



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

May 11, 2018

VIA ELECTRONIC MAIL

Dr. Sarah Koligian
Superintendent
Folsom-Cordova Unified School District
1965 Birkmont Dr.
Rancho Cordova, California 95742

(In reply, please refer to case no. 09-17-1493.)

Dear Superintendent Koligian:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed the resolution of the above-referenced complaint against the Folsom-Cordova Unified School District (District). The Complainant alleged that the District discriminated against the Student on the basis of race.¹ Specifically, OCR investigated whether the Student was subjected to discrimination on the basis of his race when he was subjected to racially harassing comments by students after students asked him to give up his seat during lunch, and the District failed to respond appropriately and effectively to notice of the harassment.

OCR resolved 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.

To investigate this complaint, OCR conducted interviews and reviewed documents and other information provided by the Complainant and the District. Prior to OCR completing its investigation and making a compliance determination, the District expressed an interest in voluntary resolution pursuant to section 302 of OCR's Case Processing Manual (CPM), and OCR determined it was appropriate to do so. The legal standards, facts gathered to date, and the reasons for OCR's determinations are summarized below.

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 discrimination on the basis of his race when he was subjected to racially harassing comments by students after students asked him to give up his seat during lunch, and the District failed to respond appropriately and effectively to notice of the harassment.*

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, reasonable, 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 if it fails to respond adequately. Once the district has notice of harassment, the responsibility to take appropriate, timely, responsive, 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.

Facts

The following facts gathered to date were relevant to OCR's analysis.

Background

During the 2016-2017 school year, the Student attended XXXXX XXXXX at XXXXXX XXXXXXXX Elementary School (School) in the District. The first day of the Fall 2017 semester was August X, 2016. The Student enrolled in the School on August XX, 2017, after school had begun. The

Student remained at the School until the Complainant dis-enrolled him on April X, 2017, prior to the completion of the school year. The Student is currently attending school outside the District.

In both the District as well as the School, African-American students are in the minority, at 6.94% and 8.51% of student enrollment, respectively. OCR notes that on January XX, 2017 the Complainant filed a written, formal Uniform Complaint Procedure complaint (UCP), which was stamped as received by the School on the same date. The UCP raised concerns about a lack of communication from the District and about “assaults on her child” by other students. The District responded on February X, 2017 but did not address the specific allegation regarding the assaults.

Seating & Other Alleged Incidents

On January XX, 2017 the Principal emailed the Complainant to inform her that the Student was involved in a lunch room incident. The Principal’s email explained that he investigated the incident and described what his interviews consistently showed – that the Student was asked to slide down a lunch room bench to make room for three female classmates, Student 1, Student 2, and Student 3, who wanted to sit together, near a group of friends. The Student replied, “why do I have to make room for an oversized cootie-catcher.” A Yard Duty Supervisor assigned to the lunch room approached the students, determined that the Student refused to move, made an inappropriate comment, and sent the Student to the Principal’s office. The Principal spoke to the Student, reminding him of the School rules: Respectful, Responsible, Kind, Safe. The Principal told OCR that these School rules are printed on posters in every classroom. The Student was sent back to class.

The Complainant stated to OCR that an unofficial write-up was placed in the Student’s file regarding the incident. The Assistant Superintendent reviewed the Student’s file and found no mention of anything related to the lunch incident in the Student’s file. The Principal also stated to OCR that there was no write-up or mention of the lunch incident in the Student’s file.

On February X, 2017, the Complainant replied to the Principal’s January XX, 2017 email regarding the lunchroom incident and asked why the Student was asked to move. The same day, on February X, 2017, the Principal responded via letter to the Complainant’s January XX, 2017 UCP regarding allegations of bullying of her son and that her son had been assaulted by other children, setting up a meeting with the Complainant for Monday, February X, 2017.

The District stated to OCR that on February X, 2017, another XXXXX XXXXX student (Student 4) verbally reported to the Principal that the Student was teased and called Rosa Parks by a classmate (Student 5) after the lunchroom incident because he had been asked to give up his seat and refused to do so.² On February X, or February X, 2017, the Principal pulled Student 5 out of class and asked if she had teased the Student by calling him Rosa Parks. Student 5 admitted to calling the Student Rosa Parks because he was asked to move seats in the lunch room the previous day and refused. The Principal reprimanded Student 5 for making the comment. The reprimand consisted of telling Student 5 that name-calling was inappropriate, and inconsistent with the School's rules. Student 5 XXXX XXXXXX XXXXXXXXXXXX XXX XXX XXX. No documentation was provided showing that the Principal discussed the racial nature of the comment with Student 5.

The District's response to OCR included that the Student was subjected to "comments" – more than one of this nature. The Complainant stated that when the Student was called the name, it was overheard by other students and he was called the name multiple times throughout the school day.

On February X, 2017, the Complainant wrote an email to the Principal stating that the School was targeting and unfairly accusing the Student of wrongdoing, as it had in previous incidents (including but not limited to a February X bathroom incident involving a fight, according to the Complainant). The Complainant's February X, 2017 email stated that the Student felt no one at the School was listening to him. On February X, 2017, the Principal emailed the Complainant stating that he had conducted an investigation and reprimanded Student 5.

