



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

1350 EUCLID AVENUE, SUITE 325  
CLEVELAND, OH 44115

REGION XV  
MICHIGAN  
OHIO

Erin Wessendorf-Wortman, Esq.  
Ennis Britton Co., L.P.A.  
1714 West Galbraith Road  
Cincinnati, Ohio 45239

Re: OCR Docket #15-14-1288

Dear Ms. Wessendorf-Wortman,

This letter is to inform you of the disposition of the above-referenced complaint, which was filed with the U.S. Department of Education's Office for Civil Rights (OCR) on August 8, 2014, against Western Brown Local School District (the District). The complaint alleged that the District allowed a racially hostile climate of which it was aware to persist at Western Brown High School (the high school), including the use of racial epithets, comments, and graffiti by students during the 2013-2014 school year.

OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, and its implementing regulation at 34 C.F.R. Part 100. Title VI prohibits discrimination based on race, color, or national origin by recipients of Federal financial assistance from the Department. The District is a recipient of Federal financial assistance from the Department; therefore, it is subject to the requirements of Title VI. Accordingly, OCR had jurisdiction over this complaint.

Based on the allegation, OCR investigated the following legal issue: whether the District effectively caused, encouraged, accepted, tolerated, or failed to correct a racially hostile environment at its high school of which it had actual or constructive notice, in violation of the Title VI implementing regulation at 34 C.F.R. § 100.3.

To investigate this complaint, OCR interviewed the high school principal, an assistant principal/athletic director, a second assistant principal, and the District's superintendent. In addition, OCR reviewed various documents submitted by the Complainant and the District. Based on all of this information, OCR found sufficient evidence to support a conclusion that the District violated Title VI. The basis for OCR's determination is explained below.

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

[www.ed.gov](http://www.ed.gov)

## Summary of OCR’s Investigation

- **Incidents of Racial Harassment at the High School and the District’s Response**

The Complainant provided information about alleged racial harassment at the District’s high school. The Complainant submitted a copy of a March 2014 investigative report of alleged racial harassment at the high school made by the Brown County Educational Service Center (the ESC). This report detailed multiple racial harassment incidents and the presence of a racially hostile climate at the high school.

According to the principal, a xxxxx complained that the school had a “socially intolerant” environment. According to the District, that xxxxx also approached students at the school about xxxxx being bullied and made allegations of racial harassment. In addition, xxxxx reported that students in xxxxx classroom shared experiences of being harassed on the basis of race and ethnicity. In response, the District contacted the Brown County Educational Service Center to conduct an investigation regarding the xxxxx complaint. The administrators said they contacted the ESC to investigate the allegations because they wanted a neutral third party involved, and because the high school administrators had not heard such allegations directly from their students. The District also provided OCR with a copy of the ESC’s March 2014 Investigative Report “regarding a complaint of bullying and/or racial harassment occurring at the high school made by xxxxx and xxxxx.”

The report outlined the investigative process the ESC used. Although the report and its conclusions centered on xxxxx made the allegations, it also included information about additional students. The ESC received authorization from the administration to interview all minority students at the high school, as well as anyone identified as having knowledge related to race-based discrimination or race-related behavior at the high school. Ultimately, the ESC interviewed xxxxx students, xxxxx of which identified themselves as xxxxx xxxxx. In addition to the students, ESC interviewed the xxxxx, the xxxxx, and nine staff members identified as having information or observations related to the complaints that prompted the investigation.

X---paragraph redacted---X

X—paragraph redacted--X

X—paragraph redacted--X

X—paragraph redacted--X

The ESC report concluded that none of the individual allegations brought by the xxxxx were valid. The report found that the individual student at issue had been “subjected to some race-based language and behaviors...as have other minorities,” but that those actions did not rise to the level of harassment and/or bullying. Although the student at

issue in the complaint xxxxx, the report concluded that because the student xxxxx the documented behaviors did not interfere with xxxxx education or create an intimidating, hostile, or offensive learning environment. This was based in part on the xxxxx. The report concluded that “there is evidence of derogatory comments being made by students in the school that are based on race...and stereotypical indicators.” The report found that “the majority [of the minority students] said that...they have experienced racial slurs or racial verbal expressions towards or around them from time to time,” and that, although the students did not feel harassed, “this is not to say that minority students have never been bullied or harassed because of their racial or ethnic background, the evidence is that they have.” (emphasis in original).

