



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

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REGION IV

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May 19, 2023

Dr. Jeff Bearden
Superintendent
Forsyth County Schools
1120 Dahlonega Highway
Cumming, Georgia 30040
Via Email Only, jbearden@forsyth.k12.ga.us

Re: OCR Complaint No. 04-22-1281

Dear Superintendent Bearden:

This letter is to advise you of the outcome of the U.S. Department of Education, Office for Civil Rights (OCR) investigation of the complaint filed against the Forsyth County Schools (District). The complaint alleged that the District discriminated against students on the basis of sex, race, color, and national origin.

OCR enforces Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681, *et seq.*, and its implementing regulation, 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any education program or activity receiving Federal financial assistance. OCR also enforces Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d, *et seq.*, and its implementing regulation, 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin in any program or activity receiving Federal financial assistance from the Department of Education. As a recipient of Federal financial assistance from the Department of Education, the District is subject to the requirements of Title IX and Title VI, as well as OCR's jurisdiction.

OCR opened an investigation of the following issues:

1. Whether the District's removal of books from schools created a hostile environment for students based on sex, in violation of Title IX and its implementing regulation at 34 C.F.R. Part 106; and
2. Whether the District's removal of books from schools created a hostile environment for students based on race, color or national origin, in violation of Title VI and its implementing regulation at 34 C.F.R. §100.3.

During the investigation, OCR reviewed documents from the District, including email correspondence among District staff, as well as between a parent and District staff, regarding the removal of books; a summary of a January 2022 District Media Committee meeting; and documentation related to a District review of books during Summer 2022. Also, OCR interviewed the District's Chief Technology and Information Officer, the Director of Instructional Technology

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and Media, and the Chief Communication Officer. In addition, OCR reviewed publicly available information, including minutes and recordings of District board meetings.

Prior to OCR completing its investigation, the District expressed an interest in resolving the complaint pursuant to Section 302 of OCR's *Case Processing Manual*. Section 302 states that allegations under investigation may be resolved at any time when, prior to the completion 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. Following are the relevant legal standards and OCR's summary of the investigation.

Legal Standards

The regulation implementing Title IX, at 34 C.F.R. § 106.31(a), provides that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives Federal financial assistance.

The regulation implementing Title IX, at 34 C.F.R. § 106.44(a), provides that a recipient with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States, must respond promptly in a manner that is not deliberately indifferent. A recipient is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances. A recipient's response must include an offer of supportive measures as defined in § 106.30 to a complainant. Further, the recipient's Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures as defined in § 106.30, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.

The regulation implementing Title IX, at 34 C.F.R. § 106.30(a), defines actual knowledge in the elementary and secondary school context as notice of sexual harassment or allegations of sexual harassment to any employee of an elementary and secondary school. The regulation, at 34 C.F.R. § 106.30(a), defines sexual harassment to include conduct on the basis of sex that is unwelcome and determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity.

The regulation, at 34 C.F.R. § 106.30(a), defines supportive measures as non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the recipient's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient's educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in

work or housing locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar measures.

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 hostile environment that is created, encouraged, accepted, tolerated or left uncorrected by a recipient constitutes discrimination on the basis of race, color, or national origin 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, color, or national origin existed; (2) the recipient had actual or constructive notice of a hostile environment based on race, color, or national origin; and (3) the recipient failed to respond adequately to redress the hostile environment based on race, color, or national origin.

Under Title VI, 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. Harassing acts need not be targeted at the complainant in order to create a hostile environment. The acts may be directed at anyone, and the harassment need not be based on the complainant's or victim's race, color, or national origin so long as it is motivated by race, color, or national origin (e.g., it might be based on the race, color, or national origin of a friend or associate of the victim). 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, color, or national origin-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, color, or national origin 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. A recipient is charged with constructive notice of a hostile environment if, upon reasonably diligent inquiry in the exercise of reasonable care, it should have known of the discrimination. In other words, if the recipient could have found out about the harassment had it made a proper inquiry, and if the recipient should have made such an inquiry, knowledge of the harassment will be imputed to the recipient.

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, color, or national origin must be tailored to redress fully the specific problems experienced as a result of the harassment.

Facts

The District reports that its enrollment is 49% White, 5% Black, 27% Asian, 15% Hispanic, 4% two or more races, and less than 1% American Indian or Alaska Native and Hawaiian.¹

According to the District’s representative, in Fall 2021, the District began receiving complaints from some parents and community members about the District providing students access to library books that parents deemed inappropriate.² These parents reportedly pointed out explicit sexual content in books and many also complained about LGBTQI+ subject matter.³ Around November 2021, a parent group reportedly asked the District to shelve LGBTQI+ books separately in school libraries and to place tags on the books.

