



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

December 4, 2017

VIA ELECTRONIC MAIL

Dr. David Hansen, Superintendent
Riverside Unified School District
3380 14th Street
Riverside, California 92501
DCHansen@rusd.k12.ca.us

(In reply, please refer to case no. 09-17-1309.)

Dear Dr. Hansen:

In a letter dated April 7, 2017, the U.S. Department of Education (Department), Office for Civil Rights (OCR), notified the Riverside Unified School District (District) of the above-referenced complaint alleging discrimination on the basis of race filed by the Complainant on behalf of the Student¹ alleging that the District subjected African-American students at a District High School (the School) to a hostile environment on the basis of race when graffiti depicting the n-word appeared on a storage container at an athletic field at the School, and the District failed to respond appropriately and effectively when pictures of the graffiti appeared on campus.²

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 by recipients of Federal financial assistance. The District receives funds from the Department and is subject to Title VI and the regulation.

To investigate this complaint, OCR interviewed the Student, the Complainant and three school and District employees. OCR also reviewed documents and other information provided by both the Complainant and the District. Based on that information, OCR was concerned that the District had not responded appropriately under Title VI to notice of harassment based on race. However, prior to OCR completing its investigation, the District voluntarily agreed to address the areas of concern identified by OCR. The legal standards, facts gathered to date, and the

¹ OCR identified the Complainant and Student in its initial notification letter to the District and is withholding their names from this letter to protect their privacy.

² OCR also later informed the District that the Student had also described other incidents of potential race-based harassment, described in more detail below.

terms of the Resolution Agreement (Agreement) reached with the District are summarized below.

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 regulation 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 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 district's responsibility whether or not the student who was harassed makes a complaint or otherwise asks the district to take action. So long as an agent or responsible employee of the district or school received notice, that notice will be imputed to the district.

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 student or others.

If OCR determines that a hostile environment has been created, OCR then 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. Other actions may be necessary to repair the educational environment.

Facts Gathered to Date

The Student, who is African-American and Latino, was a XXXXXXXXXXX at the School during the 2016-17 school year. The Student was on an athletic team at the School (the Team) during his XXXXXXXX XXX XXXXXXXXXXX XXXXX. The Student told OCR that he was the only African-American player on the XXXXXX XXXXXXXX team and that there was one other African-American player on the XXXXXXXX team. Approximately 7% of students at the School are African-American.

The Complainant (the Student's mother) appeared at a District school board meeting on XXXXXXXX XX, 2017 to speak during public comment about issues related to race and equity in the District. XX XXXX XX XXXX XXXXXXXXXXXXXX XXX XXXXXXXXXXXXXX XXXXX XXXX XXXXXXXXXXXX XX XXX XXXXXXXX XXX XXXXXXXX XXX XXXXXX XXX XXX XXXXXXXX XXXXXXXXXXXX XX XXXXX XXXXXXXXXXXXXX XXXXX.

On the morning of XXXXXXXX, January XX, 2017, the Team's coach (the Coach), who was also a teacher at the School, discovered graffiti on and around the Team's field while he was exercising on the School's track. The graffiti included pictures of male genitalia, references to the Coach's name, references to a rival high school, and the words "Fuck N-----s" spray painted in orange on the side of the XXXXXXXX XXXXXXXX "team room."

The Coach took pictures of the graffiti and sent them to the Athletic Director, who was also the School's Vice Principal. The Coach told OCR that he believed that another member of the School's staff also took pictures of the graffiti. Maintenance staff for the District painted over the graffiti later that afternoon.

The Student told OCR that on January XX, 2017, when he arrived at school on Monday morning, he first heard about the graffiti when a friend asked him whether he had heard about the incident. Subsequently, that friend shared pictures of the graffiti via Snapchat with the Student and three of his friends on the Team. The Student took a screen shot of the pictures and later shared them with OCR. The Student reported that when he went to his XXXXXX period XXXXXXXX class that day, at least three other students on the XXXXXXXX XXXXXXXX team (other than the original three who were in the Snapchat group described above) had also seen the pictures. The Student also told OCR that he learned from other students that the pictures were shared in a separate group chat amongst the XXXXXXXX Team.

When the Team gathered for practice, the Coach shared with the Team that there had been a vandalism incident at the field. The Coach did not tell the Team that the graffiti included a racial slur. The Student told OCR that the Coach also told the players not to post anything about the incident on social media. The Coach told OCR that he told the Team to let him know if they saw anything on social media. The Coach told OCR he viewed the incident as similar to if someone had stolen balls from the team.

