



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

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

May 30, 2023

Via e-mail only to: [redacted content]

[redacted content]
Foster Swift Collins & Smith PC
313 South Washington Square
Lansing, Michigan 48933

Re: OCR Docket No. 15-16-1244

Dear [redacted content]:

This letter is to notify you of the disposition of the above-referenced complaint filed on [redacted content], with the U.S. Department of Education (the Department), Office for Civil Rights (OCR), against your client, Battle Creek Public Schools (the District).

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). Title VI prohibits discrimination on the basis of race, color, and national origin by recipients of federal financial assistance from the Department. Persons who seek to enforce their rights under Title VI are also protected from retaliation. As a recipient of federal financial assistance from the Department, the District is subject to Title VI.

OCR investigated the following issues:

- Whether the District, on the basis of race, interfered with or limited the ability of a student or students to participate in or benefit from the services, activities, or privileges provided by the District by effectively causing, encouraging, accepting, tolerating, or failing to correct a hostile environment based on race of which it had actual or constructive notice, in violation of the Title VI implementing regulation at 34 C.F.R. § 100.3.
- Whether the District intimidated, threatened, coerced, or discriminated against an individual for the purpose of interfering with any right or privilege secured by Title VI or because she made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under Title VI, in violation of the Title VI implementing regulation at 34 C.F.R. § 100.7(e).

During its investigation, OCR reviewed documentation provided by the Parent and the District and interviewed the Parent and District staff. Prior to OCR completing its investigation, the District expressed an interest in voluntarily resolving the complaint under Section 302 of OCR's

Case Processing Manual. After a careful analysis of the evidence obtained to date, OCR determined that a 302 resolution was appropriate because the evidence raised a compliance concern under Title VI about the District’s response to the Parent’s complaint of racial harassment and related recordkeeping. To resolve this compliance concern, the District signed the enclosed Resolution Agreement (Agreement). OCR further determined that the evidence is insufficient to support a finding that the District retaliated against the Student in violation of Title VI.

OCR’s investigation to date and the bases for its determinations are explained below.

I. Summary of OCR’s Investigation

During the [redacted content] school year, the Student, [redacted content] in the District. That school year, the District [redacted content]. [redacted sentence]. [redacted sentence].

A. Alleged Racial Harassment [redacted content]

[redacted paragraph]

[redacted paragraph]

[redacted paragraph]

[redacted paragraph]

[redacted paragraph]

[redacted paragraph]

[redacted paragraph]

[redacted paragraph]

[redacted paragraph]

[redacted paragraph]

[redacted paragraph]

The District stated to OCR that it could not substantiate the Parent’s assertion that [redacted content]. While the District did not prohibit [redacted content], the District also asserted that [redacted content]. The District did not produce any documentation of its investigative finding or the actions it took [redacted content]. When subsequently requested by OCR, the District stated to OCR that [redacted content]. The District also did not produce any records indicating that [redacted content] were communicated to the Parent or the Student.

The District provided a copy of its policies and procedures in place at the time of the complaint applicable to complaints of racial discrimination and harassment. This included several different overlapping and conflicting complaint procedures for responding to complaints alleging harassment based on race. For example, the various documents identified different people to whom racial discrimination should be reported and different investigation procedures. The District did not provide information to OCR regarding which of the policies or procedures directed the investigation of the Parent’s complaint about [redacted content]. Nevertheless, the District’s documentation for the Parent’s complaint indicated it did not follow its published policies or procedures. For example, the District did not keep the documentation of its investigation or provide notice to the Parent of the outcome of its investigation as would have been required under its various published policies and procedures.

B. Alleged Racial Harassment [redacted paragraph]

[redacted paragraph]

[redacted paragraph]

OCR reviewed additional District records related to [redacted content]. [redacted sentence]? [redacted sentence].” [redacted sentence].”

[redacted paragraph]

[redacted paragraph]

[redacted sentence]

C. Alleged Retaliation

The Parent also alleged to OCR that District staff [redacted paragraph] in retaliation for the Parent’s complaint to the District [redacted content]. Specifically, the Parent told OCR that the District [redacted content]. The Parent told OCR that [redacted content].

In its written statements and interviews with OCR, the District [redacted content]. Rather, the District asserted and its records reflect that the Student [redacted content]after the Parent submitted her written complaint to the District [redacted content].

