



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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REGION XI  
NORTH CAROLINA  
SOUTH CAROLINA  
VIRGINIA  
WASHINGTON, DC

December 9, 2019

Dr. Douglas Schuch  
Superintendent  
Bedford County Public Schools  
310 South Bridge Street  
Bedford, VA 24523

RE: OCR Complaint No. 11-19-1232  
Resolution Letter

Dear Dr. Schuch:

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 February 28, 2019 against Bedford County Public Schools (the Division). The Complainant filed the complaint on behalf of XXXXX racial minority students at Jefferson Forest High School (the School). The Complainant alleged that the Division discriminated against XXXXX racial minority students at the School on the basis of race. Specifically, the Complainant alleged that the Division failed to take appropriate action to address a racially hostile environment at the School, including but not limited to racial harassment associated with student displays of Confederate flags on February 4, 2019; a racial slur directed at XXXXX by a peer on XXXXX; and other incidents of racial harassment.

OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d et seq., 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.

During the investigation to date, OCR reviewed information provided by the Complainant and the Division and interviewed the Complainant. Before OCR completed its investigation, the Division expressed a willingness to resolve the allegation pursuant to Section 302 of OCR's *Case Processing Manual*, which states that allegations may be resolved prior to OCR making a determination if a recipient 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. The following is a summary of the relevant legal standards and the evidence obtained by OCR during the investigation to date.

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

### Legal Standards

The Title VI regulation, at 34 C.F.R. § 100.3(a), states: “No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this part applies.” Racial harassment that creates a hostile environment is a form of race discrimination. Harassment creates a hostile environment when the conduct is sufficiently severe, pervasive, or persistent so as to interfere with or limit a student’s ability to participate in or benefit from a recipient’s programs, activities, or services. To determine whether a hostile environment exists, OCR considers the totality of the circumstances and examines the context, nature, scope, frequency, duration, and location of incidents, as well as the age of the parties, the size of the school, and the relationships of the persons involved. Harassment typically must consist of more than casual or isolated incidents to constitute a hostile environment.

As stated in Section 109 of the *Case Processing Manual*, OCR interprets Title VI and its implementing regulation consistent with the requirements of the First Amendment, and all actions taken by OCR must comport with First Amendment principles. OCR will not interpret Title VI or its implementing regulation to impinge upon rights protected under the First Amendment or to require a recipient to encroach upon the exercise of such rights. In addressing harassment allegations, OCR has recognized that the offensiveness of a particular expression (e.g., the Confederate flag), standing alone, is not a legally sufficient basis to establish a hostile environment under the statutes enforced by OCR. In order to establish a hostile environment, harassment must be sufficiently serious as to limit or deny a student’s ability to participate in or benefit from an educational program.

A recipient’s failure to address racial harassment that creates a hostile environment can violate Title VI. When responding to racial harassment, a recipient must take appropriate action to investigate or otherwise determine what occurred. If an investigation reveals that discriminatory harassment has occurred, a recipient must take steps tailored to fully redress the specific problems experienced and reasonably calculated to prevent the harassment from recurring and ensure that students are not restricted in their program participation or benefits.

### Division Policies

The Division’s Policy JFHA, “Prohibition Against Harassment and Retaliation,” prohibits harassment based on race, national origin, and other characteristics. The policy states that harassment of students based on race or national origin consists of “physical or verbal conduct, which may include use of cell phones or the internet, relating to an individual’s race, national origin...when the conduct

- Creates an intimidating, hostile or offensive...educational environment;
- Substantially or unreasonably interferes with an individual’s...education; or
- Otherwise is sufficiently serious to limit...a student’s ability to participate in or benefit from the education program.”

