



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

July 6, 2017

Via Email: Frank.Baker@sumterschools.net

Dr. J. Frank Baker
Superintendent
Sumter County School District 02
1345 Wilson Hall Road
Sumter, SC 29150

RE: OCR Complaint No. 11-17-1084
Resolution Letter

Dear Dr. Baker:

This letter is to advise you of the outcome of the complaint that the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) received on November 7, 2016 against Sumter School District (the District). The Complainant filed the complaint on behalf of a student (the Student) at XXXX (the School). The complaint alleges that the District discriminated against the Student on the basis of race. Specifically, the complaint alleges that during the XXXX school year, the Student was subjected to a racially hostile environment at the School, including peers using racial slurs, “bullying” based on race, and a physical assault on XXXX. The Complainant also alleged that the District failed to investigate and respond appropriately to the racially hostile environment.

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 District receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Title VI.

In reaching a determination, OCR reviewed documents and videos provided by the Complainant and the District, and interviewed the Complainant and District staff.

During the course of OCR’s investigation, OCR identified possible compliance concerns regarding the District’s response to the Complainant’s reports of racial harassment, which the District agreed to resolve through the enclosed resolution agreement. OCR’s findings and conclusions are discussed below.

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

Background

The Student, who is African American, was enrolled in XXXX grade at the School. On XXXX, the Student's XXXX emailed the District raising concerns about racial harassment and other race-related concerns. On XXXX, the Student was involved a physical altercation that involved XXXX students. On XXXX, the Student's XXXX emailed the District again, raising concerns about racial harassment and other race-related concerns. After the incident, the Complainant withdrew the Student from the School citing safety concerns. On XXXX, the Student's XXXX presented at the District's XXXX meeting, raising concerns about racial harassment and other race-related concerns.

The District has a discrimination, harassment, and bullying policy (Policy JICFAA) that obligates District staff to address complaints of unlawful harassment and bullying based on race, color, and national origin. The District policy obligates all school employees to report alleged violations of the policy to the principal or his/her designee.

Legal Standards

A district's failure to respond promptly and effectively to race-based harassment that it knew or should have known about, and that is sufficiently serious that it creates a hostile environment, is a form of discrimination prohibited by Title VI. Harassing conduct may take many forms, including verbal acts and name-calling; graphic and written statements, which may include use of cell phones or the Internet; physical conduct; or other conduct that may be physically threatening, harmful, or humiliating. Harassment creates a hostile environment when the conduct is sufficiently severe or pervasive as to interfere with or limit a student's ability to participate in or benefit from the district's programs, activities, or services. When such harassment is based on race, color, or national origin, it violates Title VI.

To determine whether a hostile environment exists, OCR considers the totality of the circumstances from both an objective and subjective perspective and examines the context, nature, scope, frequency, duration, and location of incidents, as well as the identity, number, and relationships of the persons involved. Harassment must consist of more than casual, isolated incidents to constitute a hostile environment.

When responding to harassment, a district must take immediate and appropriate action to investigate or otherwise determine what occurred. The specific steps in an investigation will vary depending upon the nature of the allegations, the source of the complaint, the age of the student or students involved, the size and administrative structure of the school, and other factors. In all cases, however, the inquiry should be prompt, thorough, and impartial. If an investigation reveals that discriminatory harassment has occurred, a district must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring.

Analysis

The Complainant alleged that the Student experienced race-based harassment by other students, and that the District was on notice of many of these incidents. Specifically, she alleged that the “XXXX”¹ was used around campus and that students wore hats with XXXX symbols on them and hung XXXX in their cars. She also alleged that White male students had threatened to fight the Student on at least XXXX occasions, and ultimately physically attacked the Student on XXXX. The Complainant told OCR staff that the School failed to address these race-based incidents.

The Complainant contended that the Student spoke to the Principal and the Assistant Principal in XXXX, and told them that a group of White male students gathered around the Student, offering to fight him, and requesting to meet at a local store so that they could fight. The Complainant explained that the Assistant Principal responded to the incident and told the Student that he caused the incident because he should not have been in the White area of the cafeteria. The Complainant also stated that he raised the same concerns with the School during the Student’s XXXX and that the School responded by suggesting that he contact the other parents involved directly, rather than addressing the issues with School staff.

