



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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WASHINGTON, DC 20202-1475

REGION XI  
NORTH CAROLINA  
SOUTH CAROLINA  
VIRGINIA  
WASHINGTON, D.C.

December 19, 2013

Ms. Cynthia Wilson  
Superintendent  
Orangeburg Consolidated District Five  
578 Ellis Avenue  
Orangeburg, SC 29115

Re: OCR Complaint No. 11-13-1191  
Letter of Findings

Dear Ms. Wilson:

This letter is to notify you of the resolution of the complaint that was filed on April 23, 2013 with the District of Columbia Office of the Office for Civil Rights (OCR) at the U.S. Department of Education, against Orangeburg Consolidated District Five (the District). The Complainant alleged that the District, in particular XXXX (the School), discriminated against her son (the Student) when it failed to promptly and effectively respond to the Complainant's reports that the Student has been verbally harassed by another student (Student A) because of his race.

OCR investigated the Complaint under the authority of 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 activities or programs that receive federal financial assistance (FFA). As the District is a recipient of FFA and a public entity, it is subject to the provisions of Title VI.

In reaching a determination with regard to the complaint allegation, OCR reviewed information and documents provided by the Complainant and the District and conducted interviews with the Complainant, the School Principal, four teachers (who taught both the Student and Student A), and a member of the School's administrative staff. An explanation of our findings, analysis, and conclusions follows.

**Factual Background**

<XXXX Paragraph Redacted XXXX>

The Complainant told OCR that she reported to both Teacher 1 and the Administrator that Student A had used racial slurs toward the Student and had racially harassed him prior to, and at the time of, the XXXX incident. The Complainant said that Teacher 1 told her she would speak with Student A about these incidents of racial harassment and the Administrator also told her she would "look into it."

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Teacher 1 confirmed that she saw the Student shove Student A, but said she did not overhear any racial comments or observe any act of aggression by Student A toward the Student. She also said that she could not recall any previous interactions—negative or positive—between the Student and Student A. Teacher 1 noted that she had been surprised by the Student’s action toward Student A so, immediately after it occurred, she called the Student into the hallway to question him about what had happened. Teacher 1 told OCR that the Student reported that he shoved Student A because Student A XXXX and made a derogatory racial remark. Teacher 1 said that, because the Student did not have a history of poor behavior, she did not immediately write up a disciplinary referral but, instead, decided to give him an opportunity to apologize to Student A for having shoved him. She added that while the Student was writing the note, she called Student A into the hallway to ask him what had happened. According to Teacher 1, she could not remember what Student A told her specifically, but she recalls that Student A did not admit or deny that he used a racial slur. Teacher 1 explained that after class she read the note written by the Student and, because of its insulting content, she referred the Student to the school office to be disciplined.

Teacher 1 acknowledged that, shortly after the incident in XXXX, the Complainant told her that the Student had been harassed by Student A and another XXXX student on multiple prior occasions. Teacher 1 reported that the Complainant also told her that both had used racial slurs against the Student. Teacher 1 said that this was this first time she was being made aware of the racial problem and she informed the Complainant that these earlier incidents should have been reported to school staff. Teacher 1 also stated that, while she did not attempt to personally investigate the matter, she informed the Principal about the allegation of ongoing racial harassment by Student A and the other student that had been made by the Complainant and the Student.

All of the Student’s teachers maintained that neither the Student nor the Complaint ever reported incidents of racial harassment to them. For example, Teacher 2 maintained that neither the Student nor the Complaint ever reported incidents of racial harassment to him and, in the course of the school year, he had never observed Student A and the Student interacting or otherwise communicating with each other. Similarly, Teacher 3 reported that he had not been told of, nor had he observed, any racially harassing behavior between Student A and the Student. Teacher 3 added, however, that following the incident in XXXX, the Student came to his class in a very upset mood. When Teacher 3 questioned him, the Student told him: “They are calling me names.” Teacher 3 said he did not know who the Student was referring to and he did not know what names the Student had been called. He reiterated that neither the Student nor the Complainant ever reported to him that the Student was being racially harassed. Teacher 4 told OCR that, starting in XXXX, he began to notice “a little bit of trouble” between the Student and Student A. Specifically, Student A would say something to the Student and the Student would respond. Teacher 4 described the situation as Student A “picking on” the Student. Although he could not recall anything in particular that was said, Teacher A insisted that nothing that could be construed as racial was said by either student. Eventually Teacher 4 decided to place the students on opposite sides of the classroom to minimize interactions between the two students.

