



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS
CHICAGO OFFICE

MAY 13

Dr. Steve Jordahl
Superintendent
St. Cloud Area School District #742
1000 44th Avenue North
Suite 100
St. Cloud, MN 56303

Re: OCR Docket # 05-10-i146

Dear Dr. Jordahl:

This is to notify you that the U.S. Department of Education, Office for Civil Rights (OCR), has received and evaluated the above-referenced complaint filed with OCR on March 19, 2010, against St. Cloud Area School District #742 (District) alleging discrimination on the basis of race, color or national origin. We conducted the evaluation in accordance with OCR's *Case Processing Manual* to determine whether to open the complaint for investigation. We have determined that we have the authority to investigate this complaint.

Specifically, the Complainant alleged that during the 2008-09 and 2009-10 school years, the District subjected Somali high school students to a hostile environment on the basis of race, color or national origin when students at the District's Apollo Senior High School (Apollo) and Technical Senior High School (Tech) harassed Somali students on the basis of race, color or national origin and the District failed to stop the harassment.

OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d, and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of 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 the provisions of Title VI. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

Because OCR has determined that it has jurisdiction and that the complaint was filed timely, OCR is opening the allegation for investigation. Please note that opening the allegation for investigation in no way implies that OCR has made a determination with regard to its merits. During the investigation, OCR is a neutral fact-finder, collecting and analyzing relevant evidence from the Complainants, the District, and other sources, as appropriate. OCR will ensure that its investigation is legally sufficient and is dispositive of the allegation, in accordance with the provisions of Article III of the *Case Processing Manual*, which is available on our website at <http://www.ed.gov/about/offices/list/ocr/docs/ocrcpm.html>.

500 W. MADISON ST., SUITE 1475, CHICAGO, IL 60661
www.ed.gov

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OCR offers, when appropriate, an Early Complaint Resolution (ECR) process to facilitate the voluntary resolution of complaints by providing an early opportunity for the parties involved to resolve the allegation(s). Some information about the ECR process is in the enclosure to this letter.

In addition, when appropriate, a complaint may be resolved before the conclusion of an investigation after the recipient asks OCR to resolve the complaint. In such cases, a resolution agreement signed by the recipient and submitted to OCR must be aligned with the complaint allegation(s) or the information obtained during the investigation and it must be consistent with applicable regulations. Information about this is in the enclosure to this letter.

Please read the enclosed document entitled "OCR Complaint Processing Procedures," which includes information about:

- OCR's complaint processing procedures including the availability of ECR;
- Regulatory prohibitions against retaliation and intimidation of persons who file complaints with OCR or participate in an OCR investigation; and
- Application of the Freedom of Information Act and the Privacy Act to OCR investigations.

OCR intends to conduct a prompt investigation of this complaint. The regulation implementing Title VI of the Civil Rights Act of 1964, at 34 C.F.R. § 100.6(b) and (c), requires that a recipient of Federal financial assistance make available to OCR information that may be pertinent to a compliance determination. Pursuant to 34 C.F.R. § 100.6(c) and 34 C.F.R. § 99.31 (a)(3)(iii), of the regulation implementing the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, OCR may review personally identifiable records without regard to considerations of privacy or confidentiality.

Accordingly, OCR is requesting that you provide the following information to us within fifteen (15) calendar days from the date of this letter. Whenever possible, please provide the requested information in electronic format. If responsive data are available through the Internet, please provide the link to the data.

1. A written narrative responding to the complaint allegation.
2. A copy of the District's policies and procedures that address student-to-student harassment on the basis of race, color or national origin in the District's high schools, and the identity of the District employee(s) responsible for responding to alleged incidents of student-to-student race, color or national origin harassment at each of the District's high schools. Please indicate how and when students and their parents are provided or made aware of these policies and procedures and include a copy of any

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student or parent handbook or other written material provided to students and parents that contain these policies and procedures.

