



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
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REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

October 3, 2019

Via Email: bremory@wsfcs.k12.nc.us

Dr. Beverly Emory
Superintendent
Winston-Salem Forsyth County Schools
P.O. Box 2513
Winston-Salem, NC 27102-2513

Re: OCR Complaint No. 11-18-1440
Resolution Letter

Dear Dr. Emory:

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 August 8, 2018 against Winston Salem Forsyth County Schools (the District). The Complainants¹ filed the complaint on behalf of a student (the Student) at XXXXX (the School). The Complainants alleged that the District discriminated against the Student on the basis of race (African American). Specifically, in their complaint and in subsequent communications, the Complainants alleged the following:

Allegation 1: XXXXX, the Student was treated differently based on her race when XXXXX (the Teacher) administered and graded tests in a manner that resulted in the Student receiving lower grades than she deserved and wrongfully being denied honors.

Allegation 2: XXXXX, School and District administrators failed to promptly and equitably respond to the Complainants' allegations of racial discrimination by the Student's Teacher and by peers.

Allegation 3: The Student was treated differently based on her race when she was provided with instructions that put her at an unfair disadvantage compared to the instructions given to Caucasian students during the XXXXX Competition XXXXX.

Allegation 4: XXXXX the Student was treated differently based on her race when School administrators did not promptly respond to concerns that the Student was being bullied, but promptly responded to concerns that Caucasian students were being bullied.

¹ XXXXX

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

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, OCR has jurisdiction over it pursuant to Title VI.

During the investigation, OCR reviewed documents provided by the Complainants and the District, interviewed the Complainants and District staff, and listened to audio recordings XXXXX.

Before OCR completed its investigation, the District expressed a willingness to resolve Allegations 1, 2 and 4 pursuant to Section 302 of OCR's *Case Processing Manual*, which states that allegations may be resolved prior to OCR making a determination if the District expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified issues that can be addressed through a resolution agreement.

OCR completed its investigation of Allegation 3. After carefully considering all of the information obtained during the investigation, OCR found insufficient evidence to support the Complainants' allegation.

A summary of the evidence obtained by OCR to date regarding Allegations 1, 2 and 4 as well as OCR's findings and conclusions regarding Allegation 3 are discussed below.

Background

XXXXX.

Legal Standards

Different Treatment

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 District'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 District treated the Student less favorably than similarly situated individuals of a different race. If so, OCR then determines whether the District had a legitimate, nondiscriminatory reason for the different treatment. Finally, OCR determines whether the reason given by the District is a pretext, or excuse, for unlawful discrimination.

Harassment

Title VI prohibits discrimination on the basis of race. Racial harassment that creates a hostile environment is a form of race discrimination. A district's failure to address racial harassment that creates a hostile environment can violate Title VI.

Allegation 1: XXXXX, the Student was treated differently based on her race when XXXXX (the Teacher) administered and graded tests in a manner that resulted in the Student receiving lower grades than she deserved and wrongfully being denied honors.

Facts

The Complainants alleged that the Teacher treated the Student differently by: 1) allowing other students to make test corrections to increase their grades but not allowing the Student to do so; 2) administering a test just to the Student and testing her on material weeks after it was taught and other students were assessed; and 3) purposefully grading the Student's assignments, projects and tests incorrectly so as to cause the Student to wrongfully be denied honor roll status.

A review of the email documentation shows that there were multiple emails between the Complainants and the Principal, Assistant Principal, and Teacher regarding concerns with the Student's grades XXXXX. Many of the emails OCR reviewed do not mention race-based discrimination but rather include concerns about the math content being too difficult at the beginning of the XXXXX school year and inquiries about specific questions and answers on assignments and tests throughout the school year.

Regarding the test corrections, XXXXX, the Complainants emailed the Teacher stating that the Student's friends mentioned test corrections and the Student wanted to know if she could improve her grade by submitting test corrections as well. The Teacher responded that she allowed a lot of corrections the first quarter but during the second quarter she only allowed a few to help students who were failing the subject.² The Complainants responded that they found that rationale to be unfair and that there should be a more uniform policy regarding test corrections.

Regarding the different testing, the Complainants asserted that the Student was given a test at least two tests months after her peers were tested and months after the material was taught. The District stated that a big reason for the grading issues and delays was that the Student was frequently absent XXXXX and had to complete multiple make-up assignments and tests.³ XXXXX.

Regarding the incorrect grades, XXXXX, the Complainants met with the Principal and Assistant Principal, in part to discuss concerns with the Student's grades. XXXXX, they had a follow-up meeting with the Principal, Assistant Principal, and Teacher. Later that day, the Complainants sent one email to express their dismay with the meeting and another email with evidence to refute the Teacher's statement that the Student failed her XXXXX Assessment. The next day the

² The Principal said that her understanding is that the XXXXX teachers allow test corrections in the beginning of the year but not as much toward the end of the year as they are preparing students for the rigor of XXXXX grade.