The District provided OCR with copies of its Code of Conduct in effect during the [redacted content] school year (the Code of Conduct) and [redacted content] school year. The Code of Conduct stated that students who fail to “follow school rules will be subjected to a series of interventions intended to correct the behavior.” The Code of Conduct contained a non-exhaustive list of disruptive behaviors with corresponding levels of interventions. The Code of Conduct further provided a range of disciplinary responses for each level of intervention, along with a caveat stating that disciplinary measures could progress beyond what was identified within the Code of Conduct if a student committed multiple infractions of the same offense.

[redacted paragraph]

[redacted paragraph]

[redacted paragraph]

II. Applicable Legal Standards

OCR applied the following legal standards when analyzing the issues opened for investigation.

A. Racial Harassment

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. The existence of a racially hostile environment that is created, encouraged, accepted, tolerated, or left uncorrected by a recipient constitutes discrimination on the basis of race in violation of Title VI.

To establish a violation of Title VI under the hostile environment theory, OCR must find that: (1) a hostile environment based on race existed; (2) the recipient had actual or constructive notice of a hostile environment based on race; and (3) the recipient failed to respond adequately to redress the hostile environment based on race.

Harassment creates a hostile environment when the conduct is sufficiently severe, persistent, or pervasive so as to interfere with or limit an individual's ability to participate in or benefit from a recipient's program. The harassment must in most cases consist of more than casual or isolated incidents to establish a Title VI violation. Whether harassing conduct creates a hostile environment must be determined from the totality of the circumstances. OCR will examine the context, nature, scope, frequency, duration, and location of the race-based harassment, as well as the identity, number, age, and relationships of the persons involved. If OCR determines that the harassment was sufficiently severe that it would have adversely affected a reasonable person, of the same age and race as the victim, under similar circumstances, from participating in or enjoying some aspect of the recipient's education program or activity, OCR will find that a hostile environment existed.

A school may be found to have violated Title VI if it has failed to correct a hostile environment based on harassment of which it has actual or constructive notice. If the alleged harasser is an agent or employee of a recipient, acting within the scope of his or her official duties (i.e., such that the individual has actual or apparent authority over the students involved), then the individual will be considered to be acting in an agency capacity and the recipient will be deemed to have constructive notice of the harassment.

Once a recipient has notice of a hostile environment, the recipient has a legal duty to take reasonable steps to eliminate it. OCR evaluates the appropriateness of the responsive action by assessing whether it was reasonable, timely, and effective. The appropriate response to a hostile

environment based on race must be tailored to redress fully the specific problems experienced as a result of the harassment.

B. Alleged Retaliation

The regulation implementing Title VI, at 34 C.F.R § 100.7(e), prohibits recipients of federal financial assistance from intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by the regulation or because that individual has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the regulation.

In analyzing retaliation claims, OCR examines whether: 1) an individual engaged in a protected activity; and 2) an individual experienced an adverse action caused by the recipient; and 3) there is some evidence of a causal connection between the adverse action and the protected activity. Although all three elements must exist to establish a prima facie case, OCR need not address all three elements if it determines one is missing.

Protected activity includes participation in an investigation, proceeding, or hearing under OCR's regulations; actions taken in furtherance of a substantive or procedural right guaranteed by the statutes and regulations enforced by OCR; or expression of opposition to any practice made unlawful by a statute or regulation that OCR enforces.

Causal connection between protected activity and adverse action may be established through either direct or circumstantial evidence. Direct evidence consists of a recipient's written statement, oral statement, or action demonstrating unambiguously that the recipient took the adverse action because the individual engaged in a protected activity or for the purpose of interfering with protected activities. Circumstantial evidence of retaliatory motive can include (but is not limited to): changes to treatment of the individual after protected activity; the proximity in time between protected activity and the adverse action; the recipient's treatment of the individual compared to others; or the recipient's deviation from established policies or practices.

III. Legal Analysis

Below OCR explains its analysis applying the legal standards above to the factual findings to date to reach the following conclusions.

A. Concerns about the District's Response to [redacted content]

Alleged Racial Harassment

Regarding the Parent's allegation that [redacted content], the evidence OCR has obtained to date raised compliance concerns regarding the District's response to the alleged racial harassment. Although the District immediately investigated the allegation by interviewing [redacted content] and obtaining written statements from [redacted content], the District's documentation of its investigation was incomplete. In particular, the District could not produce records of its investigative findings, the reasons for the findings, or the reasons [redacted content]. The District's response was also inconsistent with the requirements of its published anti-

discrimination and anti-harassment policies and procedures. For example, the District did not maintain the documentation required of its investigation and did not convey the results of its investigation to the Parent. Additionally, [redacted content], it is unclear what standard the District applied to reach its determination that the Parent's claim was unsubstantiated and whether the District sufficiently investigated [redacted content]. OCR's concern also stems from the District's decision to [redacted content].

