



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, DC

XXXX

Dr. Carol B. Carter
Division Superintendent
King and Queen County Public Schools
P.O. Box 97
King and Queen Courthouse, VA 23085

Re: OCR Complaint No. 11-16-1179
Letter of Findings

Dear Dr. Carter:

The Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) has completed its investigation of the complaint we received on XXXX against King and Queen County Public Schools (the Division). The Complainant filed the complaint on behalf of a student (the Student) previously enrolled at XXXX (the School). The Complainant alleges that the Division discriminated against the Student on the basis of race (African American). Specifically, the complaint alleges that the Student was discriminated against based on race when XXXX.

OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin in any program or activity receiving Federal financial assistance from the Department. Because the Division receives Federal financial assistance from the Department, OCR has jurisdiction over it pursuant to Title VI.

In reaching a determination, OCR reviewed documents provided by the Complainant and the Division, interviewed the Complainant and Division staff, and conducted a site visit on XXXX. After carefully considering all of the information obtained during the investigation, OCR found insufficient evidence to support the Complainant's allegation.

However, throughout the course of OCR's investigation, OCR identified a possible compliance concern regarding the Division's compliance with Title VI, Section 504, and Title II. However, before OCR completed its investigation, the Division expressed a willingness to resolve the concerns by taking the steps set out in the enclosed Resolution Agreement. Additionally, OCR found sufficient evidence of a violation of Title IX regarding a provision of the Division's Student Code of Conduct (the Code), but determined that the Division resolved the issue. OCR's findings and conclusions are discussed below.

Background

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

XXXX 2 SENTENCES REDACTED XXXX

XXXX PARAGRAPH REDACTED XXXX

Title VI Allegation

Legal Standard

The Title VI regulation, at 34 C.F.R. § 100.3(a), provides that no person shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under the Division's programs or activities on the basis of race, color, or national origin. When investigating an allegation of different treatment, OCR first determines whether there is sufficient evidence to establish an initial, or prima facie, case of discrimination. Specifically, OCR determines whether the division treated the Student less favorably than similarly situated individuals of a different race. If so, OCR then determines whether the division had a legitimate, nondiscriminatory reason for the different treatment. Finally, OCR determines whether the reason given by the division is a pretext, or excuse, for unlawful discrimination.

Analysis

In analyzing the Complainant's allegation that the Student was discriminated against on the basis of her race, OCR first considered whether there is sufficient evidence that the Student was treated less favorably than a similarly-situated White student, thereby establishing an initial, or prima facie, case of discrimination. XXXX 4 SENTENCES REDACTED XXXX.¹ Therefore, because the Student, an African American student, received a harsher punishment than Student 2, a White student, for XXXX, OCR determined there to be a prima facie case of race discrimination.

OCR next investigated whether the Division articulated a legitimate, non-discriminatory reason for its actions. The Division confirmed that the two students involved did receive different punishments, but stated that that reason the students received different punishments was due to their differing XXXX. Division staff asserted that the difference in discipline for each student was appropriate given each student's actions XXXX, as well as their prior XXXX.² XXXX 2 SENTENCES REDACTED XXXX. Based on the above, OCR found that the Division articulated a legitimate, non-discriminatory reason for imposing a different number of suspension days for each student.

OCR notes that the Complainant asserted a slightly different version of what transpired on XXXX. XXXX 3 SENTENCES REDACTED XXXX.

¹ OCR notes that OCR's investigation focused on whether the Student was discriminated against based on race when the School XXXX.

² The Division asserted that all decisions regarding student discipline are based on the circumstances presented and a student's prior record.

OCR next analyzed whether the Division’s non-discriminatory reason is a pretext for unlawful discrimination. First, OCR interviewed School staff. XXXX PARAGRAPH REDACTED XXXX

Next, OCR reviewed investigation documents relating to XXXX. OCR reviewed a summary document XXXX (presumably written by the Acting Principal) and contemporaneous statements collected from XXXX. XXXX 3 SENTENCES REDACTED XXXX.³

OCR also reviewed the Division’s XXXX Code of Conduct (the Code). XXXX 3 SENTENCES REDACTED XXXX.