The Complainant explained that on XXXX and XXXX, the Complainant, the Student’s XXXX, and the Student raised concerns about specific White male students and the School’s racially hostile environment. On XXXX, in the evening, the Complainant and the Student spoke to the Assistant Superintendent for Curriculum and Instruction (Assistant Superintendent) and reported concerns that a group of White male students were threatening to fight the Student, and the Student was afraid that “something would happen.” Early in the morning on XXXX, the Complainant emailed a letter to the Superintendent with the subject line “XXXX” expressing concerns about the racial environment and tension at the School, the usage of racial slurs toward the Student, and about various incidents involving the Student and White students threatening him. Specifically, the attached a letter stated the following concerns:

1. “During lunch time the cafeteria is segregated (unofficially of course). The Black Students have an area and the White Students have an area.”
2. The Student “has been requested by White Students to meet and fight at locations after school.”
3. The Student “has been referred to by using the ‘N’ word by White students three or more times.”

The Superintendent responded to the email informing the Complainant that “[i]t is being handled by the school principal.”

On XXXX and XXXX, the Student’s XXXX emailed the Superintendent raising concerns about a XXXX that occurred on XXXX. On XXXX, the Student was in a XXXX that involved XXXX students. The Complainant stated that the Student was sitting in the common area, and several White male students began XXXX at the Student. The Complainant noted that the Student told

¹ When OCR spoke with the Complainant on XXXX, the Complainant used the term “XXXX.” Throughout this letter, however, OCR will use “XXXX” when referring to that term.

the other students not to XXXX and one of the other students responded “shut, up [N-word].” At this point, the altercation escalated from a verbal exchange XXXX, involving XXXX other students.

On XXXX, the Student’s XXXX raised his concerns about the racially hostile environment at the XXXX meeting. The Student’s XXXX asserted that there was open racism, racial segregation at the School, and that racial slurs were used toward the Student. The Student’s XXXX also reported that there were about “XXXX” that were “XXXX” and that they would wear “clothes with the confederate flag” and that “XXXX with a sizeable confederate flag flying on the back.”

In its response to OCR, the District contends that XXXX was the first time that the District became aware of the Complainant’s concerns, when the Superintendent received the XXXX email and letter from the Complainant. The District asserts that, “[a]s a result of this email, the principal got involved and met with the Student and [the Principal] shared with [the Superintendent] that everything was alright and there was no longer an issue.” The District stated that as soon as the XXXX email was received, “the [S]chool became involved to investigate.” The District notes that the XXXX involved XXXX. XXXX SENTENCE REDACTED XXXX.

OCR interviewed District administrators regarding the Complainant’s allegations. Regarding the incidents in XXXX, the District alleged that it was only aware of one incident. The Assistant Principal explained that he investigated an incident that occurred in the XXXX between the Student and one other student (“Student A²”). The Assistant Principal noted that he did not witness the incident between the two students and that the students were brought to him by School staff. The Assistant Principal explained that he spoke to both students about the incident and he concluded that “[i]t wasn’t a group of students surrounding [the Student, but that] there were a group of students [present], [and the Student] had an issue with one of the students present.” He indicated that he concluded that it was a personal problem, not a racial one. The Assistant Principal noted that he only spoke to the two students, he did not ask for the students to provide a written statement, and he did not speak to other student or staff witnesses.

Regarding the XXXX phone call, the Assistant Superintendent explained to OCR that he spoke to the Complainant on XXXX and she expressed concerns about the Student being bullied at the School and the Assistant Superintendent responded to her by informing her that he did not oversee that department that handles bullying and harassment, but that he would forward the message to the appropriate person. The Assistant Superintendent explained that he immediately emailed the Superintendent, the Principal, and the Assistant Superintendent for School Services informing them of the call stating that the Complainant has “concerns with a group of guys (Caucasian) wanting to fight their son. They stated that they have spoken with [the Principal and the Assistant Principal]. [The Complainant] feel[s] like something serious is about to happen XXXX.” The Assistant Superintendent noted to OCR that no one responded to his email, nor did anyone follow-up with him to inquire about the details of the call. The Assistant Superintendent explained that this was the extent of his involvement. The Assistant Principal stated to OCR that he responded to the concerns in the Assistant Superintendent’s email and he sent his response to two District administrators. He stated that he did not receive a response to his email nor did

² OCR notes that Student A is a White male student at the School.

anyone ever ask him for additional information. OCR notes that, although OCR requested all correspondence regarding these allegations, the District did not provide this email to OCR.

Regarding the XXXX email and letter to the Superintendent, the District provided OCR with conflicting information regarding what occurred after the Superintendent received the XXXX. The Superintendent explained to OCR that his understanding was that the Principal was investigating the concerns. The Superintendent noted that he followed up with the Principal in a brief phone call and the Principal explained to him that he spoke to the Student and the Student told him that everything was okay. The Superintendent stated that he did not inquire into the details of the investigation nor did he ask the Principal whether he investigated each concern raised in the email. However, the Principal told OCR that the Superintendent forwarded him the XXXX email with the subject line XXXX with the attached letter of concern, but his understanding was that the email was an “FYI” email because “there was no ‘take any other action’ instruction by the Superintendent.”