Policy JFHA states that harassment should be reported to one of the Division’s Compliance Officers<sup>1</sup> or to “any school personnel,” and that “any school personnel who has notice that a student...may have been the victim of prohibited harassment shall immediately report the alleged harassment to one of the Compliance Officers.” Upon receipt of a report, the Compliance Officer shall immediately authorize or undertake an investigation. The Compliance Officer shall give written notice of the complaint to the complainant and the accused individual and determine whether interim measures should be taken. After completing the investigation, the Compliance Officer shall issue a written report to the Superintendent, who shall then issue a written decision to both parties as to whether the policy was violated. If the Superintendent determines that prohibited harassment occurred, the Division shall take prompt, appropriate action to address and remedy the violation and prevent any recurrence, which may include discipline of the perpetrator, school-wide or division-wide training, and counseling for the complainant. Policy JFHA also provides for an informal procedure to resolve harassment complaints if the complainant and accused individual are in agreement.

The Division’s 2018-2019 Code of Student Conduct included the State of Virginia Discipline Codes Grades 6-12, which indicated that bullying (including cyberbullying) could result in consequences at Levels 3-6 and harassment could result in consequences at Levels 4-6.<sup>2</sup> The 2018-2019 Code of Student Conduct also contained the Division’s “Bullying Prevention and Intervention” policy, which noted that cyberbullying “would fall under the investigation of school staff when it materially and substantially disrupts the educational process or the orderly operation of school.”

### Reports of Alleged Harassment

During the 2018-2019 school year, the School enrolled approximately 1400 students, of whom approximately 83% were white and 6% were African American. The Division provided information about allegations of racial harassment that came to the attention of School administrators during the 2018-2019 school year. There were four such allegations in fall 2018. First, a student posted on social media about an incident involving a racial slur, XXXXX. The school reviewed video surveillance and did not find relevant evidence. In the second incident, a student wrote a phrase containing a racial slur on a private document saved on the Division’s computer system. XXXXX In the third incident, a student reported that several students were using the “n-word” XXXXX at school, but was not able to identify the students or the precise location so that the School could investigate. XXXXX In the fourth incident, a student recorded a video XXXXX.

On February 4, 2019, which was “Country vs. Country Club Day” during Spirit Week, several students brought Confederate flags to the School. Approximately 20 students took group photos on campus displaying the Confederate flags along with several other flags and posted the photos on social media. XXXXX

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<sup>1</sup> The Division’s website identifies the Compliance Officer for Policy JFHA for the 2019-2020 school year as the Chief Learning Officer, though different individuals were identified in the 2018-2019 school year.

<sup>2</sup> Level 3 could result in detention, Saturday school, in-school suspension (ISS) for 1-5 days, or short-term out-of-school suspension (OSS) for 1-5 days; Level 4 could result in ISS for 6-10 days or OSS for 6-10 days; Level 5 could result in long-term suspension; and Level 6 could result in expulsion.

The Division indicated that the School began an investigation of the Confederate flag incident after receiving numerous complaints. It provided copies of the complaints to OCR. While most of the complaints expressed general dissatisfaction with the displays of Confederate flags, and many were from individuals with no connection to the Division, a few complaints mentioned racial incidents at the School beyond the flag displays. According to a note written by a School staff member, a parent reported that XXXXX complained to him about racial incidents, an African American friend of XXXXX had experienced racial comments, and the parent had heard about visiting sports teams experiencing racial comments from the School's fans. The Division stated that the parent's concerns dated from middle school and were not applicable to the School. The Division also indicated that staff spoke to the friend's parents, who were not aware of any issues. However, it does not appear that the Division spoke to either student. According to another note written by a staff member, the School received an anonymous phone call reporting that a student told XXXXX mother that XXXXX hears words such as XXXXX, and that students have made fun of XXXXX. The Division told OCR that the School attempted to identify the caller but was unable to do so. The School's principal also received an email from a parent stating that she was aware of issues at the School and her own child had been targeted. The Division did not have records of any follow-up communication with this parent regarding the email; however, the Division reported that the parent communicated with staff on other occasions and did not mention racial harassment.

