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**BEFORE THE U.S. COMMISSION ON CIVIL RIGHTS**

**May 13, 2011**

**I. Introduction**

Thank you for inviting the Department of Education's Office for Civil Rights to the Commission's hearing on inter-student violence in grades kindergarten through twelve. I am Russlynn Ali, the Department's Assistant Secretary for Civil Rights. Inter-student violence is a serious problem across the country, and one that cries out for a national commitment in response. Schools should be safe spaces for learning and growing. Secretary Duncan, my colleagues at OCR, and the entire Department of Education are committed to working with students, parents, school officials, community leaders, and state governments to ensure that no child has to choose between being safe and getting an education. That's why we are so pleased that the Commission has undertaken to address this important issue, and has afforded us the opportunity to share with you the work that the Department is doing to enforce the civil rights laws and to support schools in meeting their obligations to provide all students with a high-quality education in a safe learning environment, free from discrimination, harassment, bullying, and violence.

According to the National Center for Education Statistics' *Indicators of School Crime and Safety: 2010*, 32% of students aged 12-18 reported having been bullied at school during the 2007-2008 academic year alone; 10% reported being the target of discriminatory words at school; and 35% reported seeing hate-related graffiti at school. NCES also found that, during the same year, there were nearly 4,000 reported incidents of sexual battery and more than 800 reported rapes and attempted rapes in our nation's public high schools. Let me repeat: All that went on in a single school year. And these are just the reported cases. How much more goes unreported in our nation's schools every day? How many more children are being scarred by harassment and violence, without anyone else ever knowing, much less getting them help?

Increased media coverage has raised public awareness about bullying and harassment, their pervasiveness in our schools, and the damage that they can cause when not taken seriously or addressed adequately. In response, many local school districts have taken steps to reduce bullying and harassment. And parents, educators, and entire communities are hard at work trying to determine the most effective policies for identifying, responding to, and

preventing bullying and harassment. But if we are to succeed, we need to redouble our efforts; and we need determined leadership at the local, state, and national levels to combat these problems. Secretary Duncan, OCR, and the Department of Education are proud to be partners in that critical work.

We are proud, too, of the real effects of our work in making schools safer for all students. Just days after OCR issued policy guidance last month on sexual harassment and sexual violence (as I will describe in more detail below), Stanford, Yale, and the University of Virginia all announced that they would be changing the way that they address student sexual misconduct, in order to bring their procedures in line with what federal antidiscrimination law requires. After OCR resolved a compliance review on that same subject at Notre Dame College last fall, the College's general counsel recognized the important contribution that our regional office's work with the school had made toward improving compliance with federal civil rights laws on campus. And to bring things back to the Commission's specific focus today on inter-student violence in primary and secondary schools: After OCR, along with the Department of Justice, reached a settlement last month with the Owatonna School District in Minnesota, in a case involving harassment of Somali-American students, Owatonna's superintendent of schools praised OCR for conducting a thorough investigation and crafting a settlement that will "help to make [the school district] better."<sup>1</sup>

## **II. Overview of OCR**

Before I get into any more detail about our work to help schools address peer harassment, let me provide an overview of OCR. The Office's mission is to ensure equal access to education and to promote educational excellence through vigorous enforcement of the civil rights laws. OCR is responsible for enforcing 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; and Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability.

Title VI, Title IX and Section 504 extend to programs and entities that receive federal funds, including all state educational agencies, elementary and secondary school systems, colleges, universities, vocational schools, proprietary schools, state vocational-rehabilitation agencies, libraries, and museums that receive federal funds from the Department of Education.

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<sup>1</sup> James Walsh, *Owatonna Schools, feds settle Somali case*, MINN. STAR-TRIBUNE, Apr. 12, 2011, available at <http://www.startribune.com/local/119738589.html>.

Title II of the ADA applies to public educational entities and institutions, including public elementary and secondary schools and public colleges and universities, regardless of whether they receive federal funds.

OCR serves millions of students enrolled in America's schools, as well as the families, communities, advocates, and institutions working on their behalf to find systemic solutions to civil rights problems.