Nonetheless, the Principal noted that he met with the Student on XXXX because the Complainant called him on that day expressing concern regarding male students bothering the Student. The Principal explained to OCR that he immediately had a five to ten minute conversation with the Student and the Student explained that a male student was bothering him over a girl and that some White students asked him to meet and fight at an off campus location. The Principal asked the Student to provide a written statement and he then spoke to one of the other students identified, who was Student A. Student A told him that he did not know who the Student was and that he did not know anything about the Student’s claims. The Principal explained that he believed Student A because he “had not been in any kind of trouble” and because “his body language seemed [like] he was being very honest and upfront.” The Principal also noted that he tried to talk to a third student involved, but the student was unavailable on that day, and the Principal never followed up. The Principal noted that based on his interviews with the two students, he concluded that there was no issue because Student A told him that they did not know each other, and the Student wrote in his narrative “I do not have any interaction with these kids at all.”

Regarding the XXXX, the Principal explained that the School investigated the incident. The Assistant Principal told OCR that he reviewed video footage, interviewed multiple students and asked for statements from each student. The Assistant Principal concluded that something was XXXX toward the Student; the Student confronted the student who XXXX, Student A; Student A XXXX at the Student; the Student XXXX Student A; and, that is when the other students became involved. The Assistant Principal stated that “it was unclear who started.” The Assistant Principal indicated that the fight was “primarily between [blacks] and whites,” however he did not know whether race was a motivating factor, nor did he inquire whether race was a motivating factor for the fight. Regarding the XXXX email from the Student’s XXXX to the Superintendent stating “it appears that there is a race issue at your school that needs to be addressed,” the Assistant Principal noted that the email was probably sent to him but that he did not follow-up on the email.

Regarding the XXXX Board of Trustees meeting when the Complainant presented and stated “there is open racism,” “racial segregation,” and students using the “N” word at the school, the

Assistant Principal explained that he was present at the board meeting but he did not remember whether he was asked any specific questions. The Assistant Principal noted that he was not asked to provide any information to the Board of Trustees or the Superintendent to address the concerns that were raised at the meeting.

Regarding the allegation that the cafeteria is racially divided, the Principal and Assistant Principal told OCR that the cafeteria is not segregated by administrators, but that the students consistently sit where they sit and that means that the Black students sit in one area, White students sit in other areas, and then there are areas that you will find a mix. Regarding the allegation that students at the School use racial slurs often, the Principal explained to OCR that they address incidents on an individual basis, if School staff hear it. He stated that he does not believe that racial slurs were widely used and explained that they treat it similarly “as when [a] student use[s] profanity.” The Assistant Principal mentioned two incidents when a racial slur was used at the School and both incidents were handled as disciplinary infractions. Despite OCR’s request, the District did not provide copies of these disciplinary infractions. The Principal stated that he did not believe that there was racial tension in the School because he was “so visible in the building.”

Regarding the incident with the XXXX and the confederate flag, the Principal noted that the School does not let students “wear hats, shirts, anything related to confederate gear,” but he also indicated that he believed that the students didn’t “mean anything about it because that is just the culture.” The Assistant Principal explained that the Student XXXX “was sent home that day because he was so uncomfortable.” He explained that a lot of the Black students were upset. He also noted that “a particular group of White kids got on their second amendment” stating that it wasn’t about racism and slavery, but it was about history. The Assistant Principal indicated that he had to work with those two students that day. The District provided no documentation of this incident.

OCR reviewed students’ written statements from the XXXX and XXXX investigations. OCR reviewed the Student’s narrative, dated XXXX, and notes that the Student identified XXXX White students who were trying to fight him and he also provided the names of two additional students who were witnesses. In his narrative, the Student wrote that the XXXX other students overheard the White students talking about him and stating “[w]e are going to jump [the Student], I am sick of dealing with [N-word]s’ or their threats.” OCR notes that the Principal explained that he did not ask either student about the statement and that he believed the concern was resolved simply because the Student wrote in the narrative “I do not have any interaction with these kids at all.” The District provided no other contemporaneous notes or documentation regarding the Principal’s investigation.

OCR reviewed the Staff and student narratives and the investigation report for the XXXX. OCR notes that, according to the Staff Narrative created by the Assistant Principal, the XXXX was primarily between Black students against White students. The Assistant Principal told OCR that they did not investigate the incident to determine whether race was a motivating factor during the course of the initial investigation nor after the investigation once the Complainant raised concerns that race was a factor in his XXXX and XXXX emails to the Superintendent.

