composed by the Student.
- On May XX, 2016, the Complainant complained to the Superintendent's administrative assistant about the poster, the same incidents of alleged bullying the Complainant raised to the school-site administration around late-March, and also raised complaints about the Teacher, including that the Student had recently been reassigned to sit away from the rest of the class. Her complaint was routed to the School Site's Principal, as well as the District Director of Student Services.

- On May XX, 2016, at a meeting with the District Director of Student Services, the Director of Student Services gathered additional details from the Student’s grandmother about the alleged racial harassment. The Student’s grandmother reported that other students were referring to the Student as “coon,” “African,” and “black,” and that the Student’s teacher had told several students to refer to the Student as African because she is black, and had a discussion with the whole class that the Student is African American.
- The Director of Student Services initiated an investigation into the Complainant’s allegations. As part of its investigation, the District sought information from the principal and the classroom teacher.
- The Principal informed the District that Complainant had raised concerns about bullying six weeks prior, and that since receiving those complaints, the Principal and Vice-Principal had started frequently asking the Student how her day was going and monitoring any possible conflicts with other students. The Principal also reported that they interviewed the Student, who stated that no one had ever said mean things to her, but that classmates were “shush-ing” her. Further, the Principal reported to the District that the school-site administration interviewed the classroom teacher, who claimed never to have spoken to any student, much less the class, about race. The District also learned that the alliteration assignment that resulted in the offending poster was completed by all third-grade students, and that the Student composed her own caption.
- In a letter dated May XX, 2016, the District informed the Complainant that it had completed the investigation and stated in its closing letter that “there are concerns [the Complainant] brought to [the District’s] attention that need to be addressed, however [the District has] not identified any evidence that the intent of the classroom teacher or school site administration was to single out [the Student].” The letter further concluded that the “site administration addressed the bullying/harassment concerns brought to them ... in a prompt manner. The racial comments were not brought to the attention of site administration or teacher so they were unable to address those matters specifically.” Finally, the letter stated it had identified the following steps to address Complainant’s concerns:
  - “[The] District will develop a student education and staff professional development plan to address bullying/harassment issues related to race, gender, disability, or religion.
  - Racial sensitivity training will be provided for all staff during the 2016-17 school year.
  - The Wanted Poster: Alliteration assignment has been removed.
  - Student placed on Independent Study from May 18, 2016- June 2, 2016.
  - Student receiving [services, per her IEP] starting May 24, 2016- June 2, 2016 (Tuesday and Thursday) 9:00 a.m.-9:30a.m.
  - Opportunity to change schools (Intra-District Transfer) for the 2016-17 school year.”
- The Complainant told OCR that she elected to put the Student into independent study for the for the last two weeks of the 2015-2016 school year, and that the Student is currently attending a different school in the District, pursuant to the resolutions offered by the District on May 24, 2016. On August 19, 2019, the District also offered the Student counseling, which the Complainant declined at that time, because the Student is having a positive experience at her new school.

## Analysis

OCR's preliminary review of the District's investigation of the Complainant's allegations suggests that the investigation did not provide a resolution using legal standards that meet the requirements of Title VI and its implementing regulations, or a comparable process that meets OCR's requirements. Specifically, OCR is concerned that the District may not have completed its investigation into the allegations of race harassment made by the Student's grandmother because the District determined that the allegations were not initially brought to the attention of the site administration or teacher.

There is a dispute as to whether the Complainant notified the school of race-based harassment in March of 2016. However, there is no dispute that the Complainant's allegation of race-based harassment was brought to the Superintendent's office on May XX and that the grandmother's allegations of race-based harassment were brought to the Director of Student Services on May XX. The details that were provided regarding the alleged peer-based harassment, alleged comments by the Teacher and the posting of the alliteration assignment at the latter meeting were sufficient to provide notice of discriminatory harassment. Once the District had received such notice, it should have conducted an adequate investigation to determine whether harassment had occurred. In addition, based on its May XX, 2016 letter, OCR is concerned that the District applied the wrong legal standard to its investigation by searching for evidence of the classroom teacher or school site administration's "intent," instead of determining whether the alleged harassing conduct was sufficiently serious so as to limit or deny the Student's ability to participate in or benefit from the services, activities or privileges provided by a District.

