

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS



OLD FEDERAL BUILDING
50 UNITED NATIONS PLAZA
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SAN FRANCISCO, CA 94102

REGION IX
CALIFORNIA

August 26, 2016

Diann Kitamura
Office of the Superintendent
Santa Rosa City Schools
211 Ridgway Avenue
Santa Rosa, CA 95401

(In reply, please refer to case no. 09-15-1515.)

Dear Superintendent Kitamura:

On September 18, 2015, the U.S. Department of Education, Office for Civil Rights (OCR), began an investigation of the above-referenced complaint against Santa Rosa City Schools (District). Specifically, OCR investigated whether:

1. The Student¹ was discriminated against on the basis of race and national origin when he was assaulted and harassed by classmates on April X, 2015, and the District failed to respond to notice of the harassment;
2. The District failed to respond adequately to Complainant's uniform complaint procedure (UCP) complaint of discrimination filed on June 19, 2015, alleging that on April X, 2015, the Student was assaulted and harassed based on his race and national origin; and
3. The District failed to provide meaningful access to important information about the alleged assault in a language the Student's parent could understand.

OCR investigated the complaint under the authority of Title VI of the Civil Rights Act of 1964 and its implementing regulations. Title VI prohibits discrimination on the basis of race, color, and national origin in programs and activities operated by recipients of Federal financial assistance. The District is a recipient of Federal financial assistance from the Department. Therefore, OCR has jurisdiction over this complaint.

OCR gathered evidence by reviewing documents, correspondence and information provided by the Complainant and the District. With respect to the allegations, the District expressed interest in resolving the concerns identified by OCR prior to the conclusion of its investigation of the allegations. The applicable legal standards, the relevant facts obtained during the investigation conducted to date, and the reasons for our determination are summarized below.

¹ OCR notified the District of the Student's identity at the beginning of the investigation. OCR is withholding the Student's name from this letter to protect the Student's privacy.

Allegation 1: *Whether the Student was discriminated against on the basis of race and national origin when he was assaulted and harassed by classmates on April X, 2015 and the District failed to respond to notice of the harassment.*

Allegation 2: *Whether the District failed to respond adequately to the Complainant's UCP complaint of discrimination filed on June 19, 2015 alleging that on April X, 2015, the Student was assaulted and harassed based on his race and national origin.*

Legal Standard

The regulations implementing Title VI, at 34 C.F.R. §100.3(a) and (b), prohibit discrimination based on race, color or national origin by recipients of Federal financial assistance. School districts are responsible under Title VI and the regulations for providing students with a nondiscriminatory educational environment. Harassment of a student based on race, color or national origin can result in the denial or limitation of the student's ability to participate in or receive education benefits, services, or opportunities

A District violates Title VI and the regulations if the evidence shows that: (1) the alleged harassing conduct (physical, verbal, graphic, or written) on the basis of race, color, or national origin is sufficiently serious so as to limit or deny a student's ability to participate in or benefit from the services, activities or privileges provided by a district; (2) the district had actual or constructive notice about the harassment; and (3) the district failed to take an appropriate, prompt, and effective responsive action that is within its authority to end the harassment, eliminate any hostile environment that has been created, prevent its recurrence, and, where appropriate, remedy the effects of the harassment on the student who was harassed.^[1]

Under the Title VI and the regulations, once a district has notice of harassment of a student on the basis of race, color or national origin by another student that took place in a district program, it is responsible for determining what occurred and responding appropriately. The district is not responsible for the actions of the student, but rather for its own discrimination in failing to respond adequately, if discrimination is found. Once the district has notice of harassment, the responsibility to take appropriate and effective action is the school's responsibility whether or not the student who was harassed makes a complaint or otherwise asks the school to take action. So long as an agent or responsible employee of the school received notice, that notice will be imputed to the school.

In analyzing claims of harassment under Title VI, OCR first considers the totality of the circumstances to determine whether a hostile environment has been created, *i.e.*, whether the harassing conduct is sufficiently severe, persistent or pervasive that it denies or limits a student's ability to participate in or benefit from the recipient's program. These circumstances include the type of harassment, context, nature, scope, frequency and severity, age, race, duration, and location of the harassment incidents, as well as the identity, number, and relationships of the persons involved. It also considers whether other incidents motivated by race, color or national origin have occurred at the school to this complainant or others.

