



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

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REGION XV  
MICHIGAN  
OHIO

July 1, 2015

C. Bronston McCord III, Esq.  
Ennis Britton Co., L.P.A.  
1714 West Galbraith Road  
Cincinnati, Ohio 45239

Re: OCR Docket #15-15-1024

Dear Mr. McCord:

This letter is to notify you of the disposition of the complaint filed against Springfield City School District (the District) with the U.S. Department of Education (the Department), Office for Civil Rights (OCR), on October 14, 2014. The complaint alleged that the District discriminated against a student at Springfield High School (the Student) on the basis of race. Specifically, the complaint alleged that the District failed to respond appropriately when the Student was subjected to racial harassment by another student (Student B) during the 2013-2014 school year, including racial slurs and a threat that Student B would get a gun to shoot and kill the Student.

OCR is responsible for enforcing 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. Title VI prohibits discrimination on the basis of race, color, or national origin by recipients of Federal financial assistance from the Department. OCR is also responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation 34 C.F.R. Part 104 (Section 504). Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance from the Department. As a recipient of Federal financial assistance from the Department, the District is subject to these laws.

Based on the complaint allegations, OCR investigated the following legal issues:

- whether the District, on the basis of race, subjected a student to a hostile environment that was sufficiently severe, pervasive, or persistent that it denied or limited the student’s ability to participate in, or benefit from, any program or service of the District, in violation of the Title VI implementing regulation at 34 C.F.R. § 100.3; and
- whether the District denied a qualified student with a disability a free appropriate public education (FAPE) in violation of Section 504’s implementing regulation at 34 C.F.R. § 104.33.

To investigate this complaint, OCR interviewed the Complainants and relevant District staff. OCR also reviewed documentation provided by the Complainants and the District. Based on the information obtained, OCR found that the evidence was sufficient to support a finding that the District violated Title VI and Section 504. The District submitted a resolution agreement to address the non-compliance findings. OCR’s findings and the resolution are explained below.

## **Background**

“XXX-paragraph redacted-XXX”

## **Summary of OCR’s Investigation**

“XXX-13 paragraphs redacted-XXX”

OCR reviewed the District’s policies and procedures that address discrimination and harassment on the basis of race. These policies, found in the District’s Board of Education policy manual, are entitled “Nondiscrimination,” “Hazing and Bullying,” and “Hazing and Bullying (Harassment, Intimidation and Dating Violence).” OCR also reviewed the high school’s 2014-2015 Student Handbook (the handbook), which contains sections headed “Nondiscrimination” and “Bullying and/or Harassment.” A notice of nondiscrimination is included in both the “Nondiscrimination” policy and handbook, which prohibits discrimination based on race, color, national origin, citizenship status, religion, sex, economic status, age, military status, ancestry, and disability. The notice includes harassment in its definition of discrimination, and applies to students, staff, job applicants, the general public, and individuals with whom the District does business. The policies also prohibit harassment, provide examples of prohibited conduct (including racial slurs) and where such conduct might occur, and identify an informal and formal process for addressing complaints of harassment by students. The policies do not specify timeframes for steps of the investigation, the standard of review used in investigations, or contact information for the complaint coordinator. The policies contain several different definitions of harassment and do not to explain their application to harassment carried out by District staff or third parties. Finally, the policies do not contain an assurance that the school will take steps to prevent recurrence of any harassment or other discrimination, and to correct discriminatory effects on the complainant and others, if appropriate.

The board's general "Hazing and Bullying" policy includes a complaint process, which provides notice to students and parents of the complaint process and how complaints may be filed. The complaint process describes the reporting obligations of staff and notes that the principal or his or her designee will be responsible for conducting the investigations. The complaint process does not provide any contact information for the Academy principals. The complaint process indicates that a written report of the investigation will be prepared, but states that the parents or guardians of the alleged victim and perpetrator will be notified of the outcome only if the allegations are verified. In addition, the complaint process does not: provide for an adequate, reliable, and impartial investigation of the complaint, including allowing the complainant to present witnesses and other evidence; include designated and reasonably prompt timeframes for the major stages of the complaint process; or contain an assurance that the District will take steps to prevent recurrence of any harassment and to correct discriminatory effects on the victim and others, if appropriate. The procedures also do not indicate the standard of evidence the District applies in reviewing such complaints.