The Student told OCR that when he went to practice, even though the graffiti had been painted over, he could still see bits of orange spray paint in the cracks in the wood underneath what had been painted over. The Student told OCR that the Coach's response to the graffiti made him feel like the Coach did not care about what had been written and made him feel like they were trying to cover it up.

The Complainant met with the District's Assistant Superintendent of Curriculum and Instruction on approximately January XX, 2017 to follow up on the concerns the Complainant had raised at the school board meeting. At that meeting, the Complainant told the Assistant Superintendent about the graffiti and racial slur on the field. The Complainant told OCR that she shared two pictures of the graffiti with the Assistant Superintendent. The Complainant told OCR that the Assistant Superintendent asked her whether the School had already shared the incident with the District, to which the Complainant replied that she did not know what the School had done. When interviewed by OCR, the Assistant Superintendent told OCR that he had seen pictures of the graffiti at some point but that he could not recall whether the Complainant had shared the pictures with him. He stated that the Complainant did mention the incident but that he thought that she was addressing the issue directly with the School. He also told OCR that, as the Assistant Superintendent of Curriculum and Instruction, responses to incidents like the graffiti incident were not something he would generally oversee and that it was the type of incident that would be in someone else's purview at the District.

The Student told OCR that when he went back to practice in the week following the graffiti, other players on the team made jokes on several occasions like "someone must not want you here, maybe you should go" and "go back to Africa." The Student said that these comments were generally made within the team room where coaches were not present, and that the response of the other players on the team was to laugh at the jokes.

The Student told OCR that students on the Team had identified another student who they believed was responsible for the graffiti. The Coach told OCR that he believed that the graffiti had likely been done by a student at the School because they had spelled his name correctly and his name is difficult to spell. The Principal told OCR that the incident had been handed over to the school resource officer (officer) to investigate. The Principal told OCR that the officer identified one student to interview but was not able to identify any reason as to why that particular student would have known or targeted the Coach, and that the student had denied any involvement.

The Student also told OCR about several other incidents that had happened during his XXXXXXXXXX XXXX that he had not shared with the School and which OCR had not yet confirmed at the time its investigation was completed. First, the Student told OCR that his nickname on the Team was “Hershey” based on his skin color. The Student reported that another student on the team had said “Way to go Hershey” during a practice in the fall of 2016, and that after that players on the team began to use the nickname regularly, such as by saying “What’s up Hershey” when he would come off the field. The Student stated that he believed that coaches would have been likely to have heard other students calling him that, but he did not complain to the coaches. The Student told OCR he did not have a good relationship with the Coach and therefore did not feel comfortable approaching the Coach with these types of concerns. When OCR asked the Coach whether he knew of any other race-related incidents on the team, he reported one incident several years prior but did not report any other incidents involving the Student. OCR did not make any determination as to whether any of the Team’s coaches were aware of the nickname.

The Student also told OCR that on a number of occasions during the fall of 2016, some white players on the XXXXXXXX team would chant “Build That Wall” from the other side of the field when he and three Latino students on the XXXXXXX XXXXXXXX team would come out of the team room for practice. He reported that this happened while the Coach was in his office. The Student also told OCR that another player on his Team had chanted “Build that wall” when students watched the Presidential debate during XXXXXXXX class. The Student told OCR that the teacher had told the other student to keep it to himself. The Student also told OCR that players on the Team would make race-related jokes to him, such as a joke about how they could not see him when he was sitting in the shade because of his skin color. He did not tell any staff at the School about these jokes.

At the end of the first semester, on approximately XXXXXXX, January XX, 2017, the Student transferred to a different high school in the District. Earlier in the year, the Complainant had submitted a request for transfer to the District because she did not believe the culture at the School was a good fit for the Student. The transfer had been approved in late 2016, but did not take effect until the end of the semester in January 2017.

On March X, 2017, the Assistant Superintendent sent an email to the Principal and other District staff asking if anyone knew anything about the graffiti incident. The Principal responded with information summarizing the incident and the School’s response. In that response, the Principal stated that “[t]he graffiti contained sexually explicit symbols, references to [a rival] High School and the ‘N’ word - all directed at the Coach” and reported that the Coach, who was white, “did not feel threatened by the incident.”

On March X, 2017, the Complainant XXXXX XXXXXXXXXXXX XXX XXXXXXX XXXXX XXXXXXXX XXXXXXX XXXXXXX XXXXXXXX. The Complainant described the graffiti incident, and noted that she had told the District shortly after the incident but had heard nothing from the School or the District since that time. After the meeting, the Complainant provided District staff with a copy of her statement and included copies of the pictures of the racial slur on the field.