OCR evaluates the appropriateness of the responsive action by assessing whether it was prompt, thorough, and effective. What constitutes a reasonable response to harassment will differ depending upon the circumstances. However, in all cases the district must promptly conduct an impartial inquiry designed to reliably determine what occurred. If a district's grievance procedures encompass race, color, and national origin discrimination, it must apply such procedures consistently and in a manner that does not constitute Title VI discrimination. If discrimination has occurred, the response must be tailored to stop the harassment from recurring, eliminate the hostile environment, and remedy the effects of the harassment on the student who was harassed.

Facts Gathered to Date

The following facts are relevant to both Allegations 1 and 2:

- The Student arrived in California from a Spanish-speaking country in March 2015, and enrolled as a XXXXX grader at a high school (School) in the District on approximately March XX, 2015. He is an English Learner (EL) student and his mother identifies as Limited English Proficient (LEP).
- The Complainant, an attorney, filed the OCR complaint against the District on behalf of the Student and his Mother. The Complainant alleged that on April X, 2015, two male students (Student 1 and Student 2) "jumped" the Student on campus during school hours and hit him (Incident). He had two black eyes and a severely swollen nose. During the Incident, they yelled, "Welcome to America!" The Student had just arrived in the United States two weeks prior and, according to the Complainant, spoke primarily Spanish.
- The Mother told OCR that when she arrived home on the day of the Incident, she learned from the Student that he had been beaten and had blood on his shirt. According to the Mother, the Student had never spoken with the students who assaulted him until the day of the fight. She also told OCR that she asked the Student to write an account of the Incident when she and the Student came to the School to report what had happened.
- In her complaint, the Complainant stated that the Student and the Mother went to the School to report the Incident later that day. The building was closed but the School custodian (Custodian) opened the door for them. The Custodian provided interpretation as the Student and the Mother explained what had happened to an Assistant Principal (Assistant Principal 1). The Complainant stated in her complaint that the Custodian hit his hand in his fist and stated that he would hit the Student in the head with a hammer if the Student did not tell the truth when describing what happened. In an account of his meeting with the Student and the Mother, the Custodian denied making these statements. The Custodian stated that he spoke to the Student in Spanish, asked him what happened and where it happened, and told him to be sure to tell the truth.
- In describing his language abilities, the Custodian stated that he spoke English and Spanish fluently. He told OCR that in the past, he volunteered and had been asked to communicate with students, families, and community members who spoke little or no English.

- School staff stated that they would look for a video of the Incident to corroborate the Student's account. Assistant Principal 1 stated that she informed the Mother that the School would conduct an investigation the following day and contact the School Resource Officer (SRO). The following day, the Assistant Principal 1 and the other Assistant Principal (Assistant Principal 2) reviewed video footage of the Incident, collected statements from the students involved, contacted the police, and imposed consequences.
- Student 1 and Student 2 were referred to the twelve-week Restorative Justice Program (Program). They also received a four-day suspension. Student 2 was referred to counseling services through the Program, but declined them.
- Three days after the Incident, the Mother obtained a cellular phone video of the Incident, and reached out to the School. The SRO met with her and allegedly told her, "Don't worry; this is just kid's stuff." OCR reviewed the video, which shows several students beating a male student.
- The SRO conducted an investigation and submitted a police report. The report notes that the Student was "new to this country," and includes a conversation with one of the Student's family members, who stated that the Student was going to be kept at home due to injuries to his face, that his face was too swollen to have x-rays done, and that he might have suffered a broken nose as a result of the assault. The SRO also confirmed that he viewed a video of the Incident. The report notes that in the video, the SRO observed Student 1 punch and then "assault" the Student and then "strike [the Student] with several punches before a bystander pull[ed] him away." The SRO also spoke with Student 1, who stated that the Student did not engage in any behavior that precipitated the assault.
- On April 13, 2015, the District's Accountability Circles Manager e-mailed Assistant Principal 2 and the Restorative Response Specialist to notify them that Student 1 had attended an intake on April X, 2015, and expressed remorse and a desire to "make things right". He also asked whether it would be a good idea to involve the victim in this case. Assistant Principal 2 responded the same day advising against involving the "victim" because the mother was pressing charges and they also did not want to "re-traumatize the victim."
- The District informed OCR that the District generally does not take statements of students who are victims of a physical altercation unless the school is considering expulsion and needs the statement to use as evidence in an expulsion proceeding. According to the District, a Restorative Response Specialist conducted an intake interview with the Student and offered him services. OCR requested but did not receive additional information about the nature of the services offered, whether the offer was made in a language the Student could understand, or the reason provided for the Student's decision to decline them.
- The Complainant stated that during the two-week period following the Incident, the Student was physically injured and too afraid to come to school.
- On April XX, 2015, the Student's first day back to school after the Incident, Assistant Principal 2 e-mailed the Restorative Response Specialist to notify her that the Student

