



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

March 9, 2018

VIA ELECTRONIC MAIL

Deborah A. Flores, Ph.D.
Superintendent
Gilroy Unified School District
7810 Arroyo Circle
Gilroy, California 95020

(In reply, please refer to case no. 09-17-1293.)

Dear Dr. Flores:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the Gilroy Unified School District (the District). The Complainant, the parent of a student (Student) in the District, alleged that the District discriminated against the Student on the basis of race.¹ Specifically, OCR investigated whether the Student was subjected to a hostile environment based on race when she was allegedly the target of derogatory racial slurs, and whether the District failed to provide a timely, effective, and appropriate response.

OCR investigated the complaint under the authority of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and its implementing regulation, 34 C.F.R. Part 100. 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 gathered evidence by reviewing documents provided by the Complainant and the recipient, and by interviewing the Complainant. 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, and OCR agreed it was appropriate to do so. 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 complainant and student. We are withholding their names from this letter to protect their privacy.

Issue: Whether the Student was subjected to a hostile environment based on race when she was the target of derogatory racial slurs, and whether the District failed to provide a timely, effective, and appropriate response.

Legal Standard

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 -- severe, persistent, or pervasive -- 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, timely, 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.

In analyzing claims of harassment under Title VI, OCR first considers the totality of the circumstances to determine whether a hostile environment has been created, i.e., whether the harassing conduct is sufficiently severe, persistent or pervasive that it denies or limits a student's ability to participate in or benefit from the recipient's program. These circumstances include the type of harassment, context, nature, scope, frequency and severity, age, race, duration, and location of the harassment incidents, as well as the identity, number, and relationships of the persons involved. It also considers whether other incidents motivated by race, color or national origin have occurred at the school to this complainant or others.

approach by holding a conflict resolution meeting with the students, and that during the meeting Student 2 apologized to the Student, the Student stated that she did not currently feel scared or intimidated, and the Principal informed the Student that if anything else happened she could tell the Principal. The District provided OCR with a copy of a school infraction slip showing that Student 2 was issued two days of yard duty, twice a day, as a consequence for his behavior starting on February X, 2017. The Complainant told OCR that she was never informed of the outcome of the District's investigation.

On September XX, 2017, Student 3 called the Student a "n---er" during a conflict involving other students at her XXX XXXXXX school (School 2). According to the California Department of Education, students of African American descent comprised 0.9% of the XXX students at School 2 during 2016-2017.³ The Complainant told OCR that she complained to the District and reported the incident to the police, and that she met with the Assistant Principal the next day and informed him that the Student had also been called the racial epithet at her previous school as well.

The District told OCR that the Assistant Principal investigated, determined that Student 3 called the Student the racial epithet, disciplined Student 3, and determined that the use of the n-word to harass a student was an isolated incident at School 2. With regard specifically to the discipline imposed, the District stated that the Assistant Principal counseled Student 3, explained to him that his behavior was inappropriate and unacceptable, and issued two days of in-house suspension. The District's narrative stated that prior to meeting with the Complainant, the Assistant Principal was unaware of the previous incident at School 1, that he also was not aware of other incidents at School 2 of students calling the Student or other students the racial epithet, and that he informs all students at the beginning of the school year that racial discrimination is not tolerated. The District also told OCR that the Assistant Principal would monitor the situation between Student 3 and the Student.

The District utilizes Administrative Regulation 1312 (Uniform Complaint Procedure) (AR 1312) to resolve complaints of race-based harassment and discrimination. AR 1312 states that, within 60 days of the District's receipt of the complaint, the compliance officer is required to send the complainant a final written decision, which includes how the District resolved the complaint, as well as the factual findings, evidence, conclusions of law, disposition of the complaint, and rationale for the disposition. For determinations of unlawful discriminatory harassment, the final written decision shall also include a determination as to whether or not the discriminatory conduct occurred and whether a hostile environment was created, and if so, the corrective actions that will be or were taken, as well as a description of available individual remedies offered/provided, and systemic measures the school has taken to eliminate a hostile environment and prevent recurrence. AR 1312 provides for the use of restorative justice. The District

³ *Id.*

confirmed that the Complainant was not provided with a written decision with any of the information specified as being required by AR 1312, in its response to either the February X or September XX, 2017 complaints.

Analysis

Based on the facts gathered to date, OCR determined that the District responded promptly to the Complainant's notifications of alleged race-based harassment by investigating, determining that the allegations were true, and taking corrective actions against Students 2 and 3.

However, OCR identified a concern that, based on the information provided to date, the District may not have assessed whether, based on the totality of the circumstances, the Student was subjected to a hostile environment based on race. Here, the totality of circumstances included but was not limited to two different students calling the Student a "n---er" within two consecutive semesters at two different District schools, where African American students were a very small student group, and the young age of the impacted Student. The District should have also assessed whether the harassing conduct limited the Student's access to the District's educational programs or activities. OCR is also concerned that the teacher may not have timely reported the February 2017 racial epithet to the Principal. OCR is further concerned that the District's response may not have been appropriate and effectively tailored to address any hostile environment created, in part because it did not follow its own published racial harassment grievance procedure, AR 1312. In this regard, the Complainant did not receive a response to her complaints that was consistent with AR 1312. The District's racial harassment procedure required the District to provide written notice of the outcome of the investigation, including whether a hostile environment had been created and the responsive steps the District had taken/would take to prevent recurrence of harassment and remedy its effects. Prior to OCR completing its investigation of this allegation, which would have included interviews with District staff and the Student, the District expressed an interest in entering into a voluntary resolution agreement, and OCR agreed it was appropriate to do so.

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 Complainant concurrently. Prior to concluding its investigation and to address the issues alleged in the complaint, the District, without admitting to any violation of law, entered into the enclosed resolution agreement which is aligned with the complaint allegations and the information obtained by OCR during its investigation. Under the agreement, the District will among other things provide: 1) age-appropriate training to students in the Student's past and current school to address and prevent harassment based on race; 2) training for staff and administrators at the Student's past and current school who have roles in the investigation of complaints of discrimination or harassment based upon race; and 3) notice to the Complainant describing its

investigation of her complaints including any outcome and determinations related to whether a hostile environment was created.

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 statute and regulations 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 Complainant 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, retaliate, 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, 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.

Thank you for your cooperation in this case. If you have any questions regarding this letter, please contact OCR staff attorney Matthew Wood at Matthew.Wood@ed.gov or (415) 486-5591.

Sincerely,

/s/

Brian Lambert
Acting Team Leader

Encl.