The high school principal stated to OCR that, until the ESC’s investigation, she had not realized how diverse the high school was. She stated that she was not surprised by the ESC report, and that her take-away from it was that students say inappropriate things related to race and ethnicity, but they also agreed that the school would respond if they complained or if there was a problem. The superintendent’s reaction echoed that of the principal. She asserted that, while there is always room for improvement, the report was positive because it showed that students could go to someone at the District with their issues, and that they believed that the District would respond. The comments of both assistant principals were similar, with one stating that the report made him feel “better about where they were.”

According to the principal, the District previously consulted with its in-house mental health agency to request that a program on bullying be included with training that was already being presented to freshmen; however, she confirmed that these programs are not specific to harassment or bullying based on race or ethnicity. The principal also stated that she followed up with a student who was interested in starting a student anti-bullying organization.

The superintendent confirmed that the District did not follow up with the students interviewed during the ESC’s investigation. She also confirmed that after the report was issued the District did not address any of the concerns identified by students. One assistant principal commented that because there were “no negative findings” they did “nothing more” once they received ESC’s Report.

During the course of OCR’s investigation, the District also produced information related to four other race-related incidents that occurred between the start of the xxxxx school year and xxxxx. One incident, which occurred xxxxx, involved a student using derogatory language and racial remarks toward a xxxxx student. The student received a xxxxx. Another incident that occurred during the xxxxx school year involved a student who xxxxx, which included the N-word. That student received xxxxx. Another incident that year involved a student using the N-word while he xxxxx and then repeating the N-word to another student when xxxxx. That student received xxxxx. In another incident, the assistant principal investigated use of the N-word between xxxxx that had reportedly been involved in a physical altercation. After investigating and talking to xxxxx, the assistant principal determined that the N-word was not used and there had been no xxxxx.

- **District Policies and Procedures**

The District provided OCR with copies of its “Anti-harassment” bylaw and policy (Policy 5517) and its “Bullying and Other Forms of Aggressive Behavior” bylaw and policy (Policy 5517.01), which OCR reviewed. OCR also reviewed the District’s corresponding administrative guidelines (5517 and 5517.01) from the District’s website. The District uses NEOLA<sup>1</sup>-based policies and procedures. The policies contain separate processes for dealing with harassment and general bullying. Policy 5517 addresses several forms of harassment, including harassment based on race and color.

With regard to “Race/Color Harassment,” Policy 5517 provides the following:

Prohibited racial harassment occurs when unwelcome physical, verbal, or nonverbal conduct is based upon an individual's race or color and when the conduct has the purpose or effect of interfering with the individual's work or educational performance; of creating an intimidating, hostile, or offensive working, and/or learning environment; or of interfering with one's ability to participate in or benefit from a class or an educational program or activity. Such harassment may occur where conduct is directed at the characteristics of a person's race or color, such as racial slurs, nicknames implying stereotypes, epithets, and/or negative references relative to racial customs.

Policy 5517 states that the Board will investigate all allegations of harassment, and, in cases where unlawful harassment is substantiated, will take immediate steps to end the harassment. Policy 5517 explains that the Board’s process for redress may be utilized by “[m]embers of the School District community or third parties who believe they have been

---

<sup>1</sup> NEOLA® is a for-profit entity that advertises to school districts a service for developing and updating board bylaws and policies and administrative guidelines and procedures.

unlawfully harassed by another member of the School District community or a third party.” Policy 5517 further describes the District’s informal process for addressing complaints of harassment, but makes clear that complainants are not required to use the informal process, and instead may proceed immediately to the District’s formal complaint process. It also makes clear that individuals who seek resolution through the informal procedure may request that the informal process be terminated at any time to move to the formal complaint process.

