



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION XV

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

August 7, 2018

Giselle S. Spencer, Esq.
Ennis Britton Co., L.P.A.
6000 Lombardo Center
Suite 120
Cleveland, Ohio 44131

Re: OCR Docket No. 15-14-1179

Dear Ms. Spencer:

This letter is to notify you of the disposition of the above-referenced complaint filed on April 21, 2014, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Joseph Badger Local School District (the District) alleging that the District discriminated against a student (the Student) and other students based on race. Specifically, the complaint alleged that high school staff members failed to respond to complaints alleging that XXXXX.

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 by recipients of Federal financial assistance. As a recipient of Federal financial assistance from the Department, the District is subject to this law, and OCR had jurisdiction to investigate this complaint.

Based on the complaint allegation, OCR opened an investigation of the following issue: whether the District, on the basis of race, color, or national origin, subjected students to a racially hostile environment, i.e., racial harassment that was sufficiently severe, persistent, or pervasive so as to interfere with or limit students from participation in, deny students the benefit of, or otherwise subject students to discrimination under any program, activity, or service of the District in violation of the Title VI implementing regulation at 34 C.F.R. § 100.3.

To conduct its investigation, OCR interviewed the Student, the Student's parent, and the School principal; reviewed documentation from the District; and made an on-site visit in January, 2018, to interview current staff members and to assess the current educational climate in the District. Before OCR completed its investigation, the District asked to voluntarily resolve the complaint pursuant to Section 302 of OCR's *Case Processing Manual* (CPM) and OCR determined that it is appropriate to resolve these allegations with an agreement. Accordingly, OCR is not making a finding with regard to the District's compliance with Title VI in this letter. OCR's investigation to date and the District's voluntary resolution are explained below.

Background

This complaint was filed on behalf of the Student, XXXXX. According to 2013-2014 enrollment data from the Ohio Department of Education, 277 students attended the School, and fewer than 10 of the students were African American. The District has one school building (the building) which houses the School, the middle school, and the elementary school. For the 2013-2014 school year, 858 total students attended school in the District's building, and 27 or fewer of the total student body (i.e., no more than 3.1% of the total students¹) were African American.

[X--- paragraph redacted---]

The Student provided several examples of racially harassing conduct that XXXXX witnessed at the School. OCR determined that some examples were untimely for OCR to resolve in this investigation (incidents occurring before October 23, 2013) but were relevant to OCR's consideration as to whether a hostile environment existed for the Student and other African-American students at the School.

Summary of OCR's Investigation to Date

[X--- paragraph redacted---]

[X--- paragraph redacted---]

[X--- paragraph redacted---]

[X--- paragraph redacted---]

[X--- paragraph redacted---]

[X--- paragraph redacted---]

As stated above, during its investigation to date, OCR also obtained evidence about racially harassing conduct that occurred prior to the timely period for background purposes. The Student provided several examples of incidents that occurred during this time period, including an incident in XXXXX, when XXXXX; and in XXXXX, when XXXXX. XXXXX said XXXXX was notified about the incident but did nothing to respond.

[X--- paragraph redacted---]

The District provided OCR with contemporaneous written notes and information about this incident. [X--- paragraph redacted---]

¹ African American student enrollment was so low at each of the District's schools that the Ohio Department of Education did not require the District to report specific headcounts, other than that there were fewer than 10 African American students in each of its schools.

The Student provided additional examples of alleged racially harassing conduct; however, the District stated that during the 2011-2012, 2012-2013, and 2013-2014 school years, XXXXX. The District provided OCR with policies which stated, “The Board attempt to overcome, insofar as possible, discriminatory practices.” The District did not have a written complaint procedure for reporting or addressing complaints of racial harassment.

Supplemental information received from the District in 2018 showed that the District had learned of at least four incidents where [n-word] was used by middle or high school students in school or on the bus during the previous two years. The information showed that District administrators investigated these incidents, imposed discipline on the students who used the slur, and spoke with the students who were the subjects of the slurs. The information further showed that the District adopted new policies and procedures addressing race harassment, but did not provide training on the policies for staff or students.