believed that Students 1 and 2 were giving him “dirty looks.” The Restorative Response Specialist responded the same day indicating that she would address the concern. The District provided OCR no further information as to how the District responded to this situation.

- The Mother told OCR that the Complainant recommended that she enroll the Student in summer school at a junior college. The Mother added that the Student was doing well there, had friends, and was participating in activities. However, that summer the Student saw the students who hit him at the mall. The Mother told OCR that the Student told her that the students were not happy because they had been sent to court. They told him that things were not over and they were going to kill him.
- The School’s attendance logs show that the Student missed all or most of the nine school days immediately following the Incident (April X – XX, 2015 due to medical reasons), as well as four additional days for unspecified reasons between April XX and May XX, 2015. The logs also show that the Student was tardy 11 times during the period.
- The Complainant also alleged that the family never received any information regarding any action the School took in response to the Incident. She alleged that the only documentation the Mother received after the Incident was a notice regarding the Student’s excessive absences.
- The District alleged that prior to June 19, 2015, the date on which the Complainant filed a Uniform Complaint Procedure (UCP) complaint, it never received information that the assault was based on race or national origin.
- According to District board policy, the UCP is to be used to resolve complaints alleging unlawful discrimination, including harassment, in district programs and activities, including complaints based on race, color and national origin. Under the UCP, all complaints shall be presented to the compliance officer who shall maintain a log of complaints received.
- Within 10 business days after the compliance officer receives the complaint, the compliance officer shall begin an investigation into the complaint. In conducting the investigation, the compliance officer shall collect all available documents and review all available records, notes, or statements related to the complaint, including any additional evidence or information received from the parties during the course of the investigation, shall individually interview all available witnesses with information pertinent to the complaint, and may visit any reasonably accessible location where the relevant actions are alleged to have taken place. Within 60 calendar days of the district’s receipt of the complaint, the compliance officer will send the district’s decision in writing to the complainant.
- On June 19, 2015, the Complainant filed a UCP with the District alleging unlawful discrimination against the Student. She provided a detailed account of the Incident and emphasized that the students who beat the Student yelled “Welcome to America” to the Student as they hit him. She also alleged that School staff expressed hostile distrust toward the Student and the Mother despite the Student’s obvious injuries, that School staff dismissed the video because all involved were “immigrants,” and that the SRO concluded that the

Incident was just “kids being kids.” The Complainant alleged that the Mother had not received any documentation of any District response to the Incident – only communication reminding her of the Student’s excessive absences from School. On October 7, 2015, the Complainant e-mailed the District Assistant Superintendent and stated that she had not received a response to her UCP. In her OCR complaint, the Complainant also stated that she had not received a response to the UCP.

- The District acknowledged that it received and “failed to timely investigate” the UCP, in part because “the Formal Complaint was mislaid” in a staffing transition. The District also acknowledged that the UCP contained allegations of harassment and discrimination and affirmed its willingness to conduct an investigation. It stated that it had not yet conducted an investigation because the Student was no longer enrolled in the District and resided in another country.

