



U.S. DEPARTMENT OF EDUCATION

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OFFICE FOR CIVIL RIGHTS
SOUTHERN DIVISION

DISTRICT OF COLUMBIA OFFICE
District of Columbia, North Carolina, South Carolina, Virginia

January 7, 2011

Dr. Patrick Russo
Superintendent
Henrico County Public Schools
PO Box 23120
Henrico, VA 23223

RE: OCR Complaint # 11-10-1244
Letter of Findings

Dear Dr. Russo:

This letter is to advise you of our decision concerning the above-referenced complaint, which was filed on July 12, 2010, with the District of Columbia Office, Office for Civil Rights (OCR), U.S. Department of Education (Department), against Henrico County Public Schools (the Division). The Complainant filed the complaint on behalf of her son (the Student), who attends the Division's XXXXXXXXXX (the School). The Complainant alleges that the Division discriminated against the Student on the basis of national origin (he is Jewish)¹ by failing to take prompt and effective action to stop and prevent the recurrence of national origin harassment against him by other students during the 2009-2010 school year.

As we have previously informed you, OCR is responsible for enforcing certain Federal civil rights statutes and regulations, including Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d, and its implementing regulation, at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin in programs and activities that receive Federal financial assistance from the Department. Because the Division receives Federal financial assistance from the Department, it is subject to

¹ While Title VI doesn't cover discrimination based solely on religion, it does prohibit discrimination against groups that face discrimination on the basis of actual or perceived shared ancestry or ethnic characteristics.

the provisions of Title VI and we have jurisdiction over it. Because the Complainant is alleging discrimination under Title VI, we have jurisdiction over the allegation.

In making our determinations concerning this complaint, we evaluated the information provided by the Complainant in her complaint, in her submissions, and during telephone interviews, and by the Division in its December 6, 2010, submissions, during an August 4, 2010, telephone interview, and in a January 7, 2011, letter.

The legal standard applicable to the allegation is that a recipient is prohibited from permitting the harassment of students on the basis of national origin that is sufficiently serious (that is, severe, persistent, or pervasive) that it creates a hostile environment, that it, denies or limits the ability of a student to participate in or benefit from the recipient's programs or services. To establish a violation of Title VI under this hostile environment standard when the alleged harassers are students, evidence must establish that: (1) a national origin-based hostile environment existed; (2) the recipient had actual or constructive notice of the national origin-based hostile environment; and (3) the recipient failed to take prompt and effective action to stop the harassment and to prevent its recurrence.

Did a National Origin-Based Hostile Environment Exist?

The evidence establishes that, during the 2009-2010 school year, students in the Student's XXXXXXXX class had:

1. Drawn Nazi swastikas on the board;
2. Drawn a picture of Adolph Hitler on the board;
3. Written "genocide to [the Student]" on the board;
4. Placed pictures of the Student on the stairs so people would walk on them and on seats so that people would sit on them;
5. Placed a picture of the Student on a piñata above which appeared "Sponge Bob Jew Pants" and beneath which appeared a sexual slur based on the Student's name; and
6. Written for the Student's viewing that "Nazis are going to come and kill you."

A September 1, 2010, "Report of Psychological Evaluation" (the Report) prepared by the Student's XXXXXXXXXXXX indicates that, at least in part as a result of the harassment, the Student:

. . . feels he is the undue object of teasing and ridicule and that, in general, he is not liked by his cohorts . . . [and] wrestles with feelings of low self-esteem, poor self-concept, and feelings of inferiority, insecurity, and inadequacy.

We find that the Report and evidence submitted by the Division indicate that the harassment was sufficiently serious (severe, persistent, and pervasive) that it created a hostile environment, i.e., that it denied or limited the ability of the Student to participate in and benefit from the Division's programs and services, and that it would have denied or limited that ability for any reasonable student subjected to it.

Did the Division Have Notice of a National Origin-Based Hostile Environment?

A school system has notice of harassment if a responsible school employee actually knew or, in the exercise of reasonable care, should have known about the harassment. The Division's submissions, as well as its statements in the December 6, 2010, letter accompanying its submissions (at page 5), indicate that the Student's XXXXXXXX teacher (the Teacher), who was, at the time during which the harassment took place, employed by the Division, had notice of the harassment of the Student throughout the 2009-2010 school year. Consequently, we find that the Division had notice of the harassment of the Student from the beginning of the 2009-2010 school year, and certainly as of the March 2010 piñata incident (which is the earliest incident specifically identified and described by the Complainant).

Did the Division Take Prompt and Effective Action to Stop and Prevent the Recurrence of the Harassment?

In its December 6th letter, the Division admitted that it took no action regarding the harassment of the Student until the Complainant reported it in June 2010, approximately nine months after the beginning of 2009-2010 school year and over two months after the March 2010 piñata incident. The Division explained that this was because the Teacher did not report the harassment during the school year. Nevertheless, this constitutes a failure to take prompt action to stop and prevent the recurrence of the harassment.

We now look to whether the action taken by the Division, although delayed, was effective in stopping and preventing the recurrence of the harassment of the Student. On June 3, 2010, the Division initiated an investigation and interviewed the Teacher. On June 4th, the Division interviewed the Student's classmates, reviewed a cell phone video of the piñata incident, and instructed the Teacher to speak with the Division's Human Resources Director about the video. On June 7th, the Division placed the Teacher on administrative leave, interviewed the parent who (on June 2nd) informed the

Complainant about the harassment, interviewed the child of that parent (a classmate of the Student), and interviewed classmates of the Student and their parents and obtained statements from them. On June 8th and 9th, the Division obtained and reviewed at least eight additional statements from classmates of the Student, interviewed more classmates and their parents, and conducted a conference call with the Complainant and the Student regarding the status of the investigation and the Division's response to the harassment. On June 10th, Division staff notified the Teacher and his attorney that they would likely recommend that the Teacher's contract be terminated. On June 18th (the final day of school for students), an investigative report and letter recommending termination of the Teacher's contract were submitted to the Division's Superintendent. On June 24th, the Teacher submitted, and the Division accepted, his resignation.