On March XX, 2017, the Complainant filed her complaint with OCR. On March XX, 2017, following up on her statement at the School Board meeting, the Assistant Superintendent spoke with the Complainant to determine if the Complainant wished to pursue the complaint process under the District's Uniform Complaint Procedures. It is undisputed that the Complainant declined.

The Principal also told OCR about two other incidents that had occurred at the School during the 2016-17 school year. First, in mid-November 2016, a custodian found graffiti in a boys' bathroom. With a marker, someone had written "Deport all Mexicans!..." and a statement related to the recent presidential election. The graffiti was removed shortly after it was found and the Principal told OCR that the graffiti had not been reported to the Principal by any students. In addition, on January XX, 2017 (approximately two days before the graffiti on the field), a custodian found graffiti in the same boys bathroom. That graffiti included the following language written in the bathroom: "hang the n-----'s;" "kill all the n-----'s KKK;" "KKK N-----;" "hang the n----- KKK." The "hang the n----- KKK" statement was crossed out and a derogatory statement about Donald Trump appeared in different handwriting next to it.

The Principal told OCR that after the Student left the School, the Principal mentioned the incident of the graffiti on the field and the November graffiti incident to several student groups in February and March 2017, including to the Principal's Cabinet, the Movimiento Estudiantil Chicanx de Aztlán (MEChA) group, and a group of student leaders from MEChA and the Black Student Union (BSU). On approximately March XX, 2017, MEChA and BSU students organized a lunch activity where students discussed strengths and weaknesses of the School's climate. The Principal told OCR that students reported back to him that while there were no race issues on campus, students recommended continuing conversations on race to try to continue to build empathy.

The Principal also told OCR that there was a mechanism on the School's web site that allowed students to anonymously report bullying incidents. The Student told OCR that he remembered seeing a poster with the word "bullying" on it but that he was not aware of how to report bullying and that he did not remember any discussion of what to do if bullying occurred.

The Student told OCR that the effect of his experiences on the Team targeted at his race was that he did not feel welcome and felt like he did not belong on the team. He reported that it made him feel hated and that he was an outsider. He also reported that it made him depressed, such that he did not have motivation to try in school and that he no longer wanted to go to practice. The Complainant and Student told OCR that the Student's grades dropped in the second half of XXXXXXXX year after he started on the Team in the second semester.

The Student told OCR that though he was originally hesitant to transfer to a new school, he was glad that he transferred because he was much more welcomed at the new school. He also reported that the climate at his new school is better because students are not as segregated in

social circles based on race. The Complainant told OCR that after the Student shared his experience at the School with her, he began attending counseling sessions.

Analysis & Conclusion

Based on the facts gathered to date, OCR's investigation raised concerns that the Student may have been subjected to a hostile environment on the basis of race and that the District did not respond effectively and appropriately to notice of the harassment. The facts obtained thus far show that the Complainant gave notice to the District that a racial slur had appeared on the field and had previously mentioned at a School Board meeting that students of color were being called derogatory names, though she did not provide any specifics about the name calling. The facts obtained to date also indicate that the District did not follow up with the Student to learn more about these issues, through which the District would have likely learned about the other allegations of race-based harassment on the Team that the Student described to OCR. OCR also had concerns about the District's failure to follow up to determine whether pictures of the racial slur were circulating amongst the Team or elsewhere in the School, after the Complainant allegedly shared the pictures with the District. Finally, OCR had concerns about whether other students on the Team may have suffered harassment on the basis of race and whether any of the coaches were aware of the alleged harassment towards the Student or other players on the Team.

Prior to completing the investigation, which would have included additional interviews with other students, teachers, and coaches, the District agreed to voluntarily resolve this allegation pursuant to section 302 of OCR's case processing manual. OCR determined that voluntary resolution was appropriate, and without admitting to any violation of law, the District entered into the enclosed Agreement, which resolves the concerns identified above.

The enclosed Agreement is aligned with the complaint allegations and the information obtained by OCR during its investigation. It requires that the District to provide counseling and tutoring services to the Student, to train students regarding race-based harassment, to train staff regarding harassment and how to respond to harassment complaints, and to provide OCR with documentation of all reports or incidents of harassment for the remainder of the 2017-18 school year.

Based on the commitments made in the enclosed Agreement, OCR is closing the investigation of this complaint 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 the implementing regulations which were at issue in the case.

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 resolving this case. If you have any questions about this letter, please contact Civil Rights Attorney Blake Thompson at Blake.Thompson@ed.gov or at (415) 486-5630.

Sincerely,

/s/

Zachary Pelchat
Team Leader

Enclosure

cc: XXXXX XXXXXX, Counsel for the District (by email)