On February XX, 2017, the Complainant and her Advocate had a meeting with the Principal. The Principal stated to OCR that the Complainant wanted to know what disciplinary action was taken against Student 5 for making the comment. The Principal told OCR that due to Family Educational Rights and Privacy Act of 1974 (FERPA), he was unable to disclose disciplinary action against another student. The Principal notified the Assistant Superintendent of the meeting. According to the Complainant, she raised concerns with the Principal that the comment was an example of racial discrimination towards the Student.

The Complainant told OCR that the Student no longer wanted to talk to administrators at the School because no one at the School ever listened to him and always made him out to be the bad guy. He did not trust people at the School and felt voiceless and misunderstood. The

² OCR notes that being likened to Rosa Parks is a high compliment in almost all circumstances. However here, the parties, including the School, acknowledged that in this situation, the name was used by other students to mock the Student based on his race and refusal to move seats in the lunchroom.

Complainant informed OCR that her concerns included additional incidents, including incidents in which the Student was allegedly stabbed with a pencil by another Student, and choked, punched, and tripped by other students, and the Student being blamed for disciplinary incidents, when she believed he was being bullied and harassed.

The Assistant Superintendent stated to OCR that there was regular follow up between the Complainant and the Principal as documented by numerous emails from the beginning of February 2017 to the late March 2017.

In relation to the resolution of race discrimination complaints, including race harassment complaints, the District had adopted a relevant policy at <http://www.gamutonline.net/district/folsomcordovausd/DisplayPolicy/690449/>, and <http://www.gamutonline.net/district/folsomcordovausd/DisplayPolicy/690408/0>, and procedures linked to Administrative Regulation (AR) 5145.3, AR 1312.3, and the Uniform Complaint Procedure (UCP). The District's procedures state:

“When a verbal report of unlawful discrimination, including discriminatory harassment, intimidation, retaliation or bullying, is made to or received by the principal or compliance officer, he/she shall make a note of the report and encourage the student or parent/guardian to file the complaint in writing, pursuant to the provisions of AR 1312.3 – Uniform Complaint Procedures. Once notified verbally or in writing, the principal or compliance officer shall begin the investigation and shall implement immediate measures necessary to stop the discrimination and ensure that all students have access to the educational program and a safe school environment”

The Principal told OCR that in 2015, the District provided training on harassment (including peer-peer harassment) to all District administrators. The training was provided by District Counsel, and lasted approximately two hours.

On April X, 2017, the Complainant removed the Student from the School. The Complainant stated to OCR that there were a variety of reasons for pulling the Student out of the School, including incidents wherein the Student was bullied, stabbed with a pencil, removed from the after-school program, and subjected to racial comments (i.e. the Rosa Parks comment), and that she believed the District had not responded adequately to many of her concerns regarding these various incidents. The Student currently attends school outside the District, closer to his home.

On July XX, 2017, the Principal prepared a letter responding to the allegations in the OCR complaint in which he stated that the Complainant did not discuss the February X, 2017

comments during the February X, 2017 meeting, or at the subsequent February XX, 2017 meeting, and he did not receive additional reports from the Student or Complainant that the comments continued. The Principal's letter did not address the Complainant's UCP and communications subsequent to February X, 2017, wherein it was alleged that the Student was assaulted and bullied by other students.

Analysis and Conclusion

In this case, the Complainant alleged that the Student was subjected to a hostile environment based on race when a classmate, Student 5, teased the Student by calling him "Rosa Parks" on January XX, 2017, to ridicule him about a lunch incident when he refused to give up his seat. She also alleged that the Student was subjected to other such comments throughout that same school day; the District's narrative stated that the Student was subjected to "comments" but the Principal told OCR that there was just one Student who made one comment. The Complainant also alleged that the Student was subjected to other harassment and bullying and filed a complaint about an alleged assault of the Student by other students. The District's response to that UCP complaint did not include any information about its investigation of those incidents and/or whether it inquired as to whether any were based on race.

In order to complete the investigation, OCR would need to review and assess additional information regarding the other incidents of alleged bullying or physical harassment of the Student. However, prior to completing OCR's investigation, the District expressed an interest in entering into a Resolution Agreement (Agreement) under Section 302 of OCR's CPM. The Agreement requires the District to: 1) write a letter to the Complainant reaffirming its commitment to provide an educational environment free from discrimination; 2) distribute an anti-harassment statement to School parents/guardians and students; 3) provide written guidance and training regarding race discrimination, and District policies and procedures to School administrators and staff; and, 4) provide age-appropriate training regarding race discrimination, and District policies and procedures to students at the School.

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 the complaint allegations. OCR will monitor the implementation of the Agreement until the District is in compliance with its terms. Upon completion of the obligations under the Agreement, OCR will close the case.

OCR's determination in this matter should not be interpreted to address the District 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 individual 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 regarding this letter, please contact Civil Rights Attorney Rhonda Ngom at rhonda.ngom@ed.gov.

Sincerely,

/s/

Brian Lambert
Acting Team Leader

Rhonda Ngom
Civil Rights Attorney

cc: Sloan R. Simmons, Esq., Lozano Smith Attorneys at Law