³ XXXXX.

Teacher emailed to say that the online grading system, PowerSchool, had been updated to show that the Student received an 80, not a 50. The Principal reiterated to OCR that there was one instance during the XXXXX school year that the Teacher mistakenly entered the wrong grade on a quiz for the Student but that the grade was corrected after the Complainants brought it to the Teacher's attention. The Complainants asserted to OCR and to the School that the problem was not just one wrong grade but rather, the Student's first quarter grades were not updated to reflect the test corrections that the Student was allowed to do first quarter. The Complainants also told OCR that they sent "15-20 mis-graded assignments back to the Teacher but eventually stopped sending them because it was so ridiculous." The Complainants alleged that their Caucasian friends who had children in this class did not have the same grading issues.

Regarding the denial of honors, in an email chain from XXXXX, the Teacher stated that she sent home honor roll spirit sticks from first and second quarters and said that the Student "has a lot to be proud and confident about!" The Complainants also expressed concern that the Student was not recognized for making the "A" honor roll third quarter. The Principal emailed the Complainants to apologize for the third quarter mix-up and to say that she placed the Student's "All A's" spirit stick in her report card envelope. The Complainants refuted that it was a mix-up because another student in the class received his appropriate honors. Emails from the XXXX school year indicate that the School staff told the Student that she would be recognized at her XXXXX award ceremony for the first and fourth quarter awards she missed in XXXXX grade. School staff failed to recognize the Student for these past awards at the first award ceremony on XXXXX but did so at the second award ceremony on XXXXX and invited the Complainants to attend, which they did.⁴

Analysis

OCR notes that some of the grading issues were addressed, but it is unclear whether there are any outstanding issues with the Student's grades. Before OCR completed its investigation, the District expressed a willingness to resolve Allegation 1 by agreeing to conduct an independent internal review of the Complaints' grading concerns from the XXXXX school year and to adjust the Student's grades for each quarter if necessary.

Allegations 2 and 4:

Allegation 2: XXXXX, School and District administrators failed to promptly and equitably respond to the Complainants' allegations of racial discrimination by the Student's Teacher and by peers.

Allegation 4: XXXXX the Student was treated differently based on her race when School administrators did not promptly respond to concerns that the Student was being bullied, but promptly responded to concerns that Caucasian students were being bullied.

Facts

The Complainants stated to OCR and to the School that the Student was bullied by XXXXX and others and not only did the Principal, Assistant Principal, and Teacher fail to respond, but they

⁴ XXXXX

treated the Student differently based on race by promptly responding to reports that Caucasian students were being bullied. The Complainants told OCR that right before the start of the XXXXX school year, the Principal met with the Student and the Complainants and asked the Student for forgiveness for not ensuring that the Student felt safe during XXXXX. But, the Principal did nothing to help the Student feel safe in XXXXX and ignored the Student's request to be separated from two of her bullies. The Complainants also stated that the Principal did not respond to the Complainants' and Student's concerns that the Teacher did not like her because of her race. They said that they were denied the opportunity to discuss these issues with the Teacher and instead the Principal insincerely gave the Student XXXXX to cover up racism by the Teacher and the Principal. The Complainants further emphasized to OCR that District staff never denied being racist or engaging in racial discrimination.

The District denied these allegations and stated to OCR that they responded promptly and appropriately to any and all concerns raised by the Complainants. Below is a summary of the relevant information OCR gathered based on email documentation, voice recordings, and interviews with both parties.

XXXXX, the Complainants met with the Principal and Assistant Principal in part to discuss concerns that the Student felt that the Teacher did not like her because of her race. One of the main concerns that the Complainants had was that the Teacher XXXXX.

On XXXXX, the Complainants had a follow-up meeting with the Principal, Assistant Principal, and Teacher. The Principal told OCR that she had wanted the Student and Teacher to discuss their relationship during that meeting but that it was cut short due to hostility between the parties. Later that day the Complainants emailed the Principal to express their disappointment with the meeting and their impression that the Principal was angry and disinterested. The Complainants also met with the Instructional Superintendent to discuss their concerns but reported to OCR that the Instructional Superintendent did not follow through on resolving anything.

On XXXXX, the Complainants emailed School staff to inform them that the Student was concerned about a friend who felt sad and that the Student was being teased XXXXX. The Complainants said that the Student did not want any intervention at this point and "was trying to handle the teasing on her own," but would "share with her teachers if it continues." The Principal wrote back the same day thanking the Complainants for sharing the Student's concerns for her friend and stating:

I know [the Student] doesn't want intervention right now with the teasing issue but I'm afraid it may get larger and I'm worried about her. Please encourage her to share with her teachers or me. We care for her and want to help.