OCR has more than 600 attorneys, investigators, and other staff, in offices across the country, who investigate complaints, conduct compliance reviews, develop policy guidance, and provide technical assistance, all with the single purpose of ensuring that schools understand and meet their civil rights obligations — including their obligations with respect to student-on-student harassment in elementary and secondary schools. So let me say a bit more about what those obligations are.

### **III. Harassment**

Harassing conduct takes many forms, including name-calling; graphic or written statements; violence, including sexual violence; or other conduct that is physically threatening, harmful, or humiliating. School districts violate the federal civil rights laws that OCR enforces when harassment based on race, color, national origin, sex, or disability is sufficiently serious to create a hostile environment, and school employees encourage, tolerate, do not adequately address, or ignore the harassment.

A hostile environment in which harassment is tolerated doesn't hurt just the students who are the specific targets of the harassment. It hurts bystanders, and it poisons the school climate. Harassment can directly affect students' education—grades may go down and students may feel forced to withdraw from school programs and activities, or they may participate only reluctantly and with great difficulty. The targets of harassment may feel humiliated, distrustful, angry, and frustrated, leading to increased incidence of depression, headaches, anxiety, nightmares, and even suicides. In short, a hostile environment can undermine a school's educational mission and interfere with the opportunity that all students should have to achieve their full potential.

#### **IV. OCR's Role in Addressing Harassment**

OCR accomplishes its mission to ensure educational equality and excellence in five principal ways: We develop and issue policy guidance on the civil rights laws that we enforce; we investigate and resolve complaints filed with our enforcement offices; we collect data on civil rights in education and use it to help identify problems and develop systemic solutions to them; we proactively initiate compliance reviews to focus our efforts on problems that are particularly acute or national in scope; and we provide technical assistance to school officials, parents, students, and others to inform them of their legal rights and responsibilities. We bring all these tools to bear in helping schools and communities combat discriminatory harassment.

##### **A. Policy Guidance**

OCR has issued policy guidance to clarify the scope of our jurisdiction under the federal civil rights laws; to explain how these laws apply to peer harassment; and to explain how schools might appropriately and effectively prevent, investigate, and remedy harassment.

##### **1. Dear Colleague Letter: Harassment and Bullying (October 26, 2010)**

In October 2010, for example, we issued a “Dear Colleague” Letter to help schools understand when bullying constitutes discriminatory harassment, and to explain how failing to recognize discriminatory harassment when addressing student misconduct may lead to inadequate or inappropriate responses that fail to remedy violations of students’ civil rights.

The Letter also reaffirms that the federal civil rights laws prohibit harassment based on race or sex even when it overlaps with harassment based on religion or sexual orientation.

Title VI does not cover discrimination based solely on religion. But harassment of people of certain faiths very often has little to do with the victims’ religion or religious beliefs. Rather, it may be discrimination based on the victims’ actual or perceived shared ancestry or ethnic characteristics, in which case Title VI does apply. Thus, for example, anti-Semitic and anti-Muslim harassment may be grounded not in theology but in racial or ethnic stereotyping. When harassers are acting on assumptions about their victims’ race or national origin — whether or not those assumptions are correct — the harassment may violate Title VI.

Similarly, Title IX does not prohibit discrimination based solely on sexual orientation. But much of the harassment of students who are — or are perceived to be — lesbian, gay, bisexual, or transgender relates to the students’ failure to conform to stereotypical notions of masculinity or femininity in their mannerisms, dress, extracurricular activities, and the like. The

U.S. Supreme Court and the lower federal courts have consistently held that sex stereotyping can constitute sex discrimination under federal law.

Our Dear Colleague Letter reminds school officials that the fact that harassment is partly based on sexual orientation or religion, or is directed at LGBT students or students of a particular faith, does not relieve a school of its obligation under the federal civil rights laws to investigate and remedy harassment that is based at least in part on race, national origin, or sex.