Policy 5517’s formal process provides no specific deadlines for initiating the formal complaint process, but Policy 5517’s administrative guidelines provide that complainants should make every effort to file a complaint as soon as possible after the harassing conduct occurs, and explain that the investigation procedures are established to provide a prompt and equitable process for resolving complaints of unlawful harassment. Policy 5517 also provides that, once the formal complaint process is begun, “the investigation will be completed in a timely manner (ordinarily, within thirty-one (31) calendar days of the complaint being received).” Policy 5517 states that, after a complaint is filed, the Complaint Coordinator (identified in the administrative guidelines as the District’s superintendent) or designee shall conduct a prompt and timely investigation, which may include interviews of the complainant, the individual accused of engaging in harassing behavior, and any other witness who may reasonably be expected to have information relevant to the situation.

Policy 5517 provides that, at the conclusion of the investigation, the Complaint Coordinator or designee will prepare and deliver to the superintendent (even though the superintendent is identified as the Complaint Coordinator, as noted above) a written report summarizing the evidence and providing his/her recommendations regarding whether or not the complaint of harassment has been substantiated. Upon review of the written report, the superintendent will either issue a final decision regarding whether or not the complaint of unlawful harassment was substantiated, or request that further investigation be conducted. Absent extenuating circumstances, within five (5) business days of receiving the report of the Complaint Coordinator or the designee, Policy 5517 states that the superintendent must either issue a final decision regarding whether or not the complaint of harassment has been substantiated or request further investigation. A copy of the superintendent's final decision is to be delivered to both the complainant and the respondent. Policy 5517 provides for both the complainant and the accused to receive a copy of the superintendent's disposition, and notes that the decision of the superintendent shall be final. The only action Policy 5517 indicates might be taken in response to harassment is discipline against the employee or student who engaged in the conduct.

Finally, Policy 5517 provides notice that it and its administrative guidelines are not intended to interfere with the rights of a member of the District community or a third party to pursue a complaint of harassment with OCR, the Ohio Civil Rights Commission, or the Equal Employment Opportunity Commission.

- **Employee Practices and Understanding of the District’s Anti-Harassment Policies and Procedures**

OCR interviewed District employees, who expressed their belief that the use of derogatory language based on race would not constitute harassment if that language is not directed at a particular person. District employees explained their belief that there is a distinction between racially charged language used in conversation, and racially charged language directed toward another student. One school employee asserted that a racially hostile environment would not be created when students simply use inappropriate language during conversation; rather, for a racially hostile environment to exist students would have to be directing their inappropriate language *at* one another. One District employee told OCR that a racially hostile environment means “major issues with people not getting along with one another,” and involves “fear of coming into the building because of safety concerns.” District employees explained that racial or ethnic slurs and comments alone could not constitute a racially hostile environment.

District employees explained that complaints involving racial harassment or other race-based allegations would be treated as any other disciplinary issue. According to District employees, the principal works closely with the assistant principals to address disciplinary matters, although the assistant principal/athletic director stated that he has little involvement with disciplinary matters since he took over as athletic director for the entire District in 2013. The District employees responsible for discipline stated that the person responsible for dealing with a disciplinary matter of any type will depend on who is in the office at the time the incident occurs. Generally, the assistant principals are responsible for lower-level discipline, but the principal would be involved in any situations involving significant discipline, such as suspensions.

District employees explained that, to investigate a complaint alleging racial harassment, the District would generally conduct student and teacher interviews, and might review security camera footage. They explained that these investigations usually have a quick turnaround time, and generally last no more than a couple of days at most. The principal and assistant principals keep handwritten journals of what occurs on a daily basis, including anything from disciplinary investigations. Sanctions for behavior involving race are “fact-driven” and the sanctions would be determined by the behavior.

As noted above, the District’s Policy 5517 provides for the designation of an anti-harassment Complaint Coordinator, who is identified by the corresponding administrative guidelines as the superintendent. However, the principal stated that there was no anti-harassment complaint coordinator or similar person. The superintendent identified an

assistant superintendent as being the District’s Complaint Coordinator, while an assistant principal identified an employee of the in-house mental health organization as the Complaint Coordinator.

- **Training for Staff and Students**

The evidence obtained by OCR indicated that neither District students nor staff members had received any training to address cultural competency or racial harassment/discrimination. Each of the District staff members interviewed stated that they had not received cultural competency, Title VI, or investigative training outside of those topics being addressed as part of education law updates in seminars at conferences that they had attended. None of the interviewees could identify any such training coordinated by the District, or presented to the entire District staff.