Information provided to OCR by the Administrator was similar to that provided by most of the teachers. Specifically, she noted that the Complainant and the Student did not complain about racial harassment or name-calling, either prior to or after the XXXX incident. The Administrator acknowledged that the Complainant reported that the Student was “bullied” and “picked on” by other students but, according to the Administrator, the Complainant did not ever say that these behaviors were racially motivated. She added that her efforts to get additional details about these incidents from the Student were not successful. “I asked [the Student] what was going on and he said he didn’t want to be a snitch, and he could handle it,” she said. The Administrator said that she told the Complainant that these incidents should have been reported to an administrator. After the call with the Complainant, the Administrator said she told the Principal that the Complainant had reported that the Student was being harassed at the school.

The Principal reported that he learned about the XXXX incident from the Administrator who told him that the Student had shoved Student A and that the Student had written an inappropriate note and failed to apologize for the incident as instructed by his teacher. He did not recall Teacher 1 or the Complainant ever telling him that Student A had allegedly directed racial slurs toward the Student and, as a result, he suspended the Student without investigating the matter further.

In response to OCR’s inquiry regarding any other racial incidents at the school, the Principal confirmed an incident that the Complainant had also reported to OCR. Both noted that, early in the school year (i.e., in XXXX), the Student was referred to as XXXX by a XXXX student (Student B). Student B admitted to the Principal that he had called the Student XXXX but added that he had done so in response to the Student having called him XXXX. The Principal told OCR that he reported the incident to the parents of both boys; told the parents that both students were equally wrong; and asked the parents to address the matter with their child at home. Neither student was disciplined by the Principal; however, the Principal said he did instruct them to have no further contact with each other.

The Principal acknowledged that the Complainant was not satisfied with his handling of the XXXX incident. The Complainant maintained that Student B had repeatedly racially harassed the Student and she did not think it fair that he was not disciplined. However, the Principal denied that the Complainant had ever reported three or four previous alleged incidents during which Student B racially harassed the Student. He insisted that, to his knowledge, there had been no pattern of racially harassing behavior by Student B of the Student. Both the Complainant and the Principal agreed, however, that after the Principal intervened and, for the remainder of the school year, there were no additional incidents involving Student B and the Student.

The Principal also told OCR that, in XXXX, a XXXX student called XXX student XXXX and then, according to eyewitness reports, the XXXX student physically attacked the XXXX student. As the two boys fought, teachers who were present told them to stop, which they eventually did—but not immediately. The Principal told OCR that the XXXX student was suspended for three days. The Principal acknowledged that the XXXX student had the right to defend himself against the attack; however, according to the Principal, he failed to stop fighting promptly when told to do so by the staff members who were attempting to break up the fight. For this infraction, the XXXX was also disciplined (i.e., XXXX). The Principal explained that in addition to the discipline meted out above, both students were told that they could not ride home on the school

bus and the parents of both students were called to the school for a conference during which details of the altercation and how each was to be discipline were explained.

OCR notes that in a follow-up interview, the Principal was again asked if there were any other racial incidents besides the XXXX incidents. The Principal said that there had been no other racial incidents at the school. He then added that he did not necessarily consider the XXXX incident—when Student B referred to the Student as a XXXX to have been a racial incident.

### **Analysis**

Racial harassment is a form of discrimination prohibited by Title VI. A recipient may violate Title VI if a responsible employee knew, or in the exercise of reasonable care should have known, about the harassment, but failed to promptly and effectively respond to the harassment. OCR further notes that a “responsible employee” includes any employee who has the authority to take action to redress the harassment; who has the duty to report the harassing behavior to appropriate school officials; or who is an individual who a student could reasonably believe has this authority or responsibility.