On January 12, 2022, the District Media Committee convened a meeting in response to these requests regarding sexually explicit books and LGBTQI+ books.⁴ According to a summary of the meeting and interviews with District representatives, the committee considered a request that the District give parents an option to provide permission for their children to check out school library books that have LGBTQI+ content or sexual content.⁵ The committee rejected the option on the grounds that there were multiple ways that students would be able to circumvent the system, that option would put media specialists in the role of “gatekeeper” of the books, and it could cause many students to avoid using the media center. The committee discussed and rejected requests that the District shelve LGBTQI+ books separately, or put stickers on such books, concluding that those actions would be detrimental to students, might lead to increased bullying, and, again, could cause students to stop using the media center.

The meeting summary also shows that the committee approved a statement to be posted on the webpages of District media centers. The statement read in part, “Forsyth County Schools’ media centers provide resources that reflect all students within each school community. If you come across a book that does not match your family’s values and/or beliefs, and you would prefer that your child does not check that book out, please discuss it with your child.” The District’s Chief Communications Officer told OCR the statement was to communicate to parents and guardians the purpose of media centers and to remind them it was their role to discuss sensitive topics with their children.

On January 21, 2022, the District’s Superintendent notified the school board that he had authorized the Chief Technology and Information Officer (CTIO) to pull from school libraries books that were obviously sexually explicit or pornographic. District witnesses stated that books were reviewed in January 2022 for explicit sexual content, specifically graphic details of sexual acts and not just references to sex or sexual acts.

¹ [About Us / Overview \(forsyth.k12.ga.us\)](https://www.forsyth.k12.ga.us) (Last accessed by OCR on March 20, 2023).

² The evidence reflects that District schools have books located in media centers and some classrooms also have libraries. Generally, this letter will use the phrase “school libraries” to refer to media centers and classroom libraries.

³ The documents that OCR reviewed employed varying acronyms to refer to individuals who are lesbian, gay, bisexual, transgender, queer, questioning, asexual, intersex, nonbinary, or describe their sex characteristics, sexual orientation, or gender identity in another similar way. For ease of reference and consistency, this letter will refer to “LGBTQI+.”

⁴ The District Media Committee has standing meetings at the beginning and end of each school year and as-needed meetings during the school year.

⁵ The document is titled, “*Summary of the 1/12/22 District Media Committee Meeting*”; it was part of an email string responding to a parent.

On January 24, 2022, the CTIO emailed the District’s principals, noting that many parents had “taken to social media” and emailed to raise concerns over book content, and some concerns were “around personal/family preference, morals and beliefs,” while other concerns related to sexually explicit content. The email also stated that the Superintendent had authorized removal of sexually explicit books, making clear that books had not been reviewed for LGBTQI+ content or moral dilemma issues, just sexual explicitness.

Later that day, the CTIO emailed the principals a list of nine books to be removed from all school libraries indefinitely, two books to be removed temporarily or restricted to high schools, and four books to be restricted to high schools. Of the fifteen books identified, one book had already been removed in 2021 and was the only copy in the District; thus, no copies existed in the District when the CTIO sent the email. As noted in the email, six of the fifteen books were removed from middle schools only, because they were deemed age appropriate for high school students. The email also instructed principals to perform due diligence and have their media staff and teachers review for the listed books in the media centers and classroom libraries. According to District witnesses, the District did not make an announcement to, or have other communication with, students about the removal of the books.

During a February 15 District school board meeting, which the District’s Superintendent attended, multiple parents and students spoke about the District’s removal of books.⁶ Many parents called for the removal of additional books, with most of their comments focused on sexually explicit content; however, some comments focused on removing books for reasons related to gender identity or sexual orientation. Also, some parents made negative comments about diversity and inclusion or critical race theory.

The students’ comments at the board meeting focused on the gender identity, sexual orientation, and race or color of authors or characters in the books. Some students also raised concern about the impact of removing the books. One student stated that the book ban immediately made the environment more harsh for students; people like him who are not in the closet are watching their safe spaces disappear, and he is sick of being fearful at school. A student who identified herself as Asian said it is hard for her to find books with main characters who are of her race; she knows that people of other minority backgrounds have the same struggle and banning books written with diversity silences mainly minority voices.⁷ A third student -- who characterized the District’s

⁶ In January and February 2022, media reported about the race, sexual orientation or gender identity of authors of, or characters in, the removed books. For example, a January 20, 2022 article referenced removal of a book about a Puerto Rican American lesbian college student and attributed to a recent District graduate a quote that referred to the book removal as a “blatant attack on books with LGBTQI+ themes”, and the article noted the authors of some removed books were female, queer or people of color and some books had queer characters. [Opinion: First, it was critical race theory. Now, it’s books.](#) Similarly, a January 30, 2022 article referenced removal of a memoir about a gay black man, [Forsyth County Schools remove eight books for ‘sexually explicit content’ amid nationwide library debate.](#) Finally, a February 8, 2022 article from a high school student author noted, “The impact of losing such inclusionary books . . . that reflects the arc of their lives poses a risk to the lives of our youth.” That student author went on to state, “Books allow youth to have a dialogue internally that they might feel awkward or scared to talk about with adults or peers.” [Forsyth Student: Book Bans in Libraries Don’t Serve Students.](#)

