



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

February 7, 2020

*Via Email: mgill@hcps.us*

Michael B. Gill  
Superintendent  
Hanover County Public Schools  
200 Berkley Street  
Ashland, VA 23005

Re: OCR Complaint No. 11-19-1394  
Resolution Letter

Dear Dr. Gill:

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 June 13, 2019 against Hanover County Public Schools (the Division). The Complainant filed the complaint on behalf of a student (the Student) at xxxxx (the School). The Complainant alleged that the Division discriminated against the Student on the basis of race (African American). Specifically, the complaint alleged that after the Student declined to participate as a xxxxx xxxxx for a mandatory School pep rally on January 11, 2019, School staff discriminated against the Student on the basis of race, by disciplining her more severely than other Caucasian students on the xxxxx team who were accused of violating the xxxxx Contract and Code of Student Conduct.

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 and is a public entity, OCR has jurisdiction over it pursuant to Title VI.

### **Summary of Investigation**

During OCR's investigation to date, OCR reviewed documents provided by the Complainant and the Division, interviewed the Complainant, and interviewed Division faculty/staff, including during a site visit conducted on November 4, 2019.

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 the recipient expresses an

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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 evidence obtained by OCR during the investigation to date.

### **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 a recipient’s programs or activities on the basis of race, color, or national origin.

### **Findings of Fact**

During the 2018-2019 school year, the Student was a member of the School’s xxxxx xxxxx xxxxx xxxxx. The xxxxx team roster lists xxxxx members; xxxxx of the members, including the Student, are African American. The School’s xxxxx coaching staff includes a xxxxx Coach, an xxxxx Coach, and a Head Coach. The Head Coach has overseen the entire xxxxx program for the past nine years. She developed and instituted a School xxxxx Contract (the Contract), which sets forth expectations for participation. Each xxxxx and their parent signs the Contract as a condition of the student’s membership on the team. On August 13, 2018, the Student and Complainant signed the Contract.

During a xxxxx camp in August 2018, five members of the xxxxx team were found to have been in possession of or using a vaping device, a Juul, in a bathroom during a lunch break. All five students are Caucasian. The Division determined that the students’ misconduct violated both the Code of Student Conduct and the Contract. To address the Code of Student Conduct violation, School administrators required each of the five students to complete 15 hours of community service. To address the Contract violation, the Head Coach benched the students from the xxxxx sideline; however, the students were not dismissed from the team. The Complainant also identified this incident to OCR.

On January 11, 2019, and as alleged by the Complainant, the Student and two other xxxxx xxxxx, who are African American, failed to dress in uniform and participate with the xxxxx team at a pep rally during the School’s spirit week. Instead they sat in the bleachers with their xxxxx classmates. Immediately following the pep rally, the Head Coach approached the three xxxxx xxxxxx to discuss their non-participation in the pep rally. She told them that their actions were not acceptable, that they were not going to finish out the xxxxx season, and that they needed to turn in their uniforms as their season was over. The Head Coach told OCR that she suspended the three students for their remaining one or two xxxxx games in the season.<sup>1</sup>

The Principal observed the interactions between the Head Coach and the three xxxxx xxxxx after the pep rally, which occurred in a common area just outside the cafeteria, and she approached them to assess the situation. According to the Principal, the Head Coach advised her that the three girls had decided not to participate and that she told them to turn in their uniforms. The Principal described the situation as “intense.” Shortly thereafter, the Principal took the three students to

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<sup>1</sup> OCR notes that the team calendars reflect that there were up to three remaining games at which xxxxx xxxxx members could xxxxx, which the xxxxx Coach also confirmed.

various locations in the office to assess their emotional state and determine whether they should go to class. Later that day, the Complainant met with the Principal, Assistant Principal, Head Coach, and Athletic Director to discuss her concerns about how the matter had been handled. During the meeting, she raised concerns about different treatment of xxxxx on the basis of race.

At the Head Coach's direction, the xxxxx Coach, who was not present during the pep rally, subsequently emailed the Complainant on January 16, 2019 to clarify that the Student's actions during the pep rally violated the Contract and that the Student had been benched for the remaining xxxxx games. In her email, the xxxxx Coach explained to the Complainant that because it was the end of the xxxxx season, the Student needed to return her uniform. The email also stated that the Student was welcome to try out for the xxxxx team for the 2019-2020 season if the Student so chose.<sup>2</sup> Neither the Head Coach nor the xxxxx Coach asserted that the conduct of the Student and the other two African American students violated the Code of Student Conduct.

