



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW  
WASHINGTON, DC 20202-1475

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

February 26, 2014

Dr. Michael Lucas  
Superintendent  
School District of Oconee County  
414 South Pine Street  
Walhalla, South Carolina 29691

Re: OCR Complaint No. 11-13-1320  
Letter of Findings

Dear Dr. Lucas:

This letter is to inform you of the disposition of the complaint that was filed with the U.S. Department of Education (the Department), District of Columbia Office for Civil Rights (OCR) on September 17, 2013, against the School District of Oconee County (the District), in particular XXXX School (the School). Specifically, the Complainant alleged that:

1. During the 2012-2013 and the 2013-2014 school years, the School failed to promptly and appropriately respond to incidents in which her XXXX (the Student) was subjected to peer harassment based on race; and
2. During the 2013-2014 school year, School personnel created a hostile environment for the Student when they made disparaging disability-related comments toward the Student.

OCR reviewed data submitted by the District and the Complainant and conducted interviews with the Complainant and with District/School personnel. While OCR did not substantiate that the Student was subjected to harassment and to a hostile environment, as alleged, OCR identified compliance concerns in the course of its investigation. Specifically, OCR identified concerns with the District's Section 504 grievance procedure and nondiscrimination statement. OCR's analysis and proposed resolution are discussed below.

### **Legal Standards**

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, prohibit discrimination on the bases of race, color, and national origin in programs and activities that receive Federal financial assistance (FFA) from the Department. OCR also enforces Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990, and their implementing regulations at 34 C.F.R. Part

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

104 and 28 C.F.R. Part 35, which respectively prohibit discrimination on the basis of disability by recipients of FFA and by public entities. Because the District is a recipient of FFA and is a public entity, it is subject to the provisions of Title VI, Section 504, and Title II.

School districts are responsible under Title VI, Section 504, and Title II and their implementing regulations for providing students with a nondiscriminatory educational environment. Harassment of a student on the basis of disability or race can result in the denial or limitation of the student's ability to participate in or receive educational benefits, services, or opportunities. Under these laws, once a school district has actual or constructive notice of possible harassment based on race or disability, it is responsible for determining what occurred and responding appropriately. What constitutes a reasonable response to harassment will differ depending upon the circumstances. To constitute harassment, the conduct must be unwelcome and sufficiently serious as to interfere with or limit the ability of an individual to participate in or benefit from the services, activities or privileges provided by a recipient and for it to be reasonable for it to do so. If harassment is found, a school district should take reasonable, timely, age-appropriate, and effective corrective action, including steps tailored to the specific situation. The response must be designed to stop the harassment, eliminate the hostile environment, and remedy the effects of the harassment on the student who was harassed. The school district must also take steps to prevent the harassment from recurring, including disciplining the harasser where appropriate.

In addition, the Section 504 and Title II regulations establish procedural requirements that are important for the prevention and correction of disability discrimination. These requirements include issuance of a notice of non-discrimination and adoption of grievance procedures that provide for the prompt and equitable resolution of complaints of disability discrimination, including harassment.

### **Discussion**

***Allegation 1: During the 2012-2013 and the 2013-2014 school years, the School failed to promptly and appropriately respond to incidents in which the Student was subjected to peer harassment based on race.***

In her written complaint, the Complainant informed OCR that the Student, who was a XXXX, was called "XXXX" by his peer (Student A). The Complainant initially told OCR that the Student was called that term every day by Student A and that she reported this conduct to the School Board and to the District. However, she later informed OCR that she was aware of only one instance when the Student was called that term, in September 2012 (a year before she filed this OCR complaint). OCR's investigation substantiated that there was only one instance, in September 2012, when School personnel were informed of an incident of alleged racial harassment of the Student. Generally, OCR will take action only when a complaint allegation has been filed within 180 days of the last act of discrimination. Although the Complainant raised her concern of racial harassment with the District in September 2012, she did not file her complaint with OCR regarding the District's failure to respond promptly and appropriately to her concern of racial harassment in a timely manner. The Complainant requested a waiver of OCR's timeliness requirement because she did not know that OCR could investigate this type of

complaint. The information the Complainant provided is not a sufficient basis for granting a waiver of OCR's timeliness requirements.

Additionally, there is no indication the incident of racial harassment alleged in September 2012 is part of a pattern of behavior that might constitute a continuing discriminatory practice, including a racially hostile environment. Even though the Complainant never alleged racial harassment of the Student after the single incident in September 2012, School personnel informed OCR that they closely observed the Student after the September 2012 report and never identified any concerns relating to racial harassment or even bullying involving the Student from September 2012 to the present. Nonetheless, the Complainant continued to report concerns of "bullying" between the students during recess.<sup>1</sup> In response to these concerns, the Student and Student A did not attend recess together. School personnel reported to OCR that the Complainant continued to voice concerns about how Student A treated the Student during recess even though they were no longer attending recess together.