The Division also:

1. Met with the Complainant and the Student to discuss the manner in which they would report any related issues that might arise in the future;
2. Met with the five students involved in the harassment to emphasize the need to comply with the Code of Student Conduct (which includes provisions prohibiting harassment);
3. Sent letters to the parents of the students involved in the harassment notifying them that the students' behavior was unacceptable, that it would not be tolerated during the upcoming school year, and that the recurrence of it would result in disciplinary action.²
4. Arranged the Student's schedule so that none of the harassing students would be in the same classes as the Student;
5. Met with each of the Student's teachers prior to the beginning of the 2010-2011 school year to inform them of the incidents of the prior school year and instructed them to monitor the Student's interactions with classmates;
6. Spoke with the Student's XXXXXXXX;
7. Provided Division staff with religious sensitivity and harassment training prior to the beginning of the 2010-2011 school year; and
8. Provided "Rachel's Challenge" training for School students designed to create a positive school culture by, in part, emphasizing kindness and compassion.

² The Division has stated that it did not discipline these students because all of the incidents occurred well before the Complainant reported them on June 2, 2010 (although the Division was, in legal terms, on notice of the incidents when the Teacher witnessed them), they were due in large part to the failure of the Teacher to address them, and it did not learn of the incidents until the end of the school year.

The Student has not reported any instances of harassment during the current school year. We note that, although the School has not conducted a racial climate survey, a general “Student Engagement Survey” was conducted in June 2010.³ This survey included only one statement related to civil rights: “Bullying is not a problem at my school.” The survey results indicate that 62% of responding School students agreed with this statement, compared with only 48% of Division students and 49% of students nationally.

Additionally, we note that the Division’s submissions indicate that there was only one other incident at the School over the past three school years that could be deemed an instance of race or national origin harassment. This incident, which occurred on October 19, 2010, involved a student displaying a gorilla on his computer under which he placed text indicating that the picture was of an identified black student in the class. The next day, the Division suspended the offending student for one day.

Based on the above discussion, we find that the Division failed to take prompt action to stop and prevent the recurrence of the harassment, but did, with the following exception, take effective action once Division staff other than the Teacher learned of the harassment. The Division has indicated that, although the School conducted the training described in items 7 and 8, above, it had not conducted harassment training in the last few years and has no program for providing such training on an ongoing basis. We are concerned that the lack of such training may have contributed to the failure of the Teacher to promptly and properly respond to the harassment taking place in his classroom during the 2009-2010 school year, and find that such training is necessary to help prevent the recurrence of harassment at the School. To address this concern, the Division has committed, in a January 7, 2011, letter, to conduct harassment training for School faculty and students at the beginning of each school year. The faculty training will include instruction on recognizing and promptly and appropriately responding to harassment, including harassment based on race and national origin. The student training will include instruction on what behavior constitutes harassment, why that behavior is unacceptable, the disciplinary consequences of such behavior, the need for tolerance and respect in interactions with fellow students, and the right of students to file a complaint or grievance if they are being harassed and the individual with whom such complaints or grievances should be filed. In that letter, the Division also committed to submit to OCR reports on the annual training conducted at the beginning of the 2011-2012 and 2012-2013 school years in, respectively, September 2011 and September 2012.

³ The survey was conducted by the National Center for School Leadership.

The Division has provided several remedies that address some of the consequences of its failure to promptly respond to the harassment. For example,

1. On June 15th, during a meeting with the Complainant and the Student (and in response to the Student's statement that he had received threats from other students relating to the steps the Division had taken in response to the harassment), the Division agreed with the Complainant and the Student that he should be excused from taking final examinations with no penalty to him;
2. The Division offered to place the Student in a XXXXXXXXXX school of the Complainant's choice (the Complainant declined the offer);
3. The Division changed the Student's XXXXXXXXX grade from a C to a B and offered the Student the opportunity to take the XXXXXX final examination to improve that grade (the Student declined the offer);
4. The Division spoke with the Student's XXXXXXXXX; and
5. The Division permitted the Student to try out for the School XX team despite the fact that he had missed the deadline for doing so.

In addition to these remedies, the Division has committed, in its January 7th letter, to reimburse the Complainant for the cost of the Report (\$ 700), as it was reasonable for her to have had the Student evaluated to determine the effect of the harassment on him.

We find that the remedies already provided by the Division and its commitments to provide annual harassment training for School faculty and students and reimburse the Complainant for the cost of the Report adequately address OCR's compliance concerns. Therefore we are closing this case effective the date of this letter.

This is a letter of findings issued by OCR to address an individual OCR case. Letters of findings contain fact-specific investigative findings and dispositions of individual cases. Letters of findings are not formal statements of OCR policy and they 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.

We remind the Division that it is not permitted to intimidate, threaten, coerce, or discriminate against you or any other individual for the purpose of interfering with any right or privilege secured by the laws OCR enforces. If any individual is harassed or intimidated because of filing a complaint or participating in any aspect of OCR case resolution, the individual may file a complaint alleging such treatment.

Please note that, under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect, to the extent provided by law, information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Sincerely,

/s/

Sheralyn Goldbecker
Team Leader, Team IV
District of Columbia Office
Office for Civil Rights