The policies contain the following definitions of "harassment:"

- The board's "Hazing and Bullying" policy defines harassment as "any intentional written, verbal, graphic or physical acts, including electronically transmitted acts, either overt or covert, by a student or group of students toward other students/school personnel with the intent to haze, harass, intimidate, injure, threaten, ridicule or humiliate."
- The board's "Nondiscrimination" policy, which also appears in the high school's student handbook, defines harassment as "intimidation by threats of actual or physical violence; the creation, by whatever means including the use of electronic communication devices, of a climate of hostility or intimidation; or the use of language, conduct or symbols in such a manner as to be commonly understood to convey hatred, contempt or prejudice or to have the effect of insulting or stigmatizing an individual."
- The board's "Hazing and Bullying (Harassment, Intimidation and Dating Violence)" policy defines harassment as "an intentional written, verbal, or physical act that a student has exhibited toward another particular student more than once," and notes that "the behavior that causes both mental or physical harm to the other student and is sufficiently severe, persistent or pervasive that it creates an intimidating, threatening or abusive educational environment for the other student."
- The handbook defines harassment as "any behavior or conduct that has the purpose or effect of creating an intimidating, coercing, threatening, or abusive educational environment."

With respect to training on discrimination and harassment, the administrator told OCR that he provides a training assembly to students at the beginning of each year, which includes a review of the code of conduct and a discussion of bullying and harassment. The District provided OCR with a copy of the PowerPoint presentation used at this assembly during the 2014-2015 school year. The presentation contained a single slide on harassment, which noted that it is a “serious offense” which “will be dealt with appropriately,” and lists “sexual, gender, ethnic, religious, disability” as types of harassment. District staff could not identify any further training for students covering racial discrimination or harassment.

The administrator reported to OCR that there is a required annual online training for staff that addresses harassment and discrimination. Other District staff reported that this training covers inappropriate language and harassment on various bases, including gender, sexual orientation, and religion, and that it reviews the various ways harassment can happen, including online, over the phone, and through physical or verbal acts. When asked about District policies covering discrimination and harassment, staff was unclear as to where those policies were located and who was responsible for handling complaints.

### **Applicable Legal Standards and OCR Policy**

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.

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.

The regulation implementing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, at 34 C.F.R. § 104.33, requires a recipient that operates a public elementary or secondary education program or activity to provide a free appropriate public education (FAPE) to each qualified student with a disability in the recipient's jurisdiction.

Bullying on any basis of a student with a disability who is receiving Individuals with Disabilities Education Act (IDEA) FAPE services or Section 504 FAPE services can result in the denial of FAPE that must be remedied under Section 504. Under Section 504, schools have an ongoing obligation to ensure that a qualified student with a disability who receives IDEA FAPE services or Section 504 FAPE services, and who is the target of bullying, continues to receive FAPE—an obligation that exists regardless of why the student is being bullied. Accordingly, under Section 504, as part of a school's appropriate response to bullying on any basis, the school should convene the IEP team or the Section 504 team to determine whether, as a result of the effects of the bullying, the student's needs have changed such that the student is no longer receiving FAPE. The effects of bullying could include, for example, adverse changes in the student's academic performance or behavior. If the school suspects the student's needs have changed, the IEP team or the Section 504 team must determine the extent to which additional or different services are needed, ensure that any needed changes are made promptly, and safeguard against putting the onus on the student with the disability to avoid or handle the bullying.

## **Analysis**

OCR finds that the evidence supports a finding that the Student and other minority students at the Academy were subjected to race-based harassment, including repeated use of the n-word and at least one other racially derogatory comment, by a student at the school that was sufficiently severe, pervasive, and/or persistent that it created a hostile environment based on race. As described above, even though the incidents regarding the Student could not be definitively proven through District records, the administrator acknowledged that Student B had called the Student the n-word on at least two occasions. Multiple District witnesses were aware that Student B used the n-word and that she had directed the word towards staff and at least one other African American student during the 2013-2014 school year. In addition, a review of Student B's discipline record, while devoid of detail with respect to a significant number of the incidents recorded, indicated that the Student was not the only student towards whom Student B directed a racially derogatory comment.