### **Analysis**

OCR considered whether the Student was treated less favorably than similarly situated xxxxx of a different race who had violated the Contract and the Code of Student Conduct.

OCR first examined the Code of Student Conduct. Unlike the five Caucasian students who used a Juul vaping device in August 2018, the Division asserted that the non-participation of the Student and the two other African American students in the pep rally on January 11, 2019, did not constitute a violation of the Code of Student Conduct, and the three students were not otherwise disciplined in accordance with the Code of Student Conduct. Therefore, OCR will not conduct any further analysis of the Complainant's allegation with respect to the Code of Student Conduct.

OCR next examined the terms of the Contract. With respect to the incident involving the five Caucasian students, the Contract expressly states that, "any abuse of alcohol, tobacco, drugs, or flavored vapor will result in dismissal from the team."<sup>3</sup> Regarding the incident involving the Student and the two other African American students, the Contract specifies that, "All practices and games . . . are mandatory" and "Any xxxxx with an unexcused absence will result in dismissal from the team." Finally, the Contract states:

[School] xxxxxs are expected to dress as a team. On game days, I understand that I will be required to wear game day clothes to school and failure to do so will result in being benched for a game. Spirit weeks are important to promote school spirit and each xxxxx is required to participate in each day of spirit week (Fall and Spring).

However, OCR determined that although the Contract speaks to team practices and games and the consequences for unexcused absences and a failure to "wear game day clothes," it does not specify consequences for non-participation in a pep rally or a spirit week.

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<sup>2</sup> At their parents' request, neither the Student nor one other xxxxx involved in the pep rally incident continue to be enrolled in the School. The third xxxxx remains enrolled but has elected to participate on a sports team other than xxxxx.

<sup>3</sup> The Contract also states that, "Posting any pictures or sending inappropriate texts/tweets will result in dismissal from the team."

According to the Contract, the five Caucasian students involved in the vaping incident during xxxxx camp in August 2018 should have been dismissed from the team; however, the Coach decided to bench them from the xxxxx sideline instead. In contrast, although not specified in the Contract, the three African American students who chose not to participate in the pep rally in January 2019, including the Student, were benched for the remainder of the season and, therefore, were essentially dismissed from the team. The Head Coach's failure to adhere to the terms of the Contract, which resulted in leniency toward the five Caucasian students, in comparison to the apparent harshness of the consequence imposed with regard to the three African American students, albeit not specified in the Contract, supports an inference of different treatment based on race.

However, as noted above, before OCR completed its investigation, the Division expressed a willingness to resolve the allegation pursuant to Section 302 of OCR's *Case Processing Manual*. On February 5, 2020, the Division signed the enclosed Resolution Agreement (the 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.

The Agreement requires the Division to develop and widely disseminate a memorandum affirming its commitment to non-discrimination, particularly with respect to race, color, and/or national origin, in the Division's education programs and activities, including extracurricular activities and athletics. The Agreement also requires the Division to ensure that all relevant Division/School staff are provided training on Title VI's prohibition against discrimination on the basis of race, color, and/or national origin in the Division's programs and activities. In addition, the Agreement requires that the Division implement a written policy or procedure governing participation contracts for student participants of extracurricular activities and athletics (the Protocol). The Protocol will provide for the School's Activities Director and/or Principal to review and approve, prior to being imposed, the imposition of consequences that would result in the removal or the suspension (literally, or in effect) of the student participant from the athletic team for an alleged violation of the participation contract and/or the Code of Student Conduct, to ensure that such decisions/consequences are appropriately documented and implemented consistently and fairly. Lastly, the Agreement requires that the Division rescind the consequence given to the Student by Program staff, on or about January 11, 2019; and to provide the Complainant with notification of the rescission, which will also state that in the event that the Student reenrolls in the School, she will be eligible to apply/try-out for the Program. Please review the enclosed Agreement for further details. OCR will monitor the Division's implementation of the Agreement until the Division 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 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 the OCR attorneys assigned to the complaint Steve Nabors at 202-453-5729 or [steve.nabors@ed.gov](mailto:steve.nabors@ed.gov) or Betsy Trice at 202-453-5931 or [betsy.trice@ed.gov](mailto:betsy.trice@ed.gov).

Sincerely,

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

Enclosure

cc: Yvonne S. Gibney, Deputy County Attorney