



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION IX
CALIFORNIA

December 26, 2019

VIA ELECTRONIC MAIL

Cindy Castro
Superintendent
Vineland Elementary School District
14713 Weedpatch Highway
Bakersfield, CA 93307

(In reply, please refer to case no. 09-18-1208.)

Dear Superintendent Castro:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has resolved regarding the above-referenced complaint against Vineland Elementary School District (District). OCR investigated whether the Complainant's children (Student 1 and Student 2)¹ were subjected to harassment by other students based on race, and the District failed to respond in a timely, reasonable and/or effective manner to notice of the harassment.

OCR opened this complaint for investigation 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 therefore subject to Title VI and the regulation.

During its investigation, OCR reviewed information provided by the District and the Complainant. OCR also interviewed the Complainant and District employees.

OCR is closing this complaint as of the date of this letter and notifying the Complainant concurrently. The reasons for OCR's determination are summarized below.

Legal Standard

The Title VI regulation, at 34 C.F.R. § 100.3(a) and (b), prohibits discrimination based on race, color or national origin by recipients of Federal financial assistance. School districts are responsible under Title VI and the regulations for providing students with a nondiscriminatory

¹ OCR notified the District of the identity of the Student 1, Student 2 and Complainant in previous correspondence. OCR is withholding their names here to protect their privacy.

educational environment. Harassment of a student based on race, color or national origin can constitute a form of discrimination because it 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 that such harassment created a racially hostile environment; and (3) the district failed to take appropriate, timely, and effective responsive action to end the harassment, eliminate any hostile environment, prevent its recurrence, and, where appropriate, remedy the effects of the harassment.

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 or a third party 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 harasser, but rather for its own discrimination in failing to respond adequately. Once the district has notice of harassment, it must take appropriate and effective action whether or not the student who was harassed makes a complaint or otherwise asks the district to take action. So long as a responsible employee 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 context, nature, scope, frequency, duration, and location of the harassment incidents, as well as the identity, number, and relationships of the persons involved. It also considers factors such as the parties' race and age and whether other incidents motivated by race, color or national origin have occurred at the school to this complainant or others.

The response must be reasonably calculated to end the harassment, prevent the harassment from recurring, eliminate the hostile environment, and, as appropriate, remedy the effects of the harassment. 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. Other actions may be necessary to repair the educational environment. These may include special training or other interventions, the dissemination of information, new policies, and/or other steps that are designed to clearly communicate the message that the district does not tolerate harassment and will be responsive to any student reports of harassment. The district also should take steps to prevent any retaliation against the student who made the complaint or those who provided information.

Relevant Facts Gathered to Date

The Complainant's son and daughter (Student 1 and Student 2), were X and X years old and in the XXXX and XXXX grade respectively at a school in the District (School) during the 2017-2018 school year. According to the District, during the 2017-2018 school year, 98.8% of its students were Latino. The District stated to OCR that there were 81 students in Student 1's XXXX grade

class: 80 were Latino, and one – Student 1 – was African-American. The Complainant stated to OCR that Student 1 and Student 2 were the only African-American students at the School.

The Complainant stated to OCR that on January XX, 2018, two male students at the School (Student 3 and Student 4) called Student 1 and Student 2 racial slurs, including the n-word. The Complainant stated to OCR that the name-calling was ongoing as Student 1 and Student 2 had also been called racial slurs, including the n-word and “black donkey”, in the 2015-2016 school year.

On January XX, 2018, the Complainant submitted an electronic Bully Incident Report (Report) to the District. Under Incident Information, the Report described the Type of Incident as in-class, verbal harassment occurring on January XX, 2018. Specifically, it stated that Student 1 and Student 2 were called names, such as the n-word, “black donkey”, “black noodle”, “brownie”, and “black as[-]”, at School by Student 3 and Student 4. The Report also stated that Student 1 told his teacher (Teacher), but that the Teacher punished Student 1 instead of Students 3 and 4. The Report included a section for staff to update the actions it took in response to the incident. That section indicated that the incident was investigated and determined to be unfounded but did not include a description of the investigation. The Report referenced the Report Handler’s Notes. OCR requested the Report Handler’s Notes, but they were not provided as the District did not keep records of them.