3. A copy of all complaints and/or reports received or generated by District employees in relation to incidents of alleged harassment involving Somali students at Apollo and Tech during the 2008-09 and 2009-10 school years. In cases where no written incident reports were created by the District, provide a narrative describing each complaint and/or report that was made or received orally and explain why no written record of the complaint and/or report was created. Please ensure that the information submitted for each complaint and/or report makes clear the identity of the person who made the complaint or report, what was alleged to have occurred, when it was alleged to have occurred, who was alleged to have been subjected to harassment and who was alleged to have been the harasser(s).
4. Provide a description of the District's response to each verbal or written complaint and/or report identified in the District's response to item #3. In each case where an investigation was undertaken by the District, provide a copy of any investigative report or summary that was prepared and the name(s) and title(s) of the person(s) who conducted the investigation. Include a copy of any witness statements taken during the course of the investigation. If no written investigative report or summary was prepared, provide a narrative describing the investigation and the results of the investigation. In each case where the District did not conduct an investigation, provide a narrative explaining why the District did not investigate the complaint and/or report.
5. A list of all students, by name, race and grade, at Apollo and Tech who were disciplined during the 2008-09 and 2009-10 school years for harassment or other inappropriate conduct with respect to Somali students. For each instance, provide the date the incident occurred for which discipline was imposed, a description of the disciplinary action taken (warning, detention, suspension, etc.), and a copy of any disciplinary letters or notices that were issued to the student or the student's parents.
6. A list of all students, by name, race and grade, at Apollo and Tech who were accused by students, parents, or staff during the 2008-09 and 2009-10 school years of harassment or other inappropriate conduct with respect to Somali students, but who were not disciplined by the District. For each instance, provide the date the accusation of harassment was made, identify who reported the alleged harassment, include a description of what was alleged to have occurred and provide an explanation of why no disciplinary action was taken.
7. A list of all students, by name, race and grade, at Apollo and Tech who were disciplined during the 2008-09 and 2009-10 school years for harassment on the basis of race, color or national origin for incidents not included on the list prepared by the

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District in response to item #5. For each instance, provide the date the incident occurred for which discipline was imposed, a description of the disciplinary action taken (warning, detention, suspension, etc.), and a copy of any disciplinary letters or notices that were issued to the student or the student's parents.

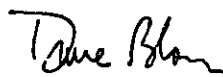
8. The student enrollment, broken down by grade and race, at Apollo and Tech during the 2008-09 and 2009-10 school years. To the extent known, please include the enrollment of Somali students, broken down by grade, at Apollo and Tech during each school year.
9. Any other information that the District feels is relevant to OCR's investigation of the allegation raised by the complaint.

Thank you for your cooperation in this matter. In addition to the information requested above, OCR may need to request additional information and interview pertinent personnel. When OCR determines that an on-site visit is necessary, we will work with the District to schedule a mutually convenient time for the visit.

Please notify OCR of the name, address, and telephone number of the person who will serve as the District's contact person during the processing of this complaint. We would like to speak with this person as soon as possible to discuss the processing of this complaint.

OCR is committed to prompt and effective service. If you have any questions, please do not hesitate to contact Jason Frazer, Attorney, at (312) 730-1653 or by email at jason.frazer@ed.gov.

Sincerely,


Dave Blom
Team Leader

Enclosure

OCR COMPLAINT PROCESSING PROCEDURES

LAWS ENFORCED BY OCR

OCR enforces the following laws:

- Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color or national origin;
- Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex;
- Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability;
- Age Discrimination Act of 1975, which prohibits discrimination on the basis of age;
- Title II of the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disability;
- Boy Scouts of America Equal Access Act, part of the No Child Left Behind Act of 2001, which prohibits denial of access to or other discrimination against the Boy Scouts or other Title 36 U.S.C. youth groups in public elementary schools, public secondary schools, local education agencies, and state education agencies that have a designated open forum or limited public forum.