OCR finds that the District had actual notice of a racially hostile environment as District staff and administration were aware that Student B used the n-word on repeated occasions and had directed the word to staff and at least two different students. The District was also in receipt of the parents' complaint of racial harassment in May 2014. Thus, OCR sought to determine whether, once on notice of the racially hostile environment, the District adequately responded and took reasonable steps to redress the racially hostile environment and eliminate it. The District demonstrated that it disciplined the former XXXXXXXXXX, who failed to appropriately respond to the threat in May 2014 and to the racial harassment of the Student during the 2013-2014 school year. The District also separated the Student and Student B, by putting Student B in an alternative placement. However, OCR concludes that the actions taken were not sufficient to adequately address the racially hostile environment.

The District did not take any action with respect to the Academy's educational environment as a whole, such as revising its policies and procedures addressing racial harassment, disseminating the District's anti-bullying/anti-harassment policy to staff and students, or conducting staff and student training related to the prohibitions of harassment under Title VI. The District also did not ensure that the Student and the other students who were harassed by Student B based on race were not restricted in their participation or benefits as a result of the racially hostile environment. Further, the District did not convene the Student's IEP team to determine whether, as a result of the effects of the harassment, the Student's needs changed such that the Student was no longer receiving FAPE. As noted above, the effects of harassment could include, for example, adverse changes in the Student's academic performance or behavior.

OCR found that the District's lack of specific, consistent policies and procedures likely contributed to its failure to timely and effectively respond to the racial harassment by Student B of which it had notice. In addition, OCR found that staff was generally not aware of the policies or who is responsible for addressing harassment. The District's written definitions of harassment do not comport with Title VI. Specifically, the

definitions in the board's "Hazing and Bullying" policies require that harassment include intent to harm, be directed at a specific target, and involve repeated incidents. The definitions are also inconsistent across the District's policies. In addition, the complaint process in the "Hazing and Bullying" policy fails to provide notice to students and employees of where reports of discrimination and harassment based on race could be made and who is responsible for addressing such reports. The District's lack of recordkeeping appears to have also contributed to its failure to promptly and effectively respond to the racial harassment.

Based on the foregoing, OCR finds sufficient evidence to conclude that the District failed to adequately address racial harassment of which it had actual or constructive notice in violation of the Title VI regulation at 34 C.F.R. § 100.3 and failed to appropriately address the potential effects of the harassment on the Student's ability to receive FAPE as a student with a disability in violation of the Section 504 regulation at 34 C.F.R. § 104.33.

### **Resolution and Conclusion**

On June 19, 2015, the District signed the enclosed agreement to resolve OCR's noncompliance findings. The agreement requires the District to:

- Reconvene the Student's IEP team to determine whether additional or different services are needed, including compensatory services, as a result of harassment of the Student based on his race.
- Meet with the Student's family to determine how the District will remedy any effects of the racial harassment the Student experienced.
- Review and revise, as necessary, its anti-harassment policy and any other related policies and/or procedures to ensure that they are reasonably designed to prevent, address, and respond to incidents of harassment against students on the basis of race, color, or national origin.
- Publish the revised policies and procedures and notify students, parents, guardians, and District personnel of them.
- Provide an age-appropriate orientation program for the District's high school students regarding the District's anti-bullying/anti-harassment policies.
- Train District high school staff and administrators on Title VI and the revised anti-harassment policies and procedures.

OCR will monitor the implementation of the agreement. The District's first monitoring report is due by August 30, 2015. If the District does not fully implement the agreement, OCR will reopen the investigation and take appropriate action.



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

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 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, 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.

OCR would like to thank you and the District for your cooperation in the investigation and resolution of this matter. The OCR contact person for the monitoring of the agreement is Ms. Sarah Poppleton, who may be reached at (216) 522-2674 or at [Sarah.Poppleton@ed.gov](mailto:Sarah.Poppleton@ed.gov). The District's first monitoring report due by August 30, 2015, should be directed to Ms. Poppleton. If you have any questions about this letter, you may contact Mr. Donald S. Yarab, Supervisory Attorney/Team Leader, at (216) 522-7634.

Sincerely,

/s/

Meena Morey Chandra  
Director

Enclosure