To investigate the Confederate flag incident, School administrators interviewed most of the students appearing in the pictures. According to the interview notes, the students generally stated that it was not their intention to express racism or to offend other students; rather, they intended to honor their heritage and ancestry.<sup>3</sup> XXXXX According to the Division, its investigation "did not uncover any incident of bullying, taunting, or harassment in connection with the display of the Flag. ... Given these findings, building administrators did not take any disciplinary action against the students who posed for the pictures."

XXXXX, the School received reports that XXXXX making racist and threatening comments toward XXXXX during the school day. The School's investigation determined that XXXXX. While the School's investigation did not verify that XXXXX directed racial slurs at any specific student, multiple witnesses reported that XXXXX used the "n-word" frequently, XXXXX. In connection with this investigation, the School received reports about a group of students whose social media activity included posts containing the "n-word," "Coon Busters," and other racist memes and comments. The Division indicated that School administrators were not able to access the alleged social media activity and there was no disruption to the school environment resulting from it, so the School did not take further action.

There were two additional reports of racial harassment in XXXXX that were not connected to the Confederate flag incident. A student reported that another student made derogatory comments about XXXXX. According to the Division, the School investigated the allegation but did not take any disciplinary action due to lack of evidence. In the other incident, an African American student reported that a student made a racial comment XXXXX. According to the

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<sup>3</sup> Several of the students reported that the group who participated in the photos experienced retaliation and threats from other students after the incident was publicized. XXXXX

Division, the offending student was counseled by administrators and XXXXX parents were contacted.

XXXXX

In addition to the reports of peer harassment described above, during the 2018-2019 school year the School received information about an incident of employee-on-student harassment involving a racial comment made by a staff member.

While OCR's investigation focused on the 2018-2019 school year, we note that the Complainant contacted OCR about an incident during an assembly at the School at the beginning of the 2019-2020 school year. According to the Complainant, when the guest speaker spoke about Emmett Till being murdered for allegedly whistling at a white woman, a large group of students began whistling. Local media reported that numerous students from the School subsequently reached out to the guest speaker on social media to apologize, but the Complainant was not satisfied with the School administration's response to the incident.

OCR received information from several sources suggesting that students are reluctant to report racial incidents at the School. The Complainant told OCR that she has heard from students that they often do not say anything about racial incidents because they do not believe anything will be done, and they do not want to be labeled as "snitches." XXXXX Another community member told OCR that parents are hesitant to share information about racial harassment at the School because their children do not want them to. During the School's investigation of one of the reports of racial harassment described above, a student witness told School administrators that "people don't come and tell because they don't want to feel like a snitch."

#### Division Response

In addition to the actions taken by the Division in response to specific reports of harassment, as described above, the Division has taken steps to address climate issues at the School and Division level by partnering with the Virginia Center for Inclusive Communities (VCIC), a non-profit organization that consults with school divisions and facilitates workshops to promote more inclusive learning environments. On March 22, 2019, VCIC conducted a workshop at the School for administrators, teachers, and student leaders from various organizations and extracurricular activities. According to the Division's Chief Learning Officer, the purpose of the workshop was to "develop personal and group action plans and then these student leaders will work with other young learners to guide discussions that will advance inclusion." Notes from this workshop indicated that the group discussed what they can do as individuals and a group to "break the Cycle of Prejudice," how they can get others involved, and possible next steps.

The Division entered into agreements with VCIC, executed in April 2019, for additional work during the 2019-2020 school year to "raise awareness and consistent practices in an effort to reduce incidents of bias and to ensure an equitable learning environment for all students." The program included a workshop for Division-level administrators that took place in June 2019, a workshop for up to 40 students at the School scheduled to take place in August 2019, workshops for student leaders at five additional schools in fall 2019, a 2-day "train-the-trainer" session for

school-based equity teams from all middle and high schools in fall 2019, and school-wide workshops for staff at six middle and high schools (including the School) in spring 2020.