OCR also notes that the District's various discrimination and harassment policies and procedures in place at the time of the complaint overlapped and conflicted with one another, causing confusion regarding who a complainant may report an incident of discrimination and/or harassment to and the procedure that should be followed in investigating the complaint.

Prior to the completion of OCR's investigation, the District expressed interest in resolving the complaint pursuant to Section 302 of OCR's *Case Processing Manual*, which provides that allegations under investigation may be resolved at any time when, prior to the conclusion of the investigation, the recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified concerns that can be addressed through a resolution agreement.

In this case, OCR has determined that a Section 302 agreement is appropriate because the evidence to date raised a compliance concern under Title VI that can be addressed through a resolution agreement. The provisions of the Agreement signed by the District are supported by the evidence obtained during this investigation and consistent with the applicable Title VI statute and regulations. When implemented, the Agreement will resolve OCR's identified concerns. OCR will monitor the District's implementation of the Agreement.

B. Insufficient Evidence of Alleged Racial Harassment [redacted content]

The evidence obtained by OCR did not substantiate the Parent's allegation that the [redacted content]. [redacted sentence]. [redacted sentence]. [redacted sentence]. Thus, OCR was unable to confirm that this incident occurred as alleged or that the District had received notice prior to the OCR complaint that this incident involved the use of any racially derogatory term.

Based on the evidence obtained in this investigation, OCR finds insufficient evidence to conclude that the District subjected the Student to a hostile environment based on race by failing to address racial harassment by [redacted content] in violation of Title VI.

C. Insufficient Evidence of Alleged Retaliation Against the Student

OCR also finds that the evidence is insufficient to support that the District retaliated against the Student. While the Parent's complaint alleging racial harassment of the Student [redacted content] constituted protected activity under Title VI, and the discipline of the Student after the complaint was filed could constitute adverse action, OCR found insufficient evidence of a causal connection between the adverse action and the protected activity. There was no direct evidence that [redacted content] because of the Parent's complaint, and OCR found insufficient circumstantial evidence of a retaliatory motive. [redacted sentence]. [redacted sentence]. [redacted sentence]. [redacted sentence].

As OCR found insufficient evidence of a causal connection between the Parent's protected activity and the adverse action, OCR finds that the evidence is insufficient to establish that the District retaliated against the Student.

IV. Conclusion

As explained above, the District voluntarily agreed to address OCR's concerns by signing the enclosed Agreement. The Agreement requires that the District issue and publish an anti-harassment statement, revise its anti-discrimination and anti-harassment policies and complaint procedures, and train staff directly involved in processing, investigating, and/or resolving complaint or other reports of race, color, and national origin discrimination. When fully implemented, the Agreement will address the evidence obtained and all of the allegations investigated. OCR will monitor the implementation of the Agreement until the District is in compliance with the terms of the Agreement and the statute(s) and regulation(s) at issue in the case. OCR is closing the investigative phase of the case effective the date of this letter. The case is now in the monitoring phase. OCR will monitor the District's implementation of the Agreement until the District is in compliance with the statutory and regulatory obligations at issue in the case. When the monitoring phase of the case is complete, OCR will close this case and will send a letter to the Complainant and to the District stating that the case is closed.

The complainant has a right to appeal OCR's determination within 60 calendar days of the date indicated on this letter. In the appeal, the complainant must explain why 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 of the case; failure to do so may result in dismissal of the appeal. If the complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit to OCR a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

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 a right to file a private suit in federal court whether or not OCR finds a violation.

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, it will seek to protect, to the extent provided by law, personally identifiable information, that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

OCR looks forward to receiving the District's first monitoring report by **September 11, 2023**. For questions about implementation of the Resolution Agreement, please contact Sarah Poppleton. She will be overseeing the monitoring and can be reached by telephone at (216) 522-2674 or by e-mail at Sarah.Poppleton@ed.gov. If you have questions about this letter, please contact me by telephone at (216) 522-2667, or by e-mail at Brenda.Redmond@ed.gov.

Sincerely,

Brenda Redmond
Supervisory Attorney/Team Leader

Enclosure