## **2. Dear Colleague Letter: Sexual Violence (April 4, 2011)**

Last month, OCR issued another Dear Colleague Letter, this time to clarify that sexual violence is sexual harassment, so the rules that govern other forms of harassment under Title IX apply with equal force to sexual violence. The letter also explains, however, that in cases of sexual violence, it is particularly important to understand the relationship between criminal investigations and schools' independent responsibilities to investigate and address the problem without regard to whether a criminal violation is found. The letter also describes in detail the role of Title IX coordinators and the requirement for prompt and equitable grievance procedures when addressing complaints of sex discrimination, including sexual violence. Finally, the letter includes examples of remedies that schools can use to respond to incidents of sexual violence, as well as proactive measures that schools can take to prevent sexual harassment and violence, and to educate the school community about these problems.

## **3. Other Policy Guidance from the Department of Education**

Of course, OCR is not alone in these efforts, which are part of a Department-wide commitment to combating inter-student violence, about which I'll say more later. For the moment, let me just tell you about one initiative: This past December, Secretary Duncan responded to requests for assistance from state and local officials across the country by issuing a memorandum that highlights state anti-bullying laws. The memorandum identifies eleven key components of effective legislation, with extensive citations to the existing laws. We believe that state and local officials will find the information extremely useful as they work to develop or revise their own anti-bullying measures.

## **4. Role of Policy Guidance**

OCR has focused on issuing more — and more detailed — guidance for schools because we know that most school administrators are as anxious to address harassment and bullying as parents and students are. But many still hesitate to act because they don't fully understand their legal obligations or appreciate the extent of their lawful authority.

OCR agrees with the Supreme Court in *Davis v. Monroe County Board of Education* (1999) that “it would be entirely reasonable for a school to refrain from a form of disciplinary action that would expose it to constitutional or statutory claims.” Schools must always honor students’ constitutional rights — including the rights to due process and free expression. But they should not sacrifice school safety and undermine the civil rights laws by unnecessarily delaying the investigation and resolution of complaints, to the detriment of harassment victims, on the mistaken assumption that the Constitution gives a free pass to harassers.

We know that, in the past, some school officials have expressed the worry that addressing harassment may infringe students’ free-speech rights. But very little of the harassment that we see involves any protected speech. Physical harassment, violence, and threats are *never* constitutionally protected. Nor is harassment the same thing as unpopular or offensive speech. As our Dear Colleague Letters make clear, student-on-student harassment violates federal civil rights laws only if it is sufficiently serious to create a hostile environment that interferes with or limits a student’s ability to participate in or benefit from the services, activities, or opportunities that the school offers. The First Amendment’s Free Speech Clause does not give students license to say whatever they want, whenever they want, without regard to the effect of their speech on other students. Schools cannot tolerate discriminatory harassment that interferes with providing a safe, nurturing learning environment for all students.

And even when some hurtful student speech might be constitutionally protected, schools have other means, apart from disciplining wrongdoers, to ameliorate the harms. As our Dear Colleague Letters make clear, a school may, for example, provide counseling services and medical resources to the victim or provide training and other educational programs for employees, students, and parents.

No universal, one-size-fits-all approach will be right for every school or all students; and our policy guidance does not attempt to mandate one. Keeping the schools free from harassment is primarily a local responsibility. Teachers’ and school administrators’ good judgment, common sense, and knowledge of the school community are critical to crafting an effective response to harassment. And parents and community organizations play no less important a role. We therefore encourage and support community-based approaches to addressing peer harassment and changing the school climate so that it does not recur. But each school has the ultimate responsibility to create a safe learning environment and to ensure that its policies, practices, and procedures protect all students from discrimination based on race, national origin, sex, and disability. OCR will step in when necessary to ensure that schools fulfill their legal duties.

Our Dear Colleague Letters give schools the guidance that they want and need, so that they can protect their students without fear of liability. We believe that when school officials understand their legal duties and the extent of their authority, they are in the best position to prevent peer harassment and to respond effectively when it occurs. OCR's job is to support them with every tool at our disposal. In keeping with that commitment, we will continue developing guidance that will help school officials fight discrimination and make our nation's classrooms and playgrounds the safe spaces that all our children deserve.

