



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

September 28, 2018

Susan Pullium
Executive Director
Neuse Charter School
909 E. Booker Dairy Road
Smithfield, NC 27577

Re: OCR Complaint No. 11-18-1272
Resolution Letter

Dear Ms. Pullium:

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 April 2, 2018, which was filed against the Neuse Charter School (the School). The Complainant alleged that in retaliation for her raising concerns that students were being subjected to discrimination/harassment on the basis of race and/or national origin at the School, the Principal of the School's XXXXX (the Principal)¹ terminated her XXXXX position at the XXXXX on XXXXX, 2018.

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. The laws enforced by OCR prohibit retaliation against any individual who asserts rights or privileges under these laws or who files a complaint, testifies, assists, or participates in a proceeding under these laws. Because the School receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Title VI.

During the investigation, OCR reviewed documents provided by the Complainant and the School, and interviewed the Complainant. Before OCR completed its investigation, the School expressed a willingness to resolve the complaint, by taking the steps set out in the enclosed Resolution Agreement, pursuant to Section 302 of OCR's *Case Processing Manual*.

Background

During the 2017-2018 school year, the Complainant was a XXXXXX primarily assigned to the School's XXXXX, which serves students at the XXXXXX. The XXXXX Academy is one of

¹ OCR notes that the Complainant initially alleged to OCR that the School's Executive Director retaliated against her as alleged; however, during the course of OCR's investigation, the Complainant clarified that it was the Principal, and not the Executive Director, who was the School administrator at issue. The School informed OCR that the School's XXXXX serves students at the XXXXX and is led by the Principal (who is also referred to as the "XXXXX Academy Leader"). The Principal reports to the Executive Director.

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three academies within the School.² The School informed OCR that because it is an independent charter school, all XXXXX teachers are managed by the XXXXX, and the scheduling of XXXXX teachers for classes is coordinated by the School's XXXXX.

The Complainant alleges that in retaliation for her raising concerns that students were being subjected to discrimination/harassment on the basis of race and/or national origin at the School, the Principal terminated her XXXXXX position at the XXXX Academy on XXXXX, 2018. The Complainant informed OCR that she was told that she was removed from her position at the XXX Academy because she was “having controversial conversations” with students in her classroom.

OCR determined that in an email sent on XXXXX, 2018, the Complainant notified the Principal of an incident wherein a student made racially harassing comments in reference to lynching that she observed in her class. Specifically, she reported:

XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX³

The Complainant stated that she sent concerned students from her class to speak to the Principal about the incident that same day. The School informed OCR that on XXXXX, 2018, the Principal visited the Complainant's assigned class during the third period, and he was able to have conversations with three separate students for a period of 5-10 minutes. The School asserted that the Complainant, the assigned XXXXX in the classroom, did not notice and/or acknowledge that the Principal had entered the room and spoke with students. The School further informed OCR that this concerned the Principal, and he instructed the XXXXX to not allow or schedule the Complainant to serve as a XXXXX teacher at the XXXX Academy; however, the School asserted that the Principal had not taken the time to explain to the XXXXX that he would need to follow-up with the Complainant before she would be permitted to return to the XXXX Academy. The School asserted that the Principal had specific concerns about the Complainant's classroom management and student safety.⁴

Thereafter, on XXXXX, 2018 at 10:19 a.m., the XXXXX sent a text message to the Complainant stating that she had received reports that the Complainant was having “controversial” conversations with students, and she directed her to “refrain” from “any of those type conversations” and limit her interactions to teaching. Subsequently, in an email to the XXXXX on XXXXX, 2018, at 10:29 p.m., the Principal directed the XXXXX to “use [the Complainant] in XXXXX as you see fit.” The XXXXX responded at 6:24 a.m. on XXXXX, 2018, and stated, “Will do.” The following day, on XXXXX, 2018, the Complainant was informed she could no longer serve as a XXXX at the XXXX as documented in an email sent by the XXXXX to the Complainant on XXXXX, 2018, at 6:28 a.m. Specifically, the email stated: “I will let you know that [the Principal] no longer wants you XXX in XXXX, so I'm going to work on moving your schedule around after today.” However, the documentation obtained indicates that the

² The School serves students from Kindergarten through Grade 12, and it has three academies. The Primary Academy serves students in Kindergarten through Grade 4; the Intermediate Academy serves students in Grades 5 through 8; and the Senior Academy serves students in Grades 9 through 12. The XXXXX Academy and the XXXXX Academy share a different principal.