The District stated to OCR that the Principal was responsible for investigating the Report. On January XX, 2018, the Principal emailed the Teacher and asked whether the Complainant had spoken to her about racial name-calling. On January XX, 2018, the Teacher responded that the Complainant had not spoken to her about racial name-calling, that she responded to complaints about students not playing fair on the playground on a daily basis, and that she would like to discuss the matter in person.

On January XX, 2018, the Principal interviewed Student 1. On January XX, 2018, the Counselor emailed the Principal stating that she spoke with Student 1 regarding social problems. She stated that Student 1 told her that Students 3 and 4, and another classmate, Student 5, called him “black”, “black noodle” and the n-word. The Counselor stated that she spoke to Student 1 about problem-solving strategies. The Counselor stated that she also spoke with Student 3 who told her that he and Student 1 sometimes argue, and that Student 1 called him “fat as[-]”. The Counselor also spoke with Student 4 who stated to her that the class is mean to Student 1, that they treat Student 1 badly, and say Student 1 is from Africa. The Counselor stated that Student 1 and 3 were identified to join the counseling social skills group. The District provided documentation which showed that Student 1 attended social skills counseling sessions three times in February 2018.

On January XX, 2018, the Teacher wrote-up Student 1 on a Disciplinary Referral Form for dangerous behavior, defiance, disrespect and disruption. The description stated that Student 1 broke school and safety rules on a daily basis.

On January XX, 2018, the Teacher wrote an email to the Principal stating that she did not recall any specific racial insults that were reported to her. She stated that during recess, her students often reported insulting language, and that she spoke to them about words being hurtful.

The District stated to OCR that in February 2018, in response to Student 1 being called the n-word, it took the following remedial actions: being hypervigilant regarding racial name-calling and harassment; closer monitoring of Students 3, 4 and 5; and documenting all misconduct involving Student 1 and reporting it to the Principal and Complainant.

On February X, 2018, the Principal emailed the Teacher, stating that Student 1 reported to the Principal that there was a pushing incident between him and another student. The Principal asked the Teacher to document any issues with Student 1. On February X, 2018, the Teacher emailed the Principal and stated that Student 1 reported to her that while he was in the hallway Student 4 told him, “you are going to infect me because of your skin color.” Student 4 told the Teacher that he did say “you are going to infect me” but did not say anything about skin color.

On February X, 2018, the Teacher sent an email to the Principal stating that a XXXX-grade student (Student 6) reported that Student 1 told him to stab himself in the neck with the pencil for no reason.

On February XX, 2018, the Teacher sent an email to the Principal and Counselor stating that after morning recess, Student 1 told her that students were trying to trip him during a soccer game. The Teacher stated that she spoke to the students Student 1 identified and they denied tripping Student 1 and told her Student 1 makes things up to get them in trouble. On February XX, 2018, Student 1 also participated in a social skills counseling session about working together and taking turns.

On February XX, 2018, the Teacher sent an email to the Principal stating that at a meeting with the Complainant, the Complainant brought up race issues. On February XX, 2018, the Teacher sent an email to the Principal and Counselor stating that several students were upset with one another; specifically, Student 1 said a classmate used the word sex in the classroom, and Student 1 said the classmate’s mother was nothing. On the same day, the Teacher also wrote-up Student 1 on a Disciplinary Referral Form for assault/aggressive behavior, bullying, dangerous behavior. The description stated that Student 1 jumped another student at recess while playing soccer.

On February XX, 2018, the District agreed to move Student 1 to a different class at the request of his parent.

On February XX and XX, 2018, Student 1 attended a social skills counseling session about listening and following directions. The District stated to OCR that during the 2017-2018 school year, Students 3, 4, and 5 all participated, at some point, in the Counselor’s social skills program.