In addition, administrators across the Division received training on June 10, 2019 regarding the Division's harassment and discrimination policies and the handling of complaints. According to the Division, the School's new principal and two assistant principals attended this training. The presentation from this training addressed relevant Division policies; the Division's obligation to address harassment that creates a hostile environment; the standard for determining whether a hostile environment exists; examples of conduct that may constitute racial harassment; the responsibility of teachers and staff to promptly report known and suspected harassment to their building principal or Compliance Officer; complaint processing procedures, including that principals are responsible for forwarding complaints to Compliance Officers; the responsibility of Compliance Officers to receive reports of harassment and oversee the investigation; interim measures; timeframes for completing investigations; evidence collection; providing written notification of the outcome of a complaint to both parties; and corrective actions.

#### Issues Addressed by the Resolution Agreement

The evidence examined by OCR to date shows that the School generally took steps to investigate reports of racial harassment that came to the attention of administrators. However, in a few cases the School's investigation may not have fully addressed the allegations. For example, soon after the Confederate flag incident, the School was contacted by several parents who raised concerns beyond the flag incident itself, and a few of those concerns may have warranted additional follow-up steps. In addition, XXXXX, the School received information about a group of students engaging in racially hostile social media activity. It is not clear whether the School conducted a thorough investigation of this allegation. Around the same time, the School learned that XXXXX routinely used a racial slur around other students, but concluded that it was not directed at particular students. OCR notes that use of a racial slur may contribute to a racially hostile environment even if the slur is not directed at a specific student. The Resolution Agreement requires the Division to evaluate harassment reports at the School to determine whether additional steps should be taken to fully investigate any of the reports.

In cases where the School's investigation verified the allegation, the evidence examined to date shows that the School generally took steps to address the incident by disciplining perpetrators. However, in some cases the School may have failed to consider whether individual complainants were subjected to a racially hostile environment and needed additional remedies such as counseling or educational supports. Furthermore, given the number of incidents at the School in one year, the severity of several of the incidents, and the commonality between many of the incidents in terms of the use of racial slurs, the School may have failed to consider whether the incidents collectively created a racially hostile environment that required broader corrective actions. The Resolution Agreement requires the Division to administer a climate survey to students at the School to assess the extent and impact of racial and national origin-based harassment. It further requires the Division to review the results of that survey and the outcome of harassment investigations to determine whether a hostile environment existed; if so, the Agreement requires the Division to assess whether additional remedies or corrective actions are necessary.

OCR commends the Division for partnering with VCIC to address climate issues at the School and at other schools in the Division, and encourages the Division to continue this work. OCR notes, however, that VCIC's workshops are designed for a limited number of student participants, and the extent of follow-up for the School's student population as a whole is not clear. In addition, VCIC's workshops are not directly focused on the Division's policies and conduct codes that prohibit harassment and how students can report harassment to initiate an investigation. The Resolution Agreement requires the Division to take steps to ensure that School staff, students, and parents receive this information. Furthermore, in light of information suggesting that students are reluctant to report incidents of harassment, the Resolution Agreement requires that the Division ensure that the School community receives information about confidentiality and protections against retaliation.

Based on the evidence reviewed to date, OCR notes that administrators may have failed to follow some of the procedures in Policy JFHA for investigating and resolving harassment complaints, such as forwarding reports of harassment to one of the Division's Compliance Officers and providing written notice to the parties of the outcome of investigations. OCR commends the Division for taking proactive steps to address this issue by conducting training for administrators in June 2019. The Resolution Agreement requires that the Division conduct a "refresher training" for School administrators that will cover remedies for individual complainants beyond disciplining perpetrators, and the Division's obligation to assess harassment complaints collectively to determine whether a hostile environment exists that requires broader corrective actions beyond individual remedies.

### Conclusion

On October 17, 2019, the Division signed the enclosed Resolution Agreement which, when fully implemented, will address the allegation investigated. The provisions of the Agreement are aligned with the allegation and the information 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 has fulfilled the terms of the Agreement.

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, please contact Sarah Morgan, the OCR attorney assigned to this complaint, at 202-453-5922 or Sarah.Morgan@ed.gov.

Sincerely,

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

Enclosure

cc: Pakapon Phinyowattanachip, Esq. (via email)