Further, OCR reviewed the Student's prior discipline records.⁴ XXXX SENTENCE REDACTED XXXX. The Division also provided XXXX.

Lastly, OCR reviewed information regarding other students who had been XXXX. XXXX 2 SENTENCES REDACTED XXXX.⁵

Based upon the above, OCR found insufficient evidence that the Division’s non-discriminatory reason for punishing the Student more harshly than XXXX is a pretext for unlawful discrimination. XXXX 3 SENTENCES REDACTED XXXX. For these reasons, OCR found insufficient evidence that the Student was discriminated against, on the basis of her race, XXXX.⁶

Nevertheless, throughout the course of OCR’s investigation as OCR attempted to investigate how other students in the Division were disciplined, OCR became concerned with the discipline recordkeeping at the School. According to the Division (and based on OCR’s review of discipline records), this was particularly an issue during the XXXX school year. Issues included a lack of consistently documenting the details of the incident or infraction that warranted a referral or discipline, and not consistently using a system or program to track student discipline. However, on XXXX, the Division told OCR that it had developed new forms and procedures for recording discipline, and shared with OCR forms, including: a Student Statement of Testimony; a Recommendation for Expulsion Packet; an Expulsion Packet Checklist; a “Steps before Making a Recommendation for Expulsion” document; School Threat Assessment Procedures; and an “Expulsion 24 Hour Notice Form.” Further, the Assistant Superintendent, who started her position in summer 2015, told OCR of her work to implement a more formalized and consistent discipline process, including capturing information through documentation. On October 13, 2016, the Division informed OCR that immediately prior to the 2016-2017 school year, the Division conducted PowerSchool training for administrators, secretaries, and guidance counselors with a focus on tracking discipline, including: inputting referrals; generating a brief summary of each incident; proper coding of incidents; and generating discipline letters for a student’s cumulative file, to be sent home, the Superintendent, and to be sent to the Director of Special Education and Student Services (the Director) if the student has a Section 504 Plan or an

³ XXXX SENTENCE REDACTED XXXX

⁴ OCR reviewed XXXX.

⁵ OCR also reviewed the racial breakdown of students XXXX. XXXX 2 SENTENCES REDACTED XXXX.

⁶ XXXX PARAGRAPH REDACTED XXXX.

Individualized Education Program. Before OCR conducted interviews, reviewed files, and otherwise investigated to assess whether the Division's updated recordkeeping process was being implemented and adequately captures discipline data, the Division expressed a willingness to resolve this issue by taking the steps set out in the enclosed Resolution Agreement. The Resolution Agreement further addresses concerns OCR identified with respect to the Division's updated Code.⁷

Section 504/Title II Concern

Throughout the course of OCR's investigation, OCR identified a possible compliance concern with respect to the Division's compliance with Section 504 and Title II.⁸ Specifically, whether the Division failed to evaluate the Student after it had sufficient information that she might be a student with a disability requiring related aids and services. However, before OCR completed its investigation, the Division expressed a willingness to resolve this issue by taking the steps set out in the enclosed Resolution Agreement. The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Resolution Agreement.

Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.33, requires school districts to provide a free appropriate public education (FAPE) to students with disabilities. An appropriate education is regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met and that are developed in compliance with Section 504's procedural requirements. Implementation of an Individualized Education Program (IEP) developed in accordance with the Individuals with Disabilities Education Act is one means of meeting this standard. OCR interprets the Title II regulation, at 28 C.F.R. §§ 35.103(a) and 35.130(b)(1)(ii) and (iii), to require school districts to provide a FAPE to the same extent required under the Section 504 regulation. In addition, the Section 504 regulation, at 34 C.F.R. § 104.35(a), requires a school district to evaluate any student who needs or is believed to need special education or related services due to a disability. A district must conduct an evaluation before initially placing the student in regular or special education and before any subsequent significant change in placement.

While the Section 504 regulation requires a school district to conduct an evaluation of any student believed to need special education or related services before taking action toward initial

⁷ The Division updated its Code after OCR initiated this investigation. Nevertheless, OCR has concerns with the current Code, including lacking definitions of quantitative terms such (e.g., repeated offenses, multiple offences, etc.) and the role and authority of teachers to remove a student from class for disruptive behavior.