Analysis

The facts gathered to date during OCR’s investigation raised concerns because the District did not follow its own grievance procedures under the UCP in investigating the assault and failed to make a determination as to whether the assault was motivated by the Student’s national origin. Further, OCR’s investigation to date raised concerns that the District did not assess whether a hostile environment existed for the Student at the School after the incident, and whether the Student may have needed any supports upon returning to school.

Prior to the completion of OCR’s investigation of this complaint, the District expressed an interest in resolving this complaint through a resolution agreement (agreement) pursuant to Section 302 of OCR’s Case Processing Manual. OCR determined that it was appropriate to resolve the complaint under this section. Without admitting to any violation of the law, the District signed the enclosed agreement which is intended to resolve the concerns that OCR identified during its investigation of this allegation. Pursuant to the agreement, the District will develop a guidance memorandum and arrange for training to be provided to staff on resolving allegations of discriminatory harassment and individual remedies for the Student.

Allegation 3: Whether the District failed to provide meaningful access to important information about the assault in a language the Student’s parent could understand.

Legal Standards

The Title VI implementing regulations, at 34 C.F.R. §100.3(a) and (b), provide that a recipient of Federal financial assistance may not, directly or through contractual or other arrangements, on the ground of race, color or national origin, exclude persons from participation in its programs, deny them any service or benefits of its programs, or provide any service or benefit which is different or provided in a different manner from that provided to others. Section 100.3(b)(2) provides that, in determining the types of services or benefits that will be provided, recipients may not utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color or national origin.

On May 25, 1970, pursuant to its authority under Title VI, the Department of Education issued a memorandum entitled “Identification of Discrimination and Denial of Services on the Basis of National Origin” (35 Fed. Reg. 11,595). The memorandum clarified OCR policy under Title VI on issues concerning the responsibility of school agencies to provide equal educational opportunity to limited English proficient national origin minority students.

The May 25th memorandum states that school districts must adequately notify national origin minority group parents of information that is called to the attention of other parents, and that such notice may have to be provided in a language other than English in order to be adequate. School districts have an obligation to ensure meaningful communication with Limited English Proficient (LEP) parents in a language they can understand and to adequately notify LEP parents of information about any programs, service, or activity of a school district that is called to the attention of non-LEP parents.

School districts must develop and implement a process for determining whether parents are LEP and identify their language needs. The process should be designed to identify all LEP parents, including parents or guardians of children who are proficient in English and parents and guardians whose primary language is not common in the district. It is important for schools to take parents at their word about their communication needs if they request language assistance. School districts must provide language assistance to LEP parents effectively with appropriate, competent staff – or appropriate and competent outside resources. It is not sufficient for staff merely to be bilingual. School districts should ensure that interpreters and translators have knowledge in both languages of any specialized terms or concepts to be used in the communication at issue and training in their role of an interpreter or translator, the ethics of interpreting and translating, and the need to maintain confidentiality.

Additional Facts Gathered to Date

- Approximately 35% of the District’s students are EL students or Fluent English Proficient (FEP) who speak Spanish. Approximately 90% of the District’s EL students are Spanish speakers. Approximately 73% of the students enrolled at the School are Spanish-speaking EL students or FEP students.²
- The District’s Board Policy 5145.6, Parental Notifications, includes the following: “Notifications to parents/guardians shall be written both in English and in the family’s primary language when so required by law.” The District did not provide other policies and procedures regarding the provision of interpretation or translation services to LEP parents.
- In its response to OCR’s request for information, the District stated that each school site has one-to-two Engagement Facilitators (Facilitators), who serve as the front-line interpreter at the school site. The School has two such Facilitators but the District did not identify the Facilitators by name or position. The District stated that they are both bilingual in Spanish. The Facilitators assist with day-to-day requests from site staff for interpretation and

² California Department of Education, DataQuest, 2014-2015 enrollment data. Available at <http://data1.cde.ca.gov/dataquest/>.

translation. The District did not identify any specific training provided to Facilitators on providing interpretation and translation services to LEP parents in the District.