The Teacher replied, "Thank you for sharing this with us. I will keep a watchful eye on both of these situations. We will be glad to intervene if the teasing continues and [the Student] feels she wants us to intervene."

The Complainants refuted the District's example of how they were responsive to the Complainants' concerns and said that the only reason they responded that way to the Complainants' email was because the Student expressed concern for a Caucasian friend.

The Student and the Complainants spoke with the Principal on XXXXX. The Complainants stated that the Principal asked the Student to forgive her for not making sure she felt safe at school and asked the Student for names of people who had bullied her. Later that day, the Complainants forwarded the Principal a video of the Student asking to be in a different class than XXXXX and another student because they were mean to her; XXXXX

The Principal replied to the Student:

I'm so thankful you came in today to talk with me. I appreciate your video and email about next year. I thank you for your honest thoughts. I'm glad you are coming to XXXXX [the School]. You'll be an awesome XXXXX scholar!

On XXXXX, the Complainants emailed the Principal and sent her a voice recording to say that XXXXX apologized to the Student for being mean, the Student forgave XXXXX, and they then went to play. The Complainant said to the Principal that she knows there are good children at the School and that is why she drives the Student out of district every morning to attend the School. In response, the Principal wrote:

Wow! Thank you for sharing this news with me. I didn't initiate it but was keeping a close eye out yesterday in XXXXX. I'm thrilled our students are learning to seek understanding first and to find win-win solutions. [The Student] is so gracious. I'm so thankful that she is here this year.

Throughout the XXXXX the Complainants sent multiple emails to the Principal to express anger and disappointment that the Principal disregarded the Student's video and placed her in the same classroom with her bully. Several emails suggest that the history of bullying was so bad, it caused the Student to have XXXXX. Other emails from the Complainants to OCR and the School stated that the relationship between the two students was fine.

When asked to explain how the School handled concerns raised by the Complainants compared to concerns about bullying raised by other families, particularly who are Caucasian, the Principal told OCR that typically she and the Assistant Principal speak with the students involved and take written statements from them. The Principal explained that did respond differently to the Student's concerns and those of the Complainants, not because of race but because the Complainants asked her and the Assistant Principal not to speak with the Student directly and that this often made it difficult to investigate any issues. For example, the Principal told OCR that she wanted to hear from the Student why she believed the Teacher did not like her, but she was unable to discuss this with the Student per the Complainants' request.

Analysis

OCR notes that there was frequent communication between the Complainants, School administrators, and Teacher, but it is unclear when and to what extent School staff were aware that the Student was being harassed or bullied, and the extent to which the harassment was race-based, such as statements that the Student could not play with a group of children because she did not have blonde hair. There is also inconsistent information as to whether any of the alleged race-based harassment was sufficiently serious to create a hostile environment. Before OCR completed its investigation, the District expressed a willingness to resolve Allegations 2 and 4 by agreeing to conduct a training on the School's legal obligations under Title VI to respond to allegations of race-based harassment.

Allegation 3: The Student was treated differently based on her race when she was provided with instructions that put her at an unfair disadvantage compared to the instructions given to Caucasian students during the XXXXX Competition XXXXX..

Facts

The Complainants alleged that the Principal discriminated against the Student in the way that she conducted the XXXXX competition, which is a national competition XXXXX.⁵ The Complainants alleged that the Principal did not want the Student to succeed because she is an African American child. Specifically, the Complainants alleged that School staff engaged in racial discrimination during XXXXX of the competition and unfairly disadvantaged the Student who did not advance to XXXXX.

The District stated that all students who participated in the XXXXX competition were given the same instructions and scoring rubric and that the decision on who advanced to the next round was simply based on the average of the judges' scores. The District further stated that one of the students chosen to advance XXXXX was an African-American male student. The Complainants explained that they believed that students who did not meet with a minimum of five judges should have had zeros factored into their average and that XXXXX should have been redone in a way that would have not allowed staff to prompt students to move from one judge to another. XXXXX.

A review of the documentation from the Complainants and the District shows that XXXXX students at the School advanced from XXXXX of the competition, which was held on XXXXX to XXXXX, which was held on XXXXX, and of those, XXXXX students advanced from XXXXX, which was held on XXXXX.

The rubric states that for each round, the judges would score the students from 0-3 based on XXXXX.