Before OCR was able to complete its investigation, the District expressed an interest in voluntarily resolving the concerns identified by OCR in this case. To complete its investigation and make a finding with regard to this issue, OCR would have conducted an independent investigation of the Complainant's allegations, including conducting interviews with school site staff, such as the classroom teacher, the school site administrators, as well as the Student's former classmates. However, on November 7, 2016, District entered into the Attached Agreement with OCR in which the District agreed to: 1) provide training to all staff district-wide who investigate complaints of harassment on the basis of race, color, national origin, ethnicity, gender, and disability, which will include the proper legal standards to apply when conducting an investigation, the steps for conducting a thorough and impartial investigation, and the requirements for investigating such complaints contained in the District's grievance procedures; 2) provide all District administrators two and a half days of training focused on equity and racial sensitivity; 3) provide all District certificated teaching staff with a half-day training focused on equity and racial sensitivity; 4) finalize a student education and staff professional development timeline which lays out the steps the District will take during the 2016-2017 school year to create a bullying/harassment prevention plan to address bullying/harassment issues related to race, color, national origin, ethnicity, gender, or disability; 5) create a plan to implement the bullying/harassment plan for 2017-2018 school year; 6) notify the Complainant that, at her request, the District will provide counseling for the Student from a qualified counselor who has received training in cultural sensitivity and addressing bullying.

**Issue 2:** *Whether the District failed to provide the Student with a free, appropriate public education (FAPE) by failing to implement the Student's seating accommodation from her Individualized Education Program (IEP).*

### Legal Standards

The Section 504 regulations, at 34 C.F.R. §104.33, require public school districts to provide a free appropriate public education (FAPE) to all students with disabilities in their jurisdictions. An appropriate education is defined as regular or special education and related aids and services that are designed to meet the individual needs of students with disabilities as adequately as the needs of non-disabled students are met, and that are developed in accordance with the procedural requirements of §§ 104.34-104.36 pertaining to educational setting, evaluation and placement, and due process protections. Implementation of an individualized education program (IEP) developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting these requirements. 34 C.F.R. §104.33(b)(2). OCR interprets the Title II regulations, at 28 C.F.R. §§35.103(a) and 35.130(b)(1)(ii) and (iii), to require districts to provide a FAPE at least to the same extent required under the Section 504 regulations.

### Findings of Fact

- The Student has a disability and an IEP team was convened and a program adopted by the District on February X, 2016. The IEP provided that several services would be offered to the Student to provide her a FAPE. No mention is made in the IEP about the Student's seating assignment.
- On May XX, 2016, the Complainant attended an Open House at the school and noticed that the Student's desk had been moved far to one side of the classroom, away from the teacher.
- In its investigation, the District determined that the seat had been moved in response to a suggestion by the special education teacher.
- By letter dated May XX, 2016, in response to the Complainant's concerns raised on May XX, 2016, the District identified the need to reconvene the IEP team to "discuss an appropriate seating assignment and accommodations to help [the Student] meet her IEP goals."
- On August XX, 2016, an IEP team was reconvened, and the Student's IEP was amended to include preferential seating, "close to teacher, always in a group, never isolated or in a corner."

### Analysis & Conclusions of Law

Section 504 requires school districts to provide a FAPE to students with disabilities. Implementation of an individualized education program (IEP) developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting these requirements

When this complaint was filed, the District had outlined the services deemed necessary to provide the Student with a FAPE in her February XX, 2016 IEP. Of the several aids and services listed in that IEP, none related to the Student's seat assignment. However, on August XX, 2016, the IEP was amended to include preferential seating, and Complainant consented to this amendment. For these reasons, OCR concluded that there was insufficient evidence to find that the February XX, 2016 IEP required the District to provide preferential seating. Further, OCR understands that the Complainant and the District have resolved Complainant's concerns through the IEP's amendment in a manner consistent with the requirements of Section 504 and Title II.

**Issue 3:** *Whether the District retaliated against the Student after the Complainant complained about race-based harassment when the Student's Teacher treated her differently than other students.*

### Legal Standards

The Title VI regulations, at 34 C.F.R. §100.7(e), prohibit school districts from intimidating, threatening, coercing, or retaliating against individuals because they engage in activities protected by Title VI. When OCR investigates an allegation of retaliation, it examines whether the alleged victim engaged in a protected activity and was subsequently subjected to adverse action by the school district, under circumstances that suggest a connection between the protected activity and the adverse action. If a preliminary connection is found, OCR asks whether the school district can provide a nondiscriminatory and nonretaliatory reason for the adverse action. OCR then determines whether the reason provided is merely a pretext and whether the preponderance of the evidence establishes that the adverse action was in fact retaliation.