## **B. Complaint Resolution**

A second critical element for accomplishing our mission is OCR's authority to investigate and resolve individual complaints. Anyone who suspects a violation of the civil rights laws that OCR enforces may file a complaint with our regional enforcement offices. OCR will then promptly investigate the allegations to determine whether federal law has in fact been violated, and will work to facilitate a remedy when we find a violation.

OCR plays a unique role in enforcing civil rights laws because our administrative-enforcement procedures require us to give schools notice of alleged civil rights violations and to seek voluntary corrective action before we can even consider pursuing fund termination or referring the matter to the Department of Justice for litigation. We take full advantage of the opportunity that our procedures afford to educate school officials about their obligations under the civil rights laws, and to help them develop policies to prevent and appropriately respond to harassment.

The number of complaints alleging harassment has increased markedly over the past several years. In calendar-year 2010, OCR received 1,016 complaints alleging harassment on the basis of race, national origin, sex, or disability — approximately 14% of the total number of complaints (7,043) that we received on all issues. That's a 31% increase from 2009 (when there were 774 harassment complaints), and almost twice as many as in 2005 (when there were 523).

OCR carefully reviews all complaints, including complaints of harassment, to determine whether the allegations raise potential civil rights violations; and we are resolving more complaints than in the past with findings of fact and written resolution agreements or through our Early Complaint Resolution procedures. For example, about 5% of the harassment complaints in 2005 were resolved through resolution agreements or ECR; in 2010, more than 13% were resolved in those ways.

Of course, any time that OCR has to exercise its enforcement authority, something has gone horribly wrong. Bullying and harassment are problems nationwide, but they play

themselves out locally. That's why it is up to local school officials to take action in the first instance. When students, parents, or teachers file a complaint with OCR, it's probably because they have already tried everything they could to fix the problem within the school, but they've been unsuccessful. So while determined administrative enforcement is critical, it necessarily comes too late: Students have already been tormented in class, in the corridors, or on the playground — perhaps for years. Because no child should have to suffer that sort of abuse, OCR cannot simply respond to individual complaints or wait for headline-making tragedies. We also strive to be proactive in identifying potential problems and helping develop solutions for them. I've already told you about our policy guidance, which is one key tool at our disposal for combating harassment and promoting school safety. Now let me tell you about some others.

### **C. Civil Rights Data Collection**

To capture more comprehensive data on the prevalence of harassment in schools, to allow for identification of systemic problems, and to facilitate research to combat those problems, OCR has added new data items to our Civil Rights Data Collection, which surveys school districts in a variety of areas related to civil rights in education. The CRDC now requires districts to collect and report information on allegations of harassment, policies regarding harassment, and discipline imposed for harassment. In 2009-10, the CRDC covered nearly 7,000 school districts, including all districts with more than 3,000 students. The data from that collection relating to anti-harassment policies will be available this spring; and the rest of the harassment data should be available in the fall. We anticipate that the additions to the CRDC will not only support our enforcement efforts, but also help school districts identify areas in which they have more work to do.

### **D. Compliance Reviews**

OCR also conducts compliance reviews to focus our resources and our attention on problems that are particularly acute or national in scope. Unlike individual cases, where we begin with specific allegations by a particular complainant and primarily seek to resolve valid complaints in ways that address those allegations, compliance reviews are broad-based investigations that address systemic problems and seek systemic solutions. We choose the issue areas for compliance reviews and the school districts where they will occur by consulting numerous sources of information, including information obtained from parents, community groups, educational organizations, the media, and other members of the public, as well as from statistical data that are supported by other sources of information. Over the past five years, OCR initiated a dozen sexual-harassment compliance reviews, one racial-harassment compliance review, and one disability-harassment compliance review. Five of those (three on



sex and the ones on race and disability) began in 2009. In 2010, OCR initiated a sexual-harassment and sexual-violence review of the West Contra Costa Unified School District, and a sexual-violence review of Ohio State University.