On March X, 2018, Student 2’s teacher (Teacher 2) wrote an email to the Principal stating that Student 2 had not reported that anyone had called her names.

The Complainant stated to OCR that on or around May X, 2018, there was a physical altercation involving Student 1 and Students 3, 4, and 5 but there are no corresponding District records. The Complainant stated to OCR that he called the Sherriff, but he was not aware of any subsequent report or action taken.

On May X, 2018, Student 1 was disenrolled from the School by his Mother.

The District stated to OCR in its supplemental data response, that September XX, 2019, was the first time the District became aware of the Complainant's allegation that Students 1 and 2 had been subjected to racial name-calling since December 2017.

The District has Uniform Complaint Procedures (UCP), found at Board Policy (BP)/Administrative Regulation (AR) 1312.3. Additional unlawful discrimination policies include Equity BP 410, Nondiscrimination BP 415, Nondiscrimination/Harassment AR 5145.3, and Anti-Bullying BP 5131.2.

On October 22, 2019, and November 20, 2019, the District expressed an interest in voluntarily resolving the issues raised in this case.

Analysis

The Complainant alleged that Student 1 and Student 2 were subjected to harassment by other students based on race, and the District failed to respond in a timely, reasonable and/or effective manner to notice of the harassment. The racial harassment primarily took the form of name-calling, and primarily targeted Student 1. The Complainant stated to OCR that the racial name-calling was on-going, though not all the name-calling incidents were timely.

Based on the information gathered, the District had notice that Student 1 was called racially derogatory names by his classmates. OCR determined that notice occurred in January 2018 when the Complainant filed the Report. The School interviewed the students involved. Although the Principal was responsible for the investigation of the Report, it was the Counselor who conducted the interviews. OCR noted ambiguity during its interviews with the District regarding who was responsible for, as opposed to who actually carried out the investigation.

The School took steps to address conflict between Student 1 and other students, including enrolling them in a social skills class, changing Student 1's class, more closely monitoring the students involved, and better documenting incidents. OCR was concerned that counseling provided to the students (including Students 1, 3, 4, and 5) did not focus on issues related to race and therefore, may not have been reasonably calculated to end conduct that could constitute racial harassment.

OCR was also concerned that the Complainant's complaints were not addressed using the District's Uniform Complaint Procedure which is the process the District designated to use to investigate discrimination complaints, including complaints of racial harassment. Further, OCR was concerned that the District did not clearly delineate staff roles and responsibilities for investigating complaints of bullying when they may also implicate discrimination, and that the District did not keep clear or adequate records of its investigations of incidents labeled as bullying that could also constitute discrimination.

Conclusion

Prior to making a final determination, the District expressed an interest in voluntarily resolving the allegation pursuant to OCR's Case Processing Manual § 302² and OCR agreed it was

² See, <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

appropriate to do so. On December 13, 2019, without admitting to any violation of law, the District signed the enclosed Resolution Agreement, which, when fully implemented, is intended to address the allegation in the complaint. Based on the commitments the District made in the enclosed Resolution Agreement - which include updating its website, policy and procedures, communicating in writing to the District community about its anti-harassment responsibilities, clearly delineating roles and responsibilities regarding the resolution of discrimination complaints, and creating a record keeping system - OCR is closing the investigation of this complaint as of the date of this letter, and notifying the Complainant concurrently. OCR will monitor the implementation of the Resolution Agreement until the District is in compliance with its terms. Upon completion of the obligations under the Resolution Agreement, OCR will close the case.

This concludes OCR's investigation of the complaint and 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. 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.

OCR's resolution 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.

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 Rhonda Ngom, OCR Attorney, at rhonda.ngom@ed.gov.

Sincerely,

/s/

Rhonda Ngom
Civil Rights Attorney

/s/

Joseph Wheeler
Team Leader

cc: Mr. Al Harris, Counsel

Enclosure