Finally, OCR requested copies of all complaints or reports of racial harassment or discrimination at the School over the past three school years, however the District responded that no such complaints or reports were made.

Regarding the Complainant's allegation that the Student was subjected to a racially hostile environment at the School, OCR considered the totality of the circumstances from both an objective and subjective perspective and examined the context, nature, scope, frequency, duration, and location of the incidents, as well as the identity, number, and relationships of the persons involved. OCR notes that harassment must consist of more than casual, isolated incidents to constitute a hostile environment. OCR considered evidence that the Student wrote in his XXXX written statement that the "N-word" was used to describe him; that the same White male student was involved in multiple incidents; and that the XXXX involved XXXX students and it was primarily racially divided. However, OCR also notes that all of the alleged incidents occurred within a XXXX timeframe, and that the District was on notice for a short timeframe. In addition, OCR notes that it cannot yet conclude that the student altercations, invitations to fight, as well as the XXXX on XXXX, were racially motivated. However, before OCR completed its investigation regarding whether the Student was subjected to a racially hostile environment, and therefore before OCR reached a conclusion regarding this allegation, the District expressed willingness to resolve the complaint.

Based on the information received from the District, OCR identified possible compliance concerns with respect to whether the District took immediate and appropriate action to investigate the incidents the Complainant, the Student, and the Student's XXXX raised. Although it is disputed whether the District had notice of the Complainant's concerns in XXXX it is undisputed that the District had notice by XXXX and that the Complainant repeatedly raised concerns about the racially hostile environment at the School to the District in XXXX and XXXX. The District does not dispute speaking to the Complainant on XXXX and XXXX, reading the Student's XXXX narrative statement noting the "XXXX" was used to describe him, receiving the Student's XXXX and Complainant's email and letter on XXXX and receiving emails on XXXX and XXXX, and listening to the Student's XXXX concerns at the XXXX meeting on XXXX. The District asserted that it investigated the concerns raised in the XXXX email and letter; however, the District confirmed that it did not investigate the Complainant's concerns pursuant to the District's HIB Policy and also provided conflicting testimony as to whether an investigation was actually conducted as a response to the XXXX email and letter. OCR notes that the District responded to the XXXX call from the Complainant expressing concerns about other students wanting to fight the Student. During the course of the XXXX investigation, the Principal spoke to the Student, took his written statement, and spoke to Student A, however, the Principal did not request a written statement from Student A, did not talk to the other students and witnesses that the Student identified, did not create a written record of the investigation, and did not follow the District's HIB Policy. OCR identified possible compliance concerns with the XXXX investigation given that the Student's written statement identifies XXXX students who allegedly bullied and threatened the Student, XXXX students who witnessed the interaction, and the statement also provided information that the Student was subject to racial slurs by his peers. OCR also identified possible compliance concerns with the lack of investigation despite the Complainant's raising the concerns several times in XXXX and XXXX. The District did not provide OCR any testimony or documentation that indicates that

any investigation occurred in response to the Complainant's concerns raised on the other dates. However, before OCR completed its investigation, the District expressed willingness to resolve this possible compliance concern by taking the steps set out in the enclosed Resolution Agreement.³

Conclusion

Pursuant to Section 302 of OCR's *Case Processing Manual*, the District signed the enclosed Resolution Agreement on June 29, 2017 which, when fully implemented, will resolve the allegation raised in this complaint. The provisions of the Agreement are aligned with the allegation and issues raised by the Complainant and the information discussed above that was obtained during OCR's investigation, and are consistent with applicable law and regulation. OCR will monitor the District's implementation of the Agreement until the District is in compliance with the statute and regulation at issue in the case. Failure to implement the Agreement could result in OCR reopening the complaint.

This concludes OCR's investigation of the complaint. This letter 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.

Please be advised that the District 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 District's cooperation in the resolution of this complaint. If you have any questions, please contact Zorayda Moreira-Smith at 202-453-6946 or Zorayda.Moreira-Smith@ed.gov or Shana Heller at 202-453-6599 or Shana.Heller@ed.gov, the OCR attorneys assigned to this complaint.

Sincerely,

/s/

³ OCR spoke to the Intercultural Development Research Association (IDRA) and IDRA expressed interest in supporting the District with the climate surveys. The District expressed interest in consulting with IDRA to implement the resolution agreement. The District shall contact IDRA to discuss the extent of IDRA's consultation.

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

Enclosure

cc: Shirley M. Fawley
Connie P. Jackson