EVALUATION OF THE COMPLAINT

OCR evaluates each complaint that it receives in order to determine whether it can investigate the complaint. OCR makes this determination with respect to each allegation in the complaint. For example, OCR must determine whether OCR has legal authority to investigate the complaint; that is, whether the complaint alleges a violation of one or more of the laws OCR enforces. OCR must also determine whether the complaint is filed on time. Generally, a complaint must be filed with OCR within 180 calendar days of the last act that the complainant believes was discriminatory.¹ If the complaint is not filed on time, the complainant should provide the reason for the delay and request a waiver of this filing requirement. OCR will decide whether to grant the waiver. In addition, OCR will determine whether the complaint contains enough information about the alleged discrimination to proceed to investigation. If OCR needs more information in order to clarify the complaint, it will contact the complainant; the complainant has 20 calendar days within which to respond to OCR's request for information.

OCR will dismiss a complaint if OCR determines that:

- OCR does not have legal authority to investigate the complaint;
- The complaint fails to state a violation of one of the laws OCR enforces;

¹ Complaints that allege discrimination based on age are timely if filed with OCR within 180 calendar days of the date the complainant first knew about the alleged discrimination.

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- The complaint was not filed timely and that a waiver will not be granted;
- The complaint is unclear or incomplete and the complainant does not provide the information that OCR requests within 20 calendar days of OCR's request;
- The allegations raised by the complaint have been resolved;
- The complaint has been investigated by another Federal, state, or local civil rights agency or through a recipient's internal grievance procedures, including due process proceedings, and the resolution meets OCR regulatory standards or, if still pending, OCR anticipates that there will be a comparable resolution process under comparable legal standards;
- The same allegations have been filed by the complainant against the same recipient in state or Federal court;
- The allegations are foreclosed by previous decisions of the Federal courts, the U.S. Secretary of Education, the U.S. Department of Education's Civil Rights Reviewing Authority, or OCR policy determinations.

OPENING THE COMPLAINT FOR INVESTIGATION

If OCR determines that it will investigate the complaint, it will issue letters of notification to the complainant and the recipient. Opening a complaint for investigation in no way implies that OCR has made a determination with regard to the merits of the complaint. During the investigation, OCR is a neutral fact-finder. OCR will collect and analyze relevant evidence from the complainant, the recipient, and other sources as appropriate. OCR will ensure that investigations are legally sufficient and are dispositive of the allegations raised in the complaint.

INVESTIGATION OF THE COMPLAINT

OCR may use a variety of fact-finding techniques in its investigation of a complaint. These techniques may include reviewing documentary evidence submitted by both parties, conducting interviews with the complainant, recipient's personnel, and other witnesses, and/or site visits. At the conclusion of its investigation, OCR will determine with regard to each allegation that:

- There is insufficient evidence to support a conclusion that the recipient failed to comply with the law, or
- A preponderance of the evidence supports a conclusion that the recipient failed to comply with the law.

OCR's determination will be explained in a letter of findings sent to the complainant and recipient. Letters of findings issued by OCR address individual OCR cases. Letters of findings contain fact-specific investigative findings and dispositions of individual cases. Letters of findings are not formal statements of OCR policy and they 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.

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RESOLUTION OF THE COMPLAINT AFTER A DETERMINATION OF NONCOMPLIANCE

If OCR determines that a recipient failed to comply with one of the civil rights laws that OCR enforces, OCR will contact the recipient and will attempt to secure the recipient's willingness to negotiate a voluntary resolution agreement. If the recipient agrees to resolve the complaint, the recipient will negotiate and sign a written resolution agreement that describes the specific remedial actions that the recipient will undertake to address the area(s) of noncompliance identified by OCR. The terms of the resolution agreement, if fully performed, will remedy the identified violation(s) in compliance with applicable civil rights laws. OCR will monitor the recipient's implementation of the terms of the resolution agreement to verify that the remedial actions agreed to by the recipient have been implemented consistent with the terms of the agreement and that the area(s) of noncompliance identified were resolved consistent with applicable civil rights laws.

