



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

1350 EUCLID AVENUE, SUITE 325  
CLEVELAND, OH 44115

REGION XV  
MICHIGAN  
OHIO

December 5, 2019

Mark P. Fancher, Esq.  
American Civil Liberties Union of Michigan  
2966 Woodward Avenue  
Detroit, Michigan 48201

Re: OCR Docket No. 15-19-1178

Dear Mr. Fancher:

On January 23, 2019, the U.S. Department of Education (the Department), Office for Civil Rights (OCR), received the complaint you filed against the Paw Paw Public School District (the District). The complaint alleges discrimination based on race, national origin, and religion. Specifically, the complaint alleges that:

1. In September 2018 the District failed to address a hostile environment based on race involving a multiracial Native American high school student (Student A) who was subjected to verbal racial harassment by other students at school in front of a teacher.
2. The District maintained a hostile environment at its middle school and high school based on race and national origin for African American, Mexican, and Middle Eastern students resulting from peer-to-peer verbal harassment that occurred from 2015-2017.
3. The District discriminated against a student based on religion with respect to a March 2016 incident where students placed a swastika and a Hitler figurine in another student's science project.

After carefully reviewing your complaint and the information you provided to OCR, OCR is dismissing allegations #2 and #3 above, and is opening allegation #1 for investigation. The bases for OCR's determinations are set forth below.

OCR enforces 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, which prohibit discrimination based on race, color, or national origin by recipients of federal financial assistance. As a recipient of federal financial assistance from the Department, the District is subject to Title VI.

### **Allegations Being Dismissed**

OCR's *Case Processing Manual* (CPM) provides that OCR will not investigate an allegation that on its face or as clarified fails to state a violation of one of the laws and regulations OCR enforces; or that lacks sufficient factual detail (e.g., who, what, where, when, how) or is so speculative, conclusory, or incoherent that OCR cannot infer that discrimination or retaliation

may have occurred or may be occurring. OCR's CPM also provides that OCR will take action only with respect to complaint allegations that have been filed within 180 calendar days from the date of the alleged violation, unless OCR grants a waiver of its timeliness requirement under certain limited circumstances.

After a review of your complaint, OCR found that it needed additional information about your allegations and on March 18, 2019, OCR sent you an email requesting additional information regarding your allegations of discrimination that occurred within 180 days of your filing the complaint. You responded by email on March 25, 2019, and April 8, 2019, and OCR spoke with you on April 4, 2019.

With respect to allegations ##2-3, you described a number of incidents in support of your assertion that there is an ongoing hostile environment within the District based on race and national origin, as well as one incident you alleged to also be discrimination based on religion. The examples of alleged racial and national origin harassment at the District that you provided occurred between 2015 and 2017. For example, you provided redacted records documenting several disciplinary incidents at the District's middle school and high school that occurred from 2015-2017 and involved comments made by students to other students based on race (African American) and national origin (Mexican and Middle Eastern). You also described a March 2016 incident where students placed a swastika and a Hitler figurine in another student's science project. You stated that the incident was reported to the principal and the students were required to remove the objects. You also alleged the March 2016 incident to be discrimination based on religion.

You stated that, even though these incidents happened more than 180 days before you filed your OCR complaint, you were not requesting a waiver of OCR's timeliness requirement because you believe the complaint allegations constitute a continuing violation of Title VI and therefore are timely. However, each of the incidents you described were discrete events occurring between different individuals and involving an array of different issues, thus not constituting a continuing practice. Therefore, OCR is dismissing these allegations as untimely.

OCR notes that you also alleged other incidents involving members of the community that did not involve any alleged action on the part of the District, e.g., regarding a local billboard, a video posted to YouTube, and a community pageant; OCR will take no action on these allegations, as these are allegations over which it has no jurisdiction.

You have a right to appeal OCR's determination of allegations ##2-3 within 60 calendar days of the date indicated on this letter. An appeal can be filed electronically, by mail, or by fax. You must either submit a completed online appeal form, which can be found at <https://www2.ed.gov/about/offices/list/ocr/docs/appeals-form.pdf>, or mail a written statement of no more than ten (10) pages (double-spaced, if typed): if submitted by mail, please send to the Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue SW, Washington, D.C. 20202. If submitted via e-mail, send to [OCR@ed.gov](mailto:OCR@ed.gov); if submitted via fax, please send to 202-453-6012. The filing date on an appeal is the date the appeal is postmarked, submitted electronically, or submitted via fax. In the appeal, you must explain why you believe the factual information was incomplete or incorrect, why the legal analysis was incorrect or the appropriate

legal standard was not applied, and how correction of any error(s) would result in the case being opened for investigation; failure to do so may result in dismissal of the appeal.

Please note that, with respect to the portion of your complaint that alleged the March 2016 incident, where students placed a swastika and a Hitler figurine in another student's science project, where students placed a swastika and a Hitler figurine in another student's science project, was also discrimination based on religion, OCR lacks subject matter jurisdiction to investigate claims of religious discrimination pursuant to the laws that it enforces. You may wish to contact the U.S. Department of Justice (DOJ), which may have jurisdiction. DOJ enforces Title IV of the Civil Rights Act of 1964, which prohibits discrimination based on religion in public schools and institutions of higher learning. DOJ can be contacted at:

U.S. Department of Justice  
Civil Rights Division  
950 Pennsylvania Avenue, N.W.  
Educational Opportunities Section, PHB  
Washington, D.C. 20530  
(202) 514-4092

#### **Allegation OCR is Opening for Investigation**

Because OCR determined that it has jurisdiction over allegation #1 and that the allegation was filed timely, it is opening this allegation for investigation. Based on the complaint allegation, OCR will investigate the following issue: whether the District effectively caused, encouraged, accepted, tolerated, or failed to correct a racially hostile environment for Native American persons at its high school of which it has actual or constructive notice, in violation of the Title VI implementing regulation at 34 C.F.R. § 100.3.

Please note that opening an allegation for investigation in no way implies that OCR has decided with regard to its merits. During the investigation, OCR is a neutral fact-finder, collecting and analyzing relevant evidence from the complainant, the recipient, and other sources, as appropriate. OCR will ensure that its investigation is legally enough and is dispositive of the allegation(s), in accordance with the provisions of Article III of OCR's *Case Processing Manual*. The complainant may have a right to file a private suit in federal court whether OCR finds a violation.

OCR works to resolve allegations of discrimination promptly and appropriately. OCR will communicate with you periodically during its investigation. When contacting the office about your case, please refer to OCR Docket Number 15-19-1178.

Please note that the complaint may be appropriate for Facilitated Resolution Between the Parties (FRBP), a process that facilitates the resolution of complaints by providing an opportunity for the parties involved to voluntarily resolve the complaint allegations. If OCR believes that this complaint is appropriate for FRBP, OCR will contact you to discuss this option.

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Pursuant to the routine use exception of the Privacy Act, for the purpose of assisting OCR in resolving the civil rights complaint or in obtaining additional information relevant to OCR's investigation, OCR is sending a redacted copy of the complaint to the District.

If you have any questions, please contact Ms. Ann Millette, who has been assigned to investigate this complaint. Ms. Millette can be reached by telephone at (216) 522-2679 or by e-mail at [Ann.Millette@ed.gov](mailto:Ann.Millette@ed.gov).

Sincerely,

*Brenda Redmond* 2019.12.05  
07:40:24 -05'00'

Brenda Redmond  
Supervisory Attorney/Team Leader