Similarly, District staff was unable to identify any training given to students that would specifically address racial discrimination or harassment. Although freshman students receive training through the District’s relationship with a mental-health provider, that training covers a wide range of topics, which District representatives acknowledged were not specific to racial harassment, cultural competency, or racial discrimination. District documents demonstrate that the principal requested that the District’s mental-health provider conduct training related to “racial and ethnic intolerance” for the freshmen; however, the District provided no evidence that similar training for sophomores, juniors, or seniors was ever provided.

Likewise, the District provided no information indicating that it has ever conducted surveys or other assessment designed to study the racial climate at the high school or in the District. While the District has done surveys of staff, parents, and students, those surveys did not involve questions addressing discrimination, harassment, or issues tied to race or ethnicity.

### **Applicable Legal Standards and Policies**

The regulation implementing Title VI, at 34 C.F.R. § 100.3, provides that no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in a recipient school district’s programs or activities. Racial harassment is a form of discrimination prohibited by Title VI. Racially-based conduct that has the effect of excluding students from participation in, denying them the benefits of, or otherwise subjecting them to discrimination on the grounds of race, color, or national origin by recipients of Federal financial assistance that consists of different treatment of the students on the basis of race by recipients’ agents or employees, acting within the scope of their official duties, violates Title VI.

A violation of Title VI may also be found if a recipient has created or is responsible for a racially hostile environment, i.e., harassing conduct that is sufficiently severe, pervasive, or persistent so as to interfere with or limit the ability of an individual to participate in or

benefit from the services, activities, or privileges provided by a recipient. A recipient has subjected an individual to different treatment on the basis of race if it has effectively caused, encouraged, accepted, tolerated, or failed to correct a racially hostile environment of which it has actual or constructive notice. Under this analysis, an alleged harasser need not be an agent or employee of the recipient, because this theory of liability under Title VI is premised on a recipient's general duty to provide a nondiscriminatory educational environment.

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 whether a racially hostile environment exists, OCR must determine if the racial harassment is severe, pervasive, and/or persistent. OCR will examine 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 victim, especially the victim's 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. The perspective of a person of the same race as the victim is necessary, because race is the immutable characteristic upon which the harassment is based. The reasonable person standard as applied to a child must incorporate the age, intelligence, and experience of a person under like circumstances to take into account the developmental differences in maturity and perception due to age.

To determine severity, the nature of the incidents must also be considered. Evidence may reflect whether the conduct was verbal or physical and the extent of hostility characteristic of the incident. In some cases, a racially hostile environment requiring

appropriate responsive action may result from a single incident that is sufficiently severe. Such incidents may include, for example, injury to persons or property or conduct threatening injury to persons or property.

The size of the recipient and the location of the incidents also will be important. Less severe or fewer incidents may more readily create racial hostility in a smaller environment, such as an elementary school, than in a larger environment, such as a college campus. The identity, number, and relationships of the individuals involved will also be considered on a case-by-case basis. The effect of conduct may be greater if perpetrated by a group of students rather than by an individual student.

In determining whether a hostile environment exists, OCR investigators will also be alert to the possible existence at the recipient institution of racial incidents other than those alleged in the complaint and will obtain evidence about them to determine whether they contributed to a racially hostile environment or corroborate the allegations.

Once a recipient has notice of a racially hostile environment, the recipient has a legal duty to take reasonable steps to eliminate it. 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 to 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.

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.

### **Analysis, Resolution, and Conclusion**

OCR has determined that a racially hostile environment existed at the high school, that the District had actual notice of the racially hostile environment, and that the District failed to adequately respond to the racially hostile environment.

The evidence shows that the District responds to some individual incidents involving race just as it responds to any disciplinary issue, but does not consider those incidents in the larger context of the school community to determine whether they are evidence of the existence of a hostile environment, which would require the District taking steps beyond disciplining the individual students.

The March 2014 ESC report provided sufficient information to put the District on notice that a racially hostile environment existed at the high school. The report showed that the use of racial and ethnic slurs at the school is persistent and pervasive, and that nearly all non-white students reported being routinely subjected to negative and derogatory remarks related to race or ethnicity. In some instances, the persistent and pervasive use of racial and ethnic slurs and negative and derogatory remarks related to race and ethnicity directly interfered with or limited the ability of students to participate in or benefit from the services, activities, or opportunities offered by the District. xxxxx and another xxxxx because of the pervasive use of derogatory remarks and comments related to race at the high school.