If the recipient refuses to negotiate a voluntary resolution agreement or does not immediately indicate its willingness to negotiate, OCR will inform the recipient that it has 30 days to indicate its willingness to engage in negotiations to voluntarily resolve identified areas of noncompliance, or OCR will issue a Letter of Finding to the parties providing a factual and legal basis for a finding noncompliance.

If, after the issuance of the Letter of Finding of noncompliance, the recipient continues to refuse to negotiate a resolution agreement with OCR, OCR will issue a Letter of Impending Enforcement Action and will again attempt to obtain voluntary compliance. If the recipient remains unwilling to negotiate an agreement, OCR will either initiate administrative enforcement proceedings to suspend, terminate, or refuse to grant or continue Federal financial assistance to the recipient, or will refer the case to the Department of Justice. OCR may also move immediately to defer any new or additional Federal financial assistance to the institution.

RESOLUTION OF THE COMPLAINT PRIOR TO THE CONCLUSION OF THE INVESTIGATION

Early Complaint Resolution (ECR):

Early Complaint Resolution allows the parties (the complainant and the institution which is the subject of the complaint) an opportunity to resolve the complaint allegations quickly; generally, soon after the complaint has been opened for investigation. If both parties are willing to try this approach, and if OCR determines that Early Complaint Resolution is appropriate, OCR will facilitate settlement discussions between the parties and work with the parties to help them understand the legal standards and possible remedies. To the extent possible, staff assigned by OCR to facilitate the Early Complaint Resolution process will not be the staff assigned to the investigation of the complaint. OCR does not approve, sign or endorse any agreement reached between the parties as a result of Early Complaint Resolution, and OCR does not monitor the agreement. However, if the recipient institution does not comply with the terms of the agreement, the

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complainant may file another complaint with OCR within 180 days of the date of the original discrimination or within 60 days of the date the complainant learns of the failure to comply with the agreement, whichever date is later.

Resolution of the Complaint Prior To the Conclusion of an Investigation

A complaint may also be resolved before the conclusion of an investigation, if the recipient expresses an interest in resolving the complaint. If OCR determines that resolution of the complaint before the conclusion of an investigation is appropriate, OCR will attempt to negotiate an agreement with the recipient. OCR will notify the complainant of the recipient's request and will keep the complainant informed throughout all stages of the resolution process. The provisions of the resolution agreement that is reached must be aligned with the complaint allegations and the information obtained during the investigation, and must be consistent with applicable regulations. A resolution agreement reached before the conclusion of an investigation will be monitored by OCR.

REQUEST FOR RECONSIDERATION OR APPEAL OF OCR'S DETERMINATIONS

OCR is committed to a high quality resolution of every case. OCR affords an opportunity to the complainant to submit a request for reconsideration or an appeal of OCR determinations that are not in the complainant's favor. If the complainant disagrees with OCR's decision to dismiss or administratively close a complaint for any reason (e.g., jurisdiction, timeliness, other administrative reasons), he or she may send a written request for reconsideration to the Deputy Assistant Secretary for Enforcement within 60 days of the date of OCR's dismissal or administrative closure letter. If the complainant disagrees with an OCR decision finding insufficient evidence to support the complaint allegation(s) after investigation, he or she may send a written appeal to the Deputy Assistant Secretary for Enforcement within 60 days of the date of OCR's letter of finding(s). Requests for reconsideration and appeals should be sent to:

Deputy Assistant Secretary for Enforcement
Office for Civil Rights
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202-1100

or OCRAppeals@ed.gov

This review process provides an opportunity for complainants to bring information to OCR's attention that would change OCR's decision. For both requests for reconsideration and appeals, the complainant must explain why he or she believes the factual information was incomplete, the analysis of the facts was incorrect, and/or the appropriate legal standard was not applied, *and* how this would change OCR's determination in the case. Failure to do so may result in the denial of the request for reconsideration or appeal. The review process will not be a *de novo* review (i.e., OCR

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will not review the matter as if no previous decision had been rendered) of OCR's decision.