Applicable Regulatory Standards

The regulation implementing Title VI, at 34 C.F.R. § 100.3, provides that no person shall, on the basis of race, color, or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program to which Title VI applies. Racial harassment is a form of discrimination prohibited by Title VI. Racial harassment is abusive or intimidating behavior, based on race, which is sufficiently severe, persistent or pervasive that it creates a hostile environment that interferes with an individual’s ability to participate in or benefit from a recipient’s program. A district may be found to have violated Title VI if it has effectively caused, encouraged, accepted, tolerated, or failed to correct a racially hostile environment of which it has actual or constructive notice.

To establish a violation of Title VI under the hostile environment theory, OCR must find that: (1) a racially hostile environment existed; (2) the recipient had actual or constructive notice of the racially hostile environment; and (3) the recipient failed to respond adequately to redress the racially hostile environment. Whether conduct constitutes a hostile environment must be determined from the totality of the circumstances.

To determine if racial harassment is severe, pervasive, or persistent, OCR examines the context, nature, scope, frequency, duration, and location of racial incidents, as well as the identity, number, and relationships of the persons involved. The harassment must in most cases consist of more than casual or isolated racial incidents to establish a Title VI violation. Generally, the severity of the incidents needed to establish a racially hostile environment under Title VI varies inversely with their pervasiveness or persistence.

When OCR evaluates the severity of racial harassment, the unique setting and mission of an educational institution must be taken into account. An educational institution has a duty to provide a nondiscriminatory environment that is conducive to learning. In addition to the curriculum, students learn about many different aspects of human life and interaction from school. The type of environment that is tolerated or encouraged by or at a school can therefore send a particularly strong signal to, and serve as an influential lesson for, its students. As with other forms of harassment, OCR must take into account the relevant particularized characteristics

and circumstances of the victims, especially the victims' race and age, when evaluating the severity of racial incidents at an educational institution. If OCR determines that the harassment was sufficiently severe that it would have adversely affected the enjoyment of some aspect of the recipient's educational program by a reasonable person, of the same age and race as the victim, under similar circumstances, OCR will find that a hostile environment existed.

A recipient can receive notice of a racially hostile environment in many different ways. For example, a student may have filed a grievance or complained to a teacher about fellow students racially harassing him or her. A student, parent, or other individual may have contacted other appropriate personnel, such as a principal, campus security, or an affirmative action officer. An agent or responsible employee of the institution may have witnessed the harassment. The recipient may have received notice in an indirect manner, from sources such as a member of the school staff, a member of the educational or local community, or the media.

In cases where the recipient did not have actual notice, the recipient may have had constructive notice. A recipient is charged with constructive notice of a hostile environment if, upon reasonably diligent inquiry in the exercise of reasonable care, it should have known of the discrimination. In other words, if the recipient could have found out about the harassment had it made a proper inquiry, and if the recipient should have made such an inquiry, knowledge of the harassment will be imputed to the recipient. A recipient also may be charged with constructive notice if it has notice of some, but not all, of the incidents involved in a particular complaint.

Once a recipient has notice of a racially hostile environment, the recipient has a legal duty to take reasonable steps to eliminate it. Thus, if OCR finds that the recipient took responsive action, OCR will evaluate the appropriateness of the responsive action by examining reasonableness, timeliness, and effectiveness. The appropriate response to a racially hostile environment must be tailored to redress fully the specific problems experienced at the institution as a result of the harassment. In addition, the responsive action must be reasonably calculated to prevent recurrence and ensure that participants are not restricted in their participation or benefits as a result of a racially hostile environment created by students or non-employees. Examples of possible elements of appropriate responsive action include imposition of disciplinary measures, development and dissemination of a policy prohibiting racial harassment, provision of grievance or complaint procedures, implementation of racial awareness training, and provision of counseling for the victims of racial harassment.

Although Title VI does not require a recipient to have specific anti-discrimination or anti-harassment policies, in evaluating a recipient's response to a racially hostile environment, OCR will examine disciplinary policies, grievance policies, and any applicable anti-harassment policies. OCR also will determine whether the responsive action was consistent with any established institutional policies or with responsive action taken with respect to similar incidents.