³ The Complainant also asserted to OCR that she reported numerous other incidents of racial or ethnic harassment to the Principal that she witnessed, or that was reported to her by other students.

⁴ The Executive Director stated that the Principal shared this information with her during a meeting on XXXXX, 2018.

Complainant was still eligible to serve as a XXXX at the other two academies, which serve students in XXXXX through XXXX.⁵

On XXXXX, 2018, the Complainant had a meeting with the School's Principal and the Executive Director. During the meeting, the Principal explained to the Complainant that he had visited her classroom and observed her classroom management behavior, all of which concerned him. The School informed OCR that the Principal only intended to restrict the Complainant from XXXXX at the XXXX until such time as his concerns could be addressed with the Complainant. The School informed OCR that the meeting did not include a discussion about the Complainant's or students' reports of discrimination/harassment on the basis of race/national origin at the School, or about the "controversial conversations" the Complainant allegedly had with students. Instead, the Principal reminded the Complainant that, as a XXXX, she needed to follow the teacher's lesson plans. The School informed OCR that at the conclusion of the meeting, the Complainant was reinstated to XXXX XXX at the XXXXX Academy and worked at the XXXX Academy on XXXXX, 2018, at least, which was prior to the Complainant's filing of the instant OCR complaint on April 2, 2018.

Legal Standards

The Title VI regulation, at 34 C.F.R. § 100.7(e), prohibits retaliation against any individual who asserts rights or privileges under Title VI or who files a complaint, testifies, assists, or participates in a proceeding under Title VI.

When analyzing a claim of retaliation, OCR will consider: 1) whether the complainant engaged in a protected activity (e.g., filed a complaint or asserted a right under a law OCR enforces); 2) whether the recipient took an adverse action against the complainant; and 3) whether there is a causal connection between the protected activity and the adverse action. If all these elements are present, this establishes an initial, or prima facie, case of retaliation. OCR then determines whether the recipient has a legitimate, non-retaliatory reason for its action. Finally, OCR examines whether the recipient's reason for its action is a pretext, or excuse, for unlawful retaliation.

Analysis

OCR determined that the Complainant engaged in a protected activity, of which the School was aware, when she complained to the School's Principal regarding an incident of racial harassment at the School on XXXXX, 2018. OCR further determined that the School took an adverse action against the Complainant when the Principal determined that she could not serve (temporarily or otherwise) as as XXXXXX at the School's XXX Academy on XXXXX, 2018, which was shared with the Complainant on XXXXX, 2018. As such, OCR also determined that there was a causal connection between the Complainant's protected activity and the adverse action, as the two events occurred on the same day. Therefore, OCR determined that the Complainant established an initial or prima facie case of retaliation.

⁵ In addition to the incident of racial harassment that the Complainant reported to the Principal on XXXXX, 2018, OCR also reviewed documentation indicating that in an email sent to the School's Executive Director on February 26, 2018, she reported additional incidents of discrimination/harassment on the basis of race and/or national origin.

OCR next considered whether the School has a legitimate, non-retaliatory reason for its action. Based on the documentation provided by the School thus far, the School asserts that it only temporarily removed the Complainant from her position due to concerns about classroom management and safety gleaned from the Principal's observation of the Complainant on XXXXX, 2018. OCR next considered whether the School's reason for its action is a pretext, or excuse, for unlawful retaliation.

However, as indicated above, prior to the completion of OCR's investigation, including conducting interviews with School staff, the School requested to resolve the Complainant's retaliation allegation pursuant to Section 302 of OCR's *Case Processing Manual*.⁶ The School signed the enclosed Resolution Agreement (the Agreement) on September 27, 2018, which, when fully implemented, will resolve the allegation raised in this complaint. The provisions of the Agreement are aligned with the allegation raised by the Complainant and the information obtained during OCR's investigation, and are consistent with applicable law and regulation. OCR will monitor the School's implementation of the Agreement until the School has fulfilled the terms of the Agreement.

Conclusion

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the School'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 School 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 School's cooperation in the resolution of this complaint. If you have any questions, please contact Jeanette Tejada Bustos, the OCR attorney assigned to this complaint, at 202-453-6084 or jeanette.tejadabustos@ed.gov.

Sincerely,

⁶ Moreover, as a result of information OCR reviewed but did not investigate, OCR will provide Technical Assistance to the School regarding its obligations to reasonably, timely, and effectively respond to incidents involving student peer discrimination/harassment on the basis of race and/or national origin, as required by Title VI.

Letisha Morgan
Team Leader, Team II
District of Columbia Office
Office for Civil Rights

Enclosure