ADDITIONAL INFORMATION

Right to File a Separate Court Action

The complainant may have the right to file suit in Federal court, regardless of OCR's findings. OCR does not represent the complainant in case processing, so if the complainant wishes to file a court action, he or she must do so through his or her own attorney or on his or her own through the court's pro se clerk's office.

If a complainant alleges discrimination prohibited by the Age Discrimination Act of 1975, a civil action in Federal court can be filed only after the complainant has exhausted administrative remedies. Administrative remedies are exhausted when either of the following has occurred:

- 1) 180 days have elapsed since the complainant filed the complaint with OCR and OCR has made no finding; or
- 2) OCR issues a finding in favor of the recipient. If this occurs, OCR will promptly notify the complainant and will provide additional information about the right to file for injunctive relief.

Prohibition against Intimidation or Retaliation

An institution under the jurisdiction of the Department of Education may not intimidate, threaten, coerce, or retaliate against anyone who asserts a right protected by the civil rights laws that OCR enforces, or who cooperates in an investigation. Anyone who believes that he or she has been intimidated or retaliated against should file a complaint with OCR.

Investigatory Use of Personal Information

In order to investigate a complaint, OCR may need to collect and analyze personal information such as student records or employment records. No law requires anyone to give personal information to OCR and no formal sanctions will be imposed on complainants or other persons who do not cooperate in providing information during the complaint investigation or resolution process. However, if OCR is unable to obtain the information necessary to investigate a complaint, we may have to close the complaint.

The Privacy Act of 1974, 5 U.S.C. § 552a, and the Freedom of Information Act (FOIA), 5 U.S.C. § 552, govern the use of personal information that is submitted to all Federal agencies and their individual components, including OCR. The Privacy Act of 1974 protects individuals from the misuse of personal information held by the Federal government. It applies to records that are maintained by the government that are retrieved by the individual's name, social security number, or other personal identifier. It

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regulates the collection, maintenance, use and dissemination of certain personal information in the files of Federal agencies.

The information that OCR collects is analyzed by authorized personnel within the agency and will be used only for authorized civil rights compliance and enforcement activities. However, in order to investigate or resolve a complaint, OCR may need to reveal certain information to persons outside the agency to verify facts or gather additional information. Such details could include the age or physical condition of a complainant. Also, OCR may be required to reveal information requested under FOIA, which gives the public the right of access to records of Federal agencies. OCR will not release any information to any other agency or individual except in the one of the 11 instances defined in the Department's regulation at 34 C.F.R. § 5b.9(b).

OCR does not reveal the name or other identifying information about an individual unless it is necessary for completion of an investigation or for enforcement activities against an institution that violates the laws, or unless such information is required to be disclosed under the FOIA or the Privacy Act. OCR will keep the identity of complainants confidential except to the extent necessary to carry out the purposes of the civil rights laws, or unless disclosure is required under the FOIA, the Privacy Act or otherwise by law.

FOIA gives the public the right of access to records and files of Federal agencies. Individuals may obtain items from many categories of records of the Federal government, not just materials that apply to them personally. OCR must honor requests for records under FOIA, with some exceptions. Generally, OCR is not required to release documents during the case evaluation and investigation process or enforcement proceedings, if the release could affect the ability of OCR to do its job. 5 U.S.C. § 552(b)(7)(A). Also, a Federal agency may refuse a request for records if their release would result in an unwarranted invasion of privacy of an individual. 5 U.S.C. § 552(b)(6) and (7)(C). Also, a request for other records, such as medical records, may be denied where disclosure would be a clearly unwarranted invasion of privacy.