The Principal called and emailed the Complainants to "share the good news" that the Student did well in the XXXXX competition and that she would be advancing to the XXXXX. The Principal wrote, "we are thrilled that [the Student] will be in XXXXX." The Complainants XXXXX

⁵ XXXXX

served as mock judges and stated to OCR that they were told during the practice session that the students would need to meet with at least five judges in eight minutes using their own time management skills to “work the room.” XXXXX, after finding out that the Student did not advance to XXXXX and that some of her Caucasian classmates who did advance met with fewer than five judges, the Complainants emailed the Principal to say that it was unfair for the School to tell students to speak to a minimum of five judges but not to enforce that minimum and instead to just average the judges’ scores regardless of how many judges a student spoke to. XXXXX the Complainants sent several emails and spoke with the Principal asking that XXXXX be redone and XXXX, which was planned for that afternoon, be postponed. The Principal mentioned that the Student seemed nervous during XXXXX and received a lower average from the judges than the other six students who were able to advance XXXXX. after the School held XXXXX as planned, the Complainants sent the Principal a very lengthy email stating that the unfair practices regarding XXXXX competition were racially discriminatory in part because Caucasian students who did not follow the five-judge minimum and/or who had to be prompted to move from one judge to another advanced to the next round, but the Student did not advance even though she met with five judges and monitored her own time. The Complainants promised to take legal action, “all the way to the Supreme Court if necessary.”

In an interview with OCR, the Principal said that the students were given coaching tips and told that during XXXXX they should use their time wisely by trying to speak with four or five of the 16 judges who would be present. She said that during the competition, there was one student who spoke with the same judge for seven minutes and one of the XXXXX teachers tapped him on the shoulder to prompt him to move on to another judge. The Principal said that this was the first year the School participated in the competition and that while she thought the Complainants had some good suggestions for how the competition could be handled next year, there was nothing discriminatory about the way XXXXX was handled this year that would require them to redo it.

Analysis

OCR found insufficient evidence to support the Complainants’ allegation that the Student was treated differently based on her race during the XXXXX competition XXXXX. First, the written evidence and the information obtained from both parties indicates that all students were provided with the same directions. Specifically, the written information states students can meet with “as many judges as they would like.” As explained by the Complainants, all students were told during the practice session that it would be wise to try to meet four or five judges. The Student did not receive nor was she denied any instructions provided to the other students. Further, the fact that Student met with the recommended number of judges did not disadvantage her per se. Despite the Complainants’ assertion that a student who saw five judges could hypothetically receive four high scores and one low score whereas a student who saw three judges would be more likely to receive three high scores, it is just as likely that a student who saw fewer judges could be at a greater disadvantage if they received a low score from one of the judges and did not have that many additional high scores to counterbalance it. Last, the Complainant might have been able to show different treatment if staff prompted one or more Caucasian students to move from one judge to another but did not prompt the Student to do so, but as both parties admit, the Student did not need prompting. In sum, OCR has determined that the Student was not subjected

to different treatment based on race as alleged and therefore finds insufficient evidence to substantiate Allegation 3.

Conclusion

On September 30, 2019, the District signed the enclosed Resolution Agreement which, when fully implemented, will address Allegations 1, 2 and 4. The provisions of the Agreement are aligned with the allegations and the information obtained during OCR's investigation, and are consistent with applicable law and regulation. Please review the enclosed Agreement for further details. OCR will monitor the District's implementation of the Agreement until the District has fulfilled the terms of the Agreement.

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. A complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

The Complainants have a right to appeal OCR's determination regarding Allegations 1 and 3 within 60 calendar days of the date of this letter. The Complainants must submit an online appeal form (<https://wdcrobcolp01.ed.gov/CFAPPS/OCR/ocrAppealsForm.cfm>) or a written statement of no more than ten (10) pages (double-spaced, if typed) by mail to the Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue SW, Washington, D.C. 20202; by email to OCR@ed.gov; or by fax to 202-453-6012. The filing date of an appeal is the date that the appeal is submitted online, postmarked, submitted by email, or submitted by fax. In the appeal, the Complainants must explain why they believe the factual information was incomplete or incorrect, the legal analysis was incorrect, or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome; failure to do so may result in dismissal of the appeal. OCR will forward a copy of the appeal to the District. The District has the option to submit a response to the appeal to OCR within 14 calendar days of the date that OCR forwarded a copy of the appeal to the District.

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.

If you have any questions regarding this letter, please contact Dana Russo, the OCR attorney assigned to this complaint, at 202-453-6559 or e-mail Dana.Russo@ed.gov or Sandra Gibson,

the OCR investigator assigned to this complaint, at 202 453-5913 or e-mail Sandra.Gibson@ed.gov.

Sincerely,

Michael Hing
Team Leader, Team 1
Office for Civil Rights
District of Columbia Office

Enclosure

cc: Dionne T. Jenkins via email at dtjenkins@wsfcs.k12.nc.us