⁷ [Forsyth County Board of Education Regular Meeting, February 15, 2022 - YouTube](#) (Last accessed by OCR March 20, 2023.)

actions as singling out books by authors who are gay, supporters of the LGBTQI+ community, women and people of color -- expressed the belief that the District does not care about diversity.⁸

The District formed a summer review committee to review eight of the nine books identified for indefinite removal from all schools in the CTIO's January 24, 2022 email. The summer review committee was called upon to determine if the books should remain on the shelves despite the explicit sexual content. The summer review committee, which included teachers, media specialists and parents, consisted of 34 readers. The committee included persons of color; District staff did not inquire if anyone was part of the LGBTQI+ community.

The summer review committee readers used a form that included six questions to answer for each assigned book.⁹ The questions related to the quality of a book's content and manner of presentation, as well as whether the book was appropriate for the age, sophistication level and grade level of middle school students and of high school students; met District students' instructional, social, emotional and personal needs; exhibited a "high degree of potential user appeal and interest;" and provided "a global perspective and promoted diversity by including materials about and by authors or illustrators of all cultures."

According to the District's representative, the committee completed reading at the end of July 2022 and provided feedback to the District Media Committee. In early August, the District Media Committee voted to return seven of the eight books to media center bookshelves. The books were placed in their original locations; they were not placed in special sections or shelves, marked with stickers, tagged or otherwise identifiable for specific content, characters, or authors.

Other than comments at board meetings, District witnesses identified no other complaints from students, parents, staff or others about the book removal. All three District witnesses said the District has not taken steps to address with students the impact of the book removals.

Analysis

OCR has a concern the District received notice that its media center book screening process may have created a hostile environment for students, yet the District's responsive steps related to the book screening process were not designed to, and were insufficient to, ameliorate any resultant racially and sexually hostile environment. OCR recognizes the District Media Committee rejected suggestions to handle challenged books in ways that it believed would target certain groups of students and that the District posted a statement on media centers' websites that they "provide resources that reflect all students within each school community" and that "If you come across a book that does not match your family's values and/or beliefs, and you would prefer that your child does not check that book out, please discuss it with your child." OCR also recognizes the District limited its book screening process to sexually explicit material. Nonetheless, communications at

⁸ In June 2022, media again addressed the book removal and the alleged impact upon students. An online article dated June 21, 2022, attributed to a District sophomore a statement that as a brown, female person, "this is something that affects me," and attributed to a District senior the statement, "I'm openly queer, openly transgender, and so it really hits close to home when people are like, let's not have diversity." [Forsyth County Schools remove eight books for 'sexually explicit content' amid nationwide library debate](#) (Last accessed by OCR April 4, 2023).

⁹ According to the form, there were five groups of readers and each group read two books.

board meetings conveyed the impression that books were being screened to exclude diverse authors and characters, including people who are LGBTQI+ and authors who are not white, leading to increased fears and possibly harassment. Indeed, one student commented at a District school board meeting about the school environment becoming more harsh in the aftermath of the book removals and his fear about going to school, and evidence OCR reviewed to date reflects other students expressing similar views. District witnesses reported to OCR that the District has not taken steps to address with students the impact of the book removals. In light of these communications and actions, OCR is concerned a hostile environment may have arisen that the District needed to ameliorate.

As noted above, the District expressed an interest in resolving the complaint with a resolution agreement pursuant to Section 302 of the *Case Processing Manual*. Based on the investigation to date, OCR notes concerns that warrant entering into a resolution agreement. The attached resolution agreement (Agreement) will, when fully implemented, resolve the issues identified above. The Agreement requires the District to issue a statement to students in the District explaining the book removal process and offering supportive measures to students who may have been impacted by the book removal process. The Agreement also requires the District to administer a climate survey of the student bodies at each of the District's middle and high schools to assess whether additional steps need to be taken.

OCR will monitor the District's implementation of the Agreement until the District is in compliance with the terms of the Agreement and the statutes and regulations at issue in this case.

Conclusion

This concludes OCR's investigation of this complaint. This letter 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. The Complainant may have a right to file a lawsuit 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 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 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.

If you have any questions about this letter, please contact Nicole Holcomb, at (202) 987-1871 or nicole.holcomb@ed.gov.

Sincerely,

/s/

Jana L. Erickson
Program Manager

Enclosure

CC: Hieu Nguyen, Attorney - hnguyen@pkknlaw.com