



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

July 12, 2022

VIA ELECTRONIC MAIL

Victor Perry
Superintendent
903 South Street
Orland, CA 95963
[XXXXXX](#)

Re: OCR Complaint No. 09-22-1189

Dear Superintendent Perry:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has resolved the above-referenced complaint against the Orland Joint School District (District). The Complainant alleged that the District retaliated against the Complainant and Student for complaining about race discrimination when it threatened to revise its dress code policy to prohibit wearing do-rags.

OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d-2000d-7, and its implementing regulation, 34 C.F.R. Part 100, which prohibit discrimination, including retaliation, on the basis of race, color, or national origin under any program or activity receiving Federal financial assistance. As a recipient of Federal financial assistance from the Department, the District is subject to Title VI.

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, and the reasons for OCR's determinations are summarized below.

Legal Standards

The regulation implementing Title VI, at 34 C.F.R. § 106.71, provides that no recipient or other person shall intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by regulations enforced by OCR or because one has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding, or hearing held in connection with a complaint. The following three elements must

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be satisfied to establish a prima facie case of retaliation: (1) an individual engaged in a protected activity; (2) an individual experienced an adverse action caused by the recipient; and (3) there is some evidence of a causal connection between the adverse action and the protected activity. When a prima facie case of retaliation has been established, OCR then determines whether there is a facially legitimate, non-retaliatory reason for the adverse action; and if so, whether the facially legitimate, non-retaliatory reason is a pretext for retaliation.

Facts Gathered

The following facts are relevant to OCR's analysis:

During the 2021-2022 school year, the Student, who is African-American, was enrolled in the XXXX grade at a District High School (School).

According to the 2017-2018 Civil Rights Data Collection (CRDC) statistics, African-American students make up .4% of all students in the District, and .1% at the School. The Complainant stated to OCR that the area surrounding the District has a small African-American population. Consequently, it is difficult to find people who style African-American hair near the District. For this reason, the Student typically wore a black XXXXXX cap to School. The Complainant stated that in 2021, with considerable effort, she located a hair stylist with experience doing African-American hair. In November 2021, he had an appointment with the newly found hair stylist and had his hair styled with twists. On November XX, 2021, the Student wore a do-rag, a plain black cloth, under his XXXXXX cap to School, to protect and maintain his new hair style.

The Complainant stated to OCR that on November XX, 2021, before lunch, the Principal approached the Student and a group of his friends, and told him to remove the do-rag because the Principal associated it with gang activity and thought it was a violation of the School's dress code policy. The Student removed the do-rag in front of his friends. The Student called the Complainant stating that the Principal told him to remove his do-rag.

The Complainant stated to OCR that after she learned of the incident from the Student, she called the Principal and requested that the Principal identify and read to her the policy he referenced to the Student prohibiting do-rags. Both the Complainant and the Principal stated to OCR that after searching, the Principal realized, during his telephone conversation with the Complainant, that while there was a policy regarding bandanas, there was no such policy prohibiting do-rags. The Complainant told the Principal that he needed to educate himself about the significance of do-rags in African-American culture. The Complainant stated to OCR that after she told the Principal that do-rags were significant in African-American culture, the Principal stated that he was sorry, but that he would be revising the School's dress-code policy in the Handbook to include a prohibition on wearing do-rags. At the end of the school day, the Principal verbally apologized to the Student.

On November XX, 2021, the Complaint filed an internal complaint with the District alleging that the Principal racially profiled the Student, told the Student he could not wear his do-rag because it was gang-related, and offered an insufficient apology. These allegations were investigated by an independent investigator. The investigator considered five allegations:

1. **Allegation No. 1:** The Principal directed the Student to remove a do-rag from his head because he considered it a gang-related item that was prohibited at the School.
2. **Allegation No. 2:** The Principal stated that, in his opinion, the do-rag was a sign of possible gang affiliation.
3. **Allegation No. 3:** The Principal stated that wearing a do-rag lacked professionalism.
4. **Allegation No. 4** The Principal made a disingenuous apology to Complainant regarding the do-rag and its connection to gangs.
5. **Allegation No. 5:** Race was a motivating factor in the Principal's comments to the Student when the Principal asked the Student to remove the do-rag.

On January XX, 2022, the District sent the Complainant and Principal a letter of findings stating that the investigation sustained Allegations 1-3, sustained in part Allegation 5, and did not sustain Allegation 4. The investigation stated, in part, that the Principal admitted to lacking knowledge regarding the use of do-rags and the Principal's actions had a negative emotional impact on the Student and were culturally insensitive. The investigation showed that the Principal stated to the Complainant that he intended to amend the handbook to explicitly prohibit do-rags at the School, and that corrective remedial action was appropriate, including but not limited to review of its anti-discrimination policies and the student handbook with staff, and staff cultural sensitivity training.

In its March XX, 2022 and May X, 2022 data responses to OCR, District stated that the District will not revise its dress code policy to prohibit students from wearing a do-rags.