Based on the information provided, OCR was unable to establish that the School staff knew about any allegation of racial harassment involving Student A and the Student prior to XXXX. However, OCR did find that, shortly *after* the XXXX incident, the Student and the Complainant told Teacher 1 that Student A had, on multiple occasion, racially harassed the Student and it was this behavior that had precipitated the most recent altercation for which the Student was being punished. OCR acknowledges that it is unclear whether this information was communicated to school administrators. Nevertheless OCR finds that it was reasonable for the Complainant and/or the Student to have assumed that Teacher 1 had authority to address the harassing behavior that he reported, or at least was responsible for reporting it to the Principal (as she claims she did). OCR confirmed that *District Policy III—Student Concerns, Complaints, and Grievances* states, among other things, that students are expected to “present complaints to teachers or administration officials...” Therefore, under Title VI, the School became responsible for investigating the Student’s harassment allegation once it was reported to Teacher 1 (i.e., a responsible employee), whether or not the Principal or other administrator was aware of the allegation. However, according to the School, this allegation was never investigated.

OCR also identified other concerns. First, a review of the disciplinary records of the two students involved in the XXXX incident revealed that the records did not indicate that a racial slur was used by the XXXX student. The incident was coded simply as “fighting” in the incident report and the documentation did not indicate that the School recognized that the incident involved possible racial harassment. Other data also suggest that School staff may be unfamiliar with the Title VI definition of racial harassment and with the requirement to document related incidents and allegations. Specifically, in response to OCR’s question about additional racial incidents at the School, the Principal noted that use of the term XXXX by Student B at the beginning of the school year—which occurred in the context of an altercation between a XXXX and a XXXX student—was not necessarily indicative of a “racial incident.”

A common understanding of what constitutes racial harassment, along with a well-understood process for clearly and promptly recording actual and alleged incidents of harassment would help to ensure accurate records are maintained and increase the likelihood that actual harassment will be met with a sufficient and effective response from School staff. For example, if such a recordkeeping method and process existed at the School—and was routinely used by staff and parents—OCR might have been able to determine (i) what, if anything, was communicated between School staff in XXXX, after the Student alleged harassment, or (ii) the nature of the communication between the Complainant and School staff about the Student’s prior relationship with Student A and Student B.

OCR also notes that, although the XXXX student who instigated the XXXX incident was suspended for three days, it is not clear that the School’s response to this incident was reasonably likely to prevent the recurrence of future racial incidents. For example, in addition to disciplining the harasser, other appropriate school-level responses may include implementation of racial awareness training; efforts to assess the possible impact of an incident on the school-wide community; and the provision of counseling for the victims of racial harassment as well as the harasser. The Principal told OCR that following the XXXX incident, the parents of both students were informed about the racial slur. However, there is no indication that, for example, the School attempted to evaluate the effect of the experience on the XXXX student, or follow up with the XXXX student, staff, or any of the many students who witnessed the incident, to address possible problems or concerns.

### **Conclusion**

While OCR finds insufficient evidence that the District failed to respond to allegations of racial harassment of the Student by Student A prior to the XXXX incident, OCR concludes that the District failed to promptly and effectively respond to the Complainant’s allegation that were made—and acknowledged by the School—immediately following the XXXX incident. In addition, OCR finds that the District’s actions regarding: (i) the definition of racial harassment; (ii) proper documentation and recordkeeping procedures; and (iii) the types of remedies that should be provided (e.g., to victims of racial harassment), fail to comport with the requirements of Title VI.

The enclosed resolution agreement, when fully implemented, will resolve OCR’s concerns. OCR will monitor the District’s implementation of the signed agreement to ensure that the District fully complies with it.

This concludes OCR’s investigation of the complaint and 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. 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. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

We have advised the Complainant that the District may not harass, coerce, intimidate, or discriminate against her because he filed a complaint or participated in the complaint resolution

process. If this happens, she may file another complaint alleging such treatment. Also, 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, personal information that, if released, could constitute an unwarranted invasion of privacy.

If you have any questions regarding this OCR complaint or OCR's procedures, please contact Karen WalkingEagle, at (202) 453-6614 or via e-mail at [Karen.WalkingEagle@ed.gov](mailto:Karen.WalkingEagle@ed.gov).

Sincerely,

Dale Rhines  
Acting Team Leader  
District of Columbia Office  
Office for Civil Rights

Enclosure