Resolution and Conclusion

As stated above, prior to the completion of OCR's investigation, the District asked to resolve the complaint pursuant to Section 302 of OCR's CPM. The CPM, at Section 302, provides that a complaint may be resolved before the conclusion of an OCR investigation if a recipient

expresses interest in resolving the complaint and OCR determines that it is appropriate to resolve the complaint with an agreement. Such a request does not constitute an admission of liability on the part of the District, nor does it constitute a determination by OCR that the District has violated any of the laws that OCR enforces with respect to the complaint. OCR has determined that it is appropriate to resolve this complaint with an agreement based on the evidence obtained to date for the following reasons.

The evidence obtained to date confirms that the District had knowledge that the n-word was used, in some cases repeatedly, by at least three different students in the School building during the school day, and on at least three separate occasions. Instances of students using the n-word occurred in the classroom, the hallway, the cafeteria, on social media, and in one instance directly to a teacher about an African-American student. OCR found a cause for concern that there may have been additional incidents (reported and unreported) where students used racial slurs in reference to African-American students.

Furthermore, the evidence to date supports a cause for concern that the District may not have adequately recorded or responded to reports of racially harassing conduct. In one instance, the high school principal refused to accept additional reports of harassment occurring at the building because the harassed student was in middle school. The District indicated that it received only two reports of racial harassment or discrimination at the School during the relevant time period supports while there was evidence that there had been many more instances. This may have been caused in part by the District's lack of a written complaint process to address race discrimination, including racial harassment. OCR notes that when the District confirmed that students in its building had used racial slurs, it did not disseminate a policy prohibiting such conduct nor did it take steps to notify the student body of their right to be free of racial harassment.

With respect to the Student's individual complaints, the evidence suggests that the principal received actual notice of a potentially hostile environment from the Student, in XXXXX and again in XXXXX. The principal investigated each issue as isolated incidents and confirmed that the incidents occurred. However, to date, OCR found no evidence to support that the District determined whether the Student was subjected to racially hostile environment; or assess whether remedial action was necessary to remedy the effects of any such hostile environment. Although the students were high school age and not young children, the repeated and widespread use of a racially derogatory term, such as the n-word, in the School building and during the school day, either in casual conversation or directed toward the Student, should have triggered an assessment of whether a racially hostile environment existed at the School.

OCR needs additional information to conclude by a preponderance of the evidence that a racially hostile environment existed in the School building. In order to complete its investigation of this allegation, OCR would need to interview additional witnesses, including students, in the building.

On August 1, 2018, the District provided OCR with the enclosed signed agreement, which, once implemented, will resolve the complaint. The agreement requires the District to send a letter to the Student stating the District's commitment to the prohibition of race, color and national-origin

discrimination, outlining the training measures the District will implement for staff and students on how to maintain a school environment free of discrimination, and inviting the Student to meet with administrators to discuss school climate, including XXXXX experiences. The agreement also requires the District to draft anti-discrimination and anti-harassment policies and complaint procedures to prevent, address, and respond to incidents of harassment on the basis of race, color or national origin; to train District staff members on the policies and complaint procedures; to provide age-appropriate training to students on the prohibition of discrimination and harassment and what to do if they believe they or other students are being harassed on the basis of race, color, or national origin; and to conduct periodic assessment of the District's educational climate to assess the effectiveness of its anti-discrimination and anti-harassment program.

This concludes OCR's investigation of the complaint and 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.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file another complaint alleging such treatment. Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, OCR will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

The Complainant may file a private suit in federal court, whether or not OCR finds a violation.

OCR looks forward to receiving the District's first monitoring report by August 15, 2018. For questions about implementation of the agreement, please contact XXXXX, who will be monitoring the District's implementation, by e-mail at XXXXX or by telephone at XXXXX.

OCR appreciates your and the District's cooperation during the investigation of this complaint. If you have questions or concerns about this letter, please contact XXXXX.

Sincerely,

Meena M. Chandra
Regional Director

Enclosure