Because the allegation was not timely filed with OCR and there is no indication that there was a pattern of behavior that might constitute a continuing discriminatory practice, including a racially hostile environment, OCR did not evaluate the District's response to the September 2012 report and is closing the allegation as of the date of this letter. With that being said, OCR recognizes that School personnel have monitored the interactions between the Student and his peers and have not observed any bullying of the Student. OCR expects that the School will continue to monitor the Student's interactions with his peers.

***Allegation 2: During the 2013-2014 school year, School personnel created a hostile environment for the Student when they made disparaging disability-related comments toward the Student.***

In her written complaint and in interviews with OCR, the Complainant alleged that School personnel subjected the Student to a hostile environment based on disability. According to the Complainant, School personnel called the Student XXXX-related epithets, such as "XXXX," "XXXX," and "XXXX." She also alleged that School personnel forced the Student to XXXX during the school day. Prior to filing her OCR complaint, the Complainant raised similar concerns with the District in XXXX. In response to these concerns, the Section 504 Coordinator conducted an investigation. She obtained statements and interviews from the specific School personnel whom the Complainant alleged had subjected the Student to a hostile environment. She also interviewed other School personnel as witnesses to the hostile environment allegation. She issued an investigative report, dated XXXX, which concluded that she could not substantiate the hostile environment allegation. The Section 504 Coordinator provided OCR with a copy of the report and informed OCR that she also provided the report to the Complainant.

The Complainant alleged that these XXXX-related epithets continued during the 2013-2014 school year. OCR conducted interviews with School personnel, who denied XXXX the Student, denied making any XXXX-related epithets, and denied observing any School personnel engaging in any such conduct. In fact, School personnel informed OCR that they established a positive

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<sup>1</sup> School personnel informed OCR that these concerns were not related to race, but were instead general concerns of bullying.

relationship with the Student, and gave several examples of how they interacted with him and how they observed other School personnel interacting with him.

A finding that a recipient has violated one of the laws OCR enforces must be supported by a preponderance of the evidence, that is, evidence that it is more likely than not that discrimination occurred. When there is a significant conflict in the evidence and OCR is unable to resolve that conflict, for example, due to the lack of corroborating witness statements or additional evidence, OCR generally must conclude that there is insufficient evidence to establish a violation of the law. OCR concluded that the preponderance of the evidence does not support that School personnel subjected the Student to a hostile environment based on disability. As noted above, School personnel and the Complainant had differing accounts of how School personnel treated the Student. OCR also notes that the Complainant informed OCR that she never witnessed School personnel engaging in harassment; instead her source of information about the alleged conduct was the Student. For these reasons, OCR found insufficient evidence to support a finding that the District subjected the Student to a hostile environment based on disability, as alleged.

During the course of OCR's investigation, OCR identified compliance concerns with the District's notice of nondiscrimination and Section 504 grievance procedure. Specifically, the non-discrimination statement fails to reference a prohibition against discrimination on the basis of all of the laws enforced by OCR in District's programs and activities and does not include the identification of the individual designated to coordinate the District's compliance with Section 504.

As mentioned earlier, Section 504 and Title II require that a school district adopt a grievance procedure that provides for the prompt and equitable resolution of complaints alleging disability discrimination, including harassment. OCR has determined that the District's disability discrimination grievance procedure (the Procedure) does not provide for equitable resolution of complaints for several reasons. First, the Procedure requires that a complainant file a grievance with the school principal and an appeal with the Superintendent. However, the Procedure does not contemplate situations where the alleged discrimination directly implicates the school principal and/or the Superintendent, and the filing of such a complaint or appeal with these individuals could create a conflict of interest. Second, the Procedure does not provide for an opportunity for complainants to provide evidence and to identify witnesses in conjunction with disability discrimination complaints. Third, the Procedure states the complainant will receive "a written summary and/or decision." An equitable response to a complaint of discrimination requires that the parties receive written notice of the outcome. Under the Procedure, the complainant is provided with either a summary or a decision, which could result in situations where the complainant does not receive notice of the outcome. Finally, the Procedure states that if a complainant "continues to be dissatisfied with the outcome of the appeal and/or decisions of the above procedures or the Section 504 Committee, the following options are available." The options include an impartial hearing to resolve disputes relating to decisions of students' receipt of a free appropriate public education (FAPE). Because these options include a process that does not appear to apply to complaints of disability harassment, it is not clear whether the Procedure is intended to address complaints of disability harassment.

The District voluntarily entered into the enclosed Resolution Agreement, which addresses the compliance concerns discussed above. OCR is closing its investigation of this complaint effective the date of this letter, but will monitor implementation of the Resolution Agreement.

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 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, or discriminate against an individual because the individual filed a complaint or participated in the complaint resolution process. If this happens, the individual 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, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

We appreciate the District's cooperation during the resolution of this complaint, and particularly the assistance of Dr. Michael Thorsland. If you have any questions, feel free to contact Kay Bhagat at 202-453-6598 or via e-mail at [Kay.Bhagat@ed.gov](mailto:Kay.Bhagat@ed.gov) or Betsy Trice at 202-453-5931 or at [Betsy.Trice@ed.gov](mailto:Betsy.Trice@ed.gov).

Sincerely,

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

Enclosure