The evidence further suggests that a lack of training on Title VI, including what constitutes racial harassment and a hostile environment, contributed to the District's failure to react to the report. Specifically, District administrators failed to recognize that the definition of racial harassment in the District's own policies includes "verbal conduct that is directed at the characteristics of a person's race or color, such as racial slurs, nicknames implying stereotypes epithets, and/or negative references relative to racial customs," and that such conduct does not need to be directed at an individual to create a hostile environment, as they indicated. The evidence also shows that District administrators responsible for recognizing and responding to racial harassment lacked an understanding of what constitutes a hostile environment. As described above, some District employees attempted to draw distinctions between racially derogatory terms directed at one student by another and racially derogatory terms being used conversationally. As a result, when presented with a report that provided sufficient notice that a racially hostile environment existed in the high school, District administrators failed to recognize it and respond appropriately and consistently with the District's own policies and procedures.

Additionally, the District's documents demonstrate that, although the principal requested that the District's mental-health provider do training related to "racial and ethnic intolerance" for freshmen students, that training was simply part of a broader training that included those topics rather than designed to specifically address them. The District provided no training on these topics to sophomores, juniors, or seniors at the high school.

Moreover, to the extent District employees identified concerns with the information included in the report, they relied on the fact that the report showed that some students stated xxxxx. Further, it appears that District employees believed that their responsibilities in this regard ended when individual students decided not to file complaints. Thus, the District took no direct action to address the hostile environment in the high school reflected in the March 2014 report, despite having sufficient information that a hostile environment existed at the high school.

With respect to incidents of a racial nature other than those addressed in the report, the District's remedial action remained limited only to issuing discipline to the involved students. Despite having previous knowledge of the existence of widespread, ongoing, and continuing acts of racial harassment, the District did not take any action with respect to the high school educational environment as a whole, such as disseminating its anti-harassment policy to staff and students, conducting staff and student training related to the prohibitions of harassment under Title VI, or following up in any manner with the student on whose behalf the complaint was originally made, any other victims of racial harassment at the school, or the larger student body.

OCR has determined that the District's policies and procedures addressing harassment based on race and national origin to some extent would address the requirements of Title VI, although they only identify the superintendent as the responsible administrator, while setting forth separate roles in the procedures for two different administrators. In addition, the procedures do not provide for any action in response to racial harassment other than discipline for an employee or student who engaged in harassing conduct.

Moreover, the District's administrators and other employees were largely unaware of the District's policies and procedures. The superintendent, who is identified in the District's documents as its anti-harassment Complaint Coordinator, was unaware that he occupied this role.

Based on the foregoing, OCR finds sufficient evidence to conclude that the District allowed a racially hostile climate to persist at the high school of which it was aware, in violation of the Title VI regulation. In order to resolve the complaint, the District signed the enclosed resolution agreement on xxxxx, which, once implemented, will fully address the violation findings in accordance with the requirements of Title VI. The agreement requires the District to revise its harassment policies and procedures; train employees and students; implement a student facilitation program through which the District will work with students to identify racial issues and biases in the high school and address them; and conduct, and respond as appropriate to the results of, racial climate assessments at the high school.

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 harmed individual may file a 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, we 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.

We appreciate the District's cooperation during the investigation and resolution of this matter. We look forward to receiving the District's first monitoring report by xxxxx. For questions about implementation of the Agreement, please contact Ms. Aubrie Wancata, who will be monitoring the District's implementation, by e-mail at [Aubrie.Wancata@ed.gov](mailto:Aubrie.Wancata@ed.gov), or by telephone at (216) 522-xxxx. For questions about this letter, please contact Ms. Kelly M. Johnson, Supervisory Attorney/Team Leader, at (216) 522-xxxx, or by email at [Kelly.M.Johnson@ed.gov](mailto:Kelly.M.Johnson@ed.gov).

Sincerely,

/s/

Meena Morey Chandra  
Director

Enclosure