This year, OCR has added to that list by launching two more compliance reviews on harassment issues. One addresses harassment of Hispanic students, English Language Learners, girls, and students with disabilities in the Yakima School District; and the other addresses sexual harassment and sexual violence in the SUNY System. We expect to launch at least one more compliance review on harassment later this year.

#### **E. Technical Assistance**

Finally, OCR provides technical assistance to educate stakeholders about their legal rights and responsibilities. This technical assistance takes many forms, including on-site consultations, conferences, community meetings, and publication and dissemination of materials — including materials that we post on our website to reach as many interested persons and institutions as possible. We also address a variety of audiences, including students, parents, teachers, administrators, elementary and secondary schools, colleges, universities, and community groups. We find that audiences respond enthusiastically to our technical assistance: Once they learn what the law requires, school officials often undertake voluntary changes to come into compliance.

#### **V. Coordination Within the Department of Education and Among Federal Agencies**

OCR actively coordinates our work on harassment and bullying not only with the offices and programs within the Department of Education, but also with other federal agencies.

I've already told you a bit about Secretary Duncan's December 2010 memorandum on state anti-bullying measures. Now let me tell you about some of the other work that my colleagues at the Department have undertaken on this issue.

In 2010, for example, the Department launched two programs to provide states and school districts with financial assistance to reduce inter-student violence. Under the new, competitive Safe and Supportive Schools program, the Office of Safe and Drug-Free Schools awarded \$38 million to 11 states to develop measurement systems for assessing school safety, building by building, and to implement programs in the schools with the greatest need for reform. The measurement systems will use student, staff, and parent surveys to improve educational agencies' ability to assess and monitor the prevalence of inter-student violence and

bullying. Meanwhile, the Department's Office of Innovation and Improvement launched the Promise Neighborhoods Initiative, based on the experience of programs like the Harlem Children's Zone, to help communities implement 360-degree wraparound services that will support students from the cradle to college and career, improving academic performance, student health, and school safety. This year, the Office of Safe and Drug-Free Schools intends to launch an initiative to provide states with grant funds to assist schools and local educational agencies in improving readiness and emergency management, including crisis prevention, mitigation, response, and recovery. This new program would help the educational agencies to respond to a range of crises, including acts of school violence.

Beyond all that, we at the Department of Education routinely work with other federal agencies to formulate and implement policy; and OCR and the Department of Justice conduct joint investigations into possible civil rights violations. The Department of Education also participates in an interagency group that, in August 2010, sponsored the first-annual national summit to address bullying prevention. That summit brought together a diverse audience of more than 100 participants, including representatives of federal, state, and local governments; researchers; nongovernmental organizations; corporate leaders; and perhaps most importantly, those most directly affected by bullying and harassment — the nation's youth. The next summit is scheduled for September 2011. Meanwhile, in March of this year, the President, the Department, and several cooperating federal agencies invited students, parents, teachers, nonprofit leaders, advocates, and policymakers to the White House for a Conference on Bullying Prevention. Participants spoke about the effects of bullying, and about anti-bullying initiatives nationwide. Together, we launched [StopBullying.gov](http://StopBullying.gov), which provides information from various governmental agencies on how kids, teens, young adults, parents, educators, and others in the community can prevent or stop bullying. The Conference also showcased the efforts and the deep commitment of a number of nonprofit and corporate leaders on these issues. And in a related initiative, a partnership of federal agencies hosted a summit last month to develop a comprehensive federal strategy to address gender-based violence among young people.

## **VI. Conclusion**

Obviously, no single office or agency, and no single strategy, will be sufficient to stamp out discriminatory harassment in our schools. But through collective efforts, and in partnership with our sister agencies and other experts in education and civil rights, we believe that we can help provide students, parents, and local school districts with the tools that they need to adopt more effective approaches to addressing bullying, harassment, and discrimination. OCR is

committed to ensuring that every student has the opportunity to receive a high-quality education at a safe school, free from discrimination and harassment.

Again, thank you for allowing me to address the Commission, and for taking on this important issue.