⁸ OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department.

placement, the regulation does not impose a specific timeline for completion of the evaluation. Optimally, as little time as possible should pass between the time when the student's possible eligibility is recognized and the district's conducting the evaluation. An unreasonable delay results in discrimination against students with disabilities because it has the effect of denying them meaningful access to educational opportunities provided to students without disabilities. Timeframes imposed by the Individuals with Disabilities Education Act (IDEA) as well as state timelines for special education evaluations are helpful guidance in determining what is reasonable. The IDEA regulation, at 34 C.F.R. § 300.301(c)(1), requires that school districts complete evaluations within 60 days of receiving parental consent for the evaluation unless the state has established a different timeline, in which case evaluations must be completed within the timeline established by the state. Virginia state regulations generally require that all evaluations and decisions about eligibility be completed within 65 business days of the receipt of the referral by the special education administrator or designee (8VAC20-81-60(b)(1)(g)).

Analysis

XXXXX 5 SENTENCES REDACTED XXXX. The Division, however, did not refer the Student for an evaluation.

On XXXX, the Complainant completed a form requesting a XXXX. The Complainant also provided his consent for an initial evaluation. XXXX 5 SENTENCES REDACTED XXXX. However, prior to completing the investigation and conducting additional interviews, the Division expressed a willingness to resolve these issues by taking the steps set out in the enclosed Resolution Agreement.

Title IX Concern

In addition, throughout the course of OCR's investigation, OCR identified a compliance concern with respect to the Division's compliance with Title IX.

OCR enforces Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any program or activity receiving Federal financial assistance from the Department. The Title IX regulation, at 34 C.F.R. § 106.31(a), provides that no person shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under the Division's education programs or activities on the basis of sex. Further, the Title IX regulation, at 34 C.F.R. § 106.40(b), provides that a division "shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extra-curricular activity, on the bases of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity."

OCR identified a compliance concern with respect to a provision of the Division's 2015-2016 Code. Specifically, OCR discovered a provision titled "Pregnancy" in the Code. That provision included the following language:

The King & Queen County School Board reserves the right to exclude pregnant pupils from attending school if, in the judgment of the Board, the presence in school of such pupils would be detrimental to the health and/or welfare of the school. . . . Pupils who become pregnant and desire to continue to attend school should make such request of the school administration.

Under “recommended dispositions,” student conference, parent contact, conference with parent, and, alternative school program were listed.

OCR determined the above language to be in violation of Title IX. OCR brought this concern to the Division’s attention. In a phone call on July 21, 2016, the Division’s counsel notified OCR that this pregnancy policy was no longer in the Code, which, after review of the updated policy, OCR confirmed that the provision has been removed. OCR additionally confirmed that no student, over the past three years, had been affected by this policy. OCR therefore determined that the Division resolved this issue.

Conclusion

Pursuant to Section 302 of OCR’s *Case Processing Manual*, the Division signed the enclosed Resolution Agreement on December 11, 2017 which, when fully implemented, will resolve the possible compliance concern related to the Division’s evaluation of the Student. The provisions of the Agreement are aligned with the possible compliance concerns and the information discussed above that was obtained during OCR’s investigation, and are consistent with applicable law and regulation. OCR will monitor the Division’s implementation of the Agreement until the Division is in compliance with the statutes and regulations at issue. Failure to implement the Agreement could result in OCR reopening the investigation.

This concludes OCR’s investigation of the complaint. This letter should not be interpreted to address the Division’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.

Please be advised that the Division must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

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 personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

We appreciate the Division's cooperation in the resolution of this complaint. If you have any questions regarding this letter, please contact Shana Heller or Zorayda Moreira-Smith, the OCR attorneys assigned to this complaint. You may reach Ms. Heller at 202-453-6599 or Shana.Heller@ed.gov or Ms. Moreira-Smith at 202-456-6946 or Zorayda.Moreira-Smith@ed.gov.

Sincerely,

/s/

Kristi R. Harris
Team Leader, Team IV
Office for Civil Rights
District of Columbia Office

Enclosure

cc: Melissa Wolf Riley, Counsel for the Division