The Complainant stated to OCR that as a result of the incident, the Student was angry and emotional. He felt embarrassed and singled out as the incident occurred in front of his peers.

The Complainant stated to OCR that the Student has never been in a gang. The District stated that during the 2021-2022 school year, there have been incidents of students expressing interest in joining gang affiliated groups and getting gang affiliated tattoos.

In response to the January XX, 2022 incident, the District stated it took the following actions:

- All staff, including the Principal, were required to complete mandatory Cultural Sensitivity training. The training was assigned on January XX, 2022, with a completion date of February XX, 2022. Approximately 220 staff members completed the training. The training discussed the value of a diverse organization, the definition of diversity, how to create a culture that supports diversity, and the importance of communication and awareness. OCR noted that this training focused on employees and workplace issues, rather than issues specific to students and educational environments.
- The District is currently working on revising the student handbook, and is seeking input from students and staff to make the process and handbook inclusive. As part of this effort, the District will be sending a survey to students and staff for their input.
- Another District Principal (Principal 2), who is African-American, spoke about equity in the classroom during the staff meeting on May X, 2022.
- The District plans to continue to incorporate trainings regarding diversity, equity, and inclusion as part of staff meetings for the 2022-2023 school year.

The Principal informed OCR that since the incident, he has made an effort to learn more about do-rags by speaking to Principal 2, and by doing some research. The Principal also stated to OCR that no actions were taken regarding the other students who witnessed the Principal requiring the Student to remove his do-rag, and no actions were taken to ensure that African-American students feel safe at the School.

Analysis and Resolution

When OCR investigates an allegation of retaliation, it examines whether the alleged target engaged in a protected activity and was subsequently subjected to adverse action by the 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 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.

In this case, the Complainant engaged in protected activity when she stated to the Principal that requiring the Student remove his do-rag was discrimination based on race as do-rags are significant in African-American culture and when she subsequently filed a written complaint with the District stating that the Student had been racially profiled by the Principal. When the Principal threatened to change the School's policy to prohibit wearing do-rags immediately after the Complainant complained that he had inappropriately singled the Student out in front of his friends and explained the significance of do-rags in the African-American culture, the Principal engaged in an adverse action. In this case threatening to change the dress code occurred on the same day as the protected activity, immediately after the Complainant complained of race discrimination, by the individual to whom the complaint was made. Therefore, there was a causal connection between the adverse action and protected activity.

OCR next examined whether the District proffered a legitimate non-discriminatory reason for the adverse action. The District stated the Principal threatened to change the School policy because he associated do-rags with gang activity and considered them to be unprofessional. However, the Principal had no reason to believe that the Student was wearing it in association with gang activity. Despite being made aware of the importance of do-rags in African-American culture and that the Student was wearing a do-rag specifically to protect his hair, the Principal continued threatening to change School policy in order to prohibit wearing do-rags. While the District informed OCR that there had been incidents of students seeking out gang affiliation, there was no information to suggest a connection between wearing do-rags and the students in the District who had sought gang affiliation. Additionally, the Principal knew that the Student was one of very few African-American students in the School and, therefore, one of very few students to whom the policy change would specifically apply. Based on the facts described above, OCR identified a compliance concern with respect to the District's proffered reason for the adverse action.

Prior to the conclusion of OCR's investigation, the District agreed to enter into a Resolution Agreement to resolve the issues raised in the complaint. In particular, the District agreed to 1). send a letter to the Complainant and Student reinforcing its commitment to provide an educational

environment free from discrimination, including retaliation, for all its students and committing to resolving incidents implicating race, color or national origin in a manner consistent with its Uniform Complaint Procedures and Title VI, 2). designate a School employee to serve as a contact for the Student, 3). issue a statement to parents/guardians at the School, stating that the District does not tolerate discrimination, including retaliation, 4). communicate to all students, in an age-appropriate manner, the prohibition against discrimination, including retaliation, and how to report an incident involving discrimination, 5). issue a written guidance memorandum to School employees regarding its anti-discrimination/anti-retaliation statement on the basis of race, color, or national origin, and the steps staff should take when they witness or are told of discrimination/retaliation, 6). provide training for School employees on how to recognize conduct that may constitute discrimination, including retaliation, 7). develop a written self-evaluation plan for monitoring the climate at the School.

Overall Conclusion

This concludes the investigation of this complaint.

To address the complaint allegations and OCR's concerns identified in the investigation, the District, without admitting to any violation of law, entered into the enclosed resolution agreement.

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. When fully implemented, the resolution agreement is intended to address the complaint allegations. OCR will monitor the implementation of the resolution agreement until the District is in compliance with the terms of the resolution agreement. Upon completion of the obligations under the resolution agreement, OCR will close 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, discriminate, or otherwise retaliate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the individual subjected to such retaliatory treatment may file another complaint alleging retaliation.

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, personally identifiable 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 at rhonda.ngom@ed.gov.

Sincerely,

/s/

Sara Berman
Team Leader

Enclosure

cc: Courtney de Groof