### Findings of Fact

- The Complainant informed the school site administrators that the Student was being bullied around late-March. The District maintains that the Complainant did not inform them of the racial nature of the bullying at this time; the Complainant told OCR that she characterized the bullying as race-based.
- The Complainant stated that the Teacher retaliated against the Student by not high-fiving her until the Complainant or the Student's grandmother was present, and by not letting the Student take home a school-issued Chromebook for a period of time in April.
- On May XX, 2016, the Complainant complained to the District of race-based harassment, and also complained about the Teacher's actions with regards to the high-fives and the ChromeBook. On May XX, 2016, at a meeting with the District Director of Student Services (District Director), the Student's grandmother reported allegations of racial harassment as described above, and also complained about the Teacher's unwillingness to high-five the Student and her withholding of the ChromeBook.

- In order to investigate the May complaint, the District Director gathered information from the School principal and the Teacher about the concerns the Complainant raised. The District Director found that it was the Teacher's practice not to high-five any student until the adult coming to pick up the student appeared. With respect to the ChromeBook, the District Director also found that the Teacher kept the ChromeBook at school until the Student was able to bring in its charger, because the Student had reported to the Teacher that the charger was not working. The District Director also found that when the Teacher confirmed the charger was working and showed that to the Student, the Teacher allowed the ChromeBook to go home with the Student again.

### Analysis

The Title VI regulations, at 34 C.F.R. §100.7(e), protect the Complainant from intimidation, coercion, or retaliation by the District for engaging in activities protected by Title VI. The Complainant told OCR that she engaged in protected activity around late-March by raising concerns that her daughter was being bullied on the basis of race. This fact is disputed by the District. The District maintains that the Complainant did not report to the District that the bullying was occurring on the basis of race. The Complainant alleged that her advocacy around late-March resulted in the school site staff subjecting Student to adverse treatment, which the Complainant stated manifested as the Student's Teacher refusing to high-five the Student at dismissal until the Complainant or the Student's grandmother arrived, and by not allowing the Student to take home a school-issued ChromeBook for a period of time.

Assuming, without deciding, that the complaint lodged around late-March identified the bullying as race-based, and was therefore protected activity, OCR found insufficient evidence that the Teacher's actions were adverse to the Student. While there is some difference between the accounts of the Complainant and the Teacher concerning the length of time during which the Chromebook was unavailable, the preponderance of evidence did not establish that the Student was deprived of the Chromebook for more than the few days it took to recharge it and ensure that its charger was working properly; OCR also found that the District's asserted reason for maintaining the Chromebook at school for this period was a legitimate, nonretaliatory reason.<sup>5</sup> OCR also found it credible that the Teacher waited to high-five the Student until an adult was present, since the high-five signaled the end of the school day and was the way the Teacher said good-bye to students. As such, OCR concluded that neither the Teacher's refusal to send the Chromebook home for a few days while it was being recharged nor the failure to high-five the Student, as alleged, were sufficiently adverse to the Student or the Complainant to support a finding of retaliation. Accordingly, OCR concludes that there is insufficient evidence to find that the Student was subjected to retaliation under Title VI and the implementing regulation.

### Conclusion

This concludes OCR's investigation of the complaint and should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than

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<sup>5</sup> As part of its investigation into the Complainant's allegation, the District conducted an internal investigation. OCR may adopt factual evidence collected during the investigation if it appears reliable. In this case, the District asked the Teacher questions that were substantially identical to those that OCR would have asked, and obtained written answers, which OCR reviewed. OCR therefore did not re-interview the Teacher.

those addressed in this letter. OCR is closing this case as of the date of this letter, and notifying the Complainant concurrently.

When fully implemented, the Agreement is intended to address all of OCR's compliance concerns in this investigation. OCR will monitor the implementation of the Agreement until the District is in compliance with Title VI and its implementing regulations.

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 they have 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, 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 would like to thank your staff, especially Domenica Bernauer, for their cooperation and courtesy in resolving this matter. If you have any questions regarding this letter, please contact Araceli Martínez-Olguín, Civil Rights Attorney, at (415) 486-5589 or a.martinez-olguin@ed.gov.

Sincerely,

/s/

Anamaria Loya  
Team Leader

Enclosure: Resolution Agreement

cc: Domenica Bernauer, Director of Student Services (*via email only*)