- The District also has site-level staff members who have passed a language proficiency exam developed for the District by a company that offers oral interpretation and written translation services in many languages, and administered by the District Translation Supervisor. These site-level staff provide interpretation in such settings as Individual Education Program (IEP) meetings, Student Success Team (SST) meetings, District English Learner Advisory Committee (DELAC) meetings, and disciplinary proceedings. School sites access these certified interpreters either through their Facilitator or Translation Supervisor.
- The District also contracts with a telephone service called “Language Line,” which provides District staff access to trained interpreters in many languages. The District stated that staff members use Language Line interpreters only in emergency situations, as Language Line interpreters are not trained in specialized school terms.
- With respect to all schools in the District, the District stated that if a site staff member needed to request interpretation services, the staff member would contact either a Facilitator or the Translation Supervisor to fulfill that request. If front office staff members receive such a request, they contact a Facilitator. If a parent made a request for interpretation services, the Translation Supervisor would also coordinate that request. LEP parents are notified of the option to request interpretation at DELAC and English Learner Advisory Committee (ELAC) meetings, back-to-school night, and orientation. All of the aforementioned processes are through verbal requests. There is no written document notifying parents of the option to request interpretation services and how to do so.
- The District identified 14 staff members at the School, including at least two administrators and the Custodian, who provided interpretation or translation services during the 2014-2015 school year. The District stated that no specific training has been provided to School staff, including the Facilitators, on providing interpretation and translation services.
- Regarding translation of documents, the District stated that all district-wide documents are sent home in Spanish. The Translation Supervisor translates such documents as IEPs, Section 504 plans, assessment reports. If he/she is not qualified to translate a document, the District makes a request to an external company (unnamed in data response 2) to complete the translation. The Facilitators complete site-level translations that do not require specialized vocabularies.

Analysis

OCR recognizes that the Mother’s visit to the School on the afternoon of April X, 2015 to report the Incident and seek assistance may have constituted an emergency situation and not a planned appointment with School staff. However, OCR’s investigation raised concerns that the Custodian, who provided interpretation and gathered an oral statement from the Student, may not have had the requisite qualifications to interpret or gather information effectively. While the District indicated that the Custodian spoke Spanish and English and had provided interpretation

services for the School on other occasions, the District provided no information that would demonstrate that the Custodian could effectively serve as a language interpreter. Nor did it provide information that would demonstrate that the Custodian had received training with respect to: 1) any specialized terms or concepts to be used in the communication at issue; 2) his role as an interpreter; and 3) ethical considerations and the need to maintain confidentiality. The facts gathered to date raised concerns that the Custodian may have stepped out of the role of interpreter to act as an investigator, and that the inquiry may have negatively affected the Student and the Mother.

OCR's investigation also raised concerns regarding the lack of a written procedure or protocol for LEP parents to request interpretation and translation services, and whether sufficient training was provided to School site staff and Engagement Facilitators on providing interpretation and translation to LEP parents.

As stated above, prior to OCR's completion of the investigation of this complaint, the District expressed an interest in resolving this complaint through an agreement pursuant to Section 302 of OCR's Case Processing Manual. OCR determined that an agreement pursuant to section 302 was appropriate, and the District signed the enclosed agreement, which is intended to resolve the concerns that OCR identified during its investigation of this allegation. Pursuant to the agreement, the District will provide training to site-level staff and site-level Engagement Facilitators on interpretation and translation; develop a written procedure describing how LEP parents at the School may request interpretation or translation services; and develop site-level emergency protocol for responding to requests for interpretation or translation from LEP parents.

Conclusion

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. OCR is closing the investigation of this complaint as of the date of this letter, and notifying the Complainant by concurrent 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 Complainant may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personal information that, if released could reasonably be expected to constitute an unwarranted invasion of privacy. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

When fully implemented, the resolution agreement is intended to address all of OCR's compliance concerns in this investigation. OCR will monitor the implementation of the agreement until the District is in compliance with Title VI and its implementing regulations at issue in this case.

If you have any questions, please contact Abony Alexander or Shilpa Ram, Civil Rights Attorneys, at abony.alexander@ed.gov or shilpa.ram@ed.gov.

Sincerely,

/s/

Zachary Pelchat
Team Leader

Enclosures

cc: Jennifer E. Nix, Legal Counsel for the District