



October 28, 2016

VIA U.S. MAIL & EMAIL

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OFFICERS AND DIRECTORS
SUSAN N. HERMAN
PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

Re: Complaint and Request for Investigation Pursuant to Title VI

Dear Enforcement Officer:

Title VI of the Civil Rights Act, as enforced by the Office of Civil Rights (OCR) for the Department of Education, prohibits discrimination on the basis of race, color, or national origin in any program or activity receiving federal financial assistance. OCR also has made clear that it “does not tolerate,” and will not hesitate to investigate, “race or national origin harassment commingled with aspects of religious discrimination[.]”¹ Unfortunately, the Academy of Excellence—a public charter school in Phoenix, Arizona—has violated these nondiscrimination protections.² School officials were notified that a Muslim child was being abused, physically

¹ *Title VI and Title IX Religious Discrimination in Schools and Colleges*, Letter from Kenneth L. Marcus, Deputy Assistant Sec’y for Enforcement Delegated the Authority of the Assistant Sec’y for Civil Rights, to Colleagues (Sept. 13, 2004), *available at* <http://www2.ed.gov/about/offices/list/ocr/religious-rights2004.html>. *See also* Letter from Russlynn Ali, Assistant Sec’y for Civil Rights, U.S. Dep’t of Educ., to Colleagues at 5 (Oct. 26, 2010), *available at* <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf> (“While Title VI does not cover discrimination based solely on religion, groups that face discrimination on the basis of actual or perceived shared ancestry or ethnic characteristics may not be denied protection under Title VI on the ground that they also share a common faith.”).

² Under Arizona law, charter schools are “public schools that serve as alternatives to traditional public schools.” A.R.S. § 15-181(A). The State of Arizona directly funds public charter schools, including the Academy of Excellence, based on a per-pupil determination, using public monies. We believe that the Academy of Excellence is the recipient of federal financial assistance.

assaulted, and singled out by his teacher because of his religion and nationality. Instead of addressing these serious issues, the school demanded that the child withdraw from the Academy. On behalf of our clients—a Somali Muslim family whose children attended the Academy—we respectfully request that OCR conduct a full investigation into the Academy’s practices, which discriminate against students on the basis of race, national origin, and religion.

Our clients, Asli Noor and her children (A.A. and F.A.),³ are originally from Somalia. In 2012, Ms. Noor and her five children were resettled as refugees in the United States. Ms. Noor has been a practicing Muslim her entire life and has raised her children in the same manner. The family believes Islam is a peaceful religion; Ms. Noor has raised her children to respect all persons, regardless of their religion, race, or nationality.

A.A. is twelve years old and F.A. is eight. Until January of this year, they attended the Academy of Excellence. Early in the 2015-16 school year, Academy teacher Faye Myles began singling out A.A. (then 11 years old and in the sixth grade) for unfavorable treatment because of his faith and nationality. Although the family repeatedly complained about Ms. Myles to school administrators and sought their assistance, school officials did not properly investigate Ms. Myles’s conduct, provide appropriate oversight of her classroom behavior, or hold her accountable for her discriminatory and abusive actions. On the contrary, school officials unlawfully forced Ms. Noor to withdraw both of her children from the Academy, giving her withdrawal forms and demanding that she sign them.

Ms. Myles’s harassment of A.A. was extensive. During class, students were provided with free time. While other students were permitted to talk during this time, Ms. Myles instructed A.A. alone to remain quiet. Worse yet, Ms. Myles assaulted A.A. One day, when he continued to talk to a classmate, she slammed her hands down on her desk and then walked over to him, grabbed him by his neck, and choked him tightly until his eyes began to water from the pain.

After releasing his neck, Ms. Myles let A.A. go to the bathroom to clean up. In the bathroom, his neck was in pain, and he saw that it had several white impressions where his teacher’s fingers had been while she choked him. After the incident, Ms. Myles tried to intimidate A.A. into not telling his mother about the abuse, saying, “If you tell your mom, watch what happens next.” The incident shocked A.A.; he felt humiliated by his teacher’s actions in front of his classmates. He reported the abuse to his mother as soon as he got home and became very anxious over the incident, scared to return to school because of his teacher’s actions and warning.

The next day, Ms. Noor and her daughter, one of A.A.’s older sisters, went to the school to report the assault to Director Eula Saxon Dean. A.A. was brought to the main office to explain what happened. While Ms. Noor was speaking with Ms. Dean, Ms. Myles barged into the room and began to argue loudly, denying that she had choked A.A. After Ms. Myles

³ Because this letter of complaint will be made public, we refer to the children by their initials. Counsel will disclose their full names to Department investigators.

left, Ms. Dean apologized for the teacher's behavior and said she would fully investigate the matter. Feeling reassured that there would be a proper investigation and that the school would deal appropriately with the assault, Ms. Noor did not pursue the matter further. However, a few days later Ms. Dean called to inform Ms. Noor that her investigation had uncovered no wrongdoing by Ms. Myles.

In the months that followed, Ms. Myles continued to target A.A. for unfavorable treatment, making clear that she disapproved of his faith and nationality. After showing a video clip relating to the terrorists who attacked the United States on September 11, 2001, she told A.A., "That's going to be you," suggesting that he was destined to become a terrorist. He felt humiliated and extremely upset over his teacher's comment before the entire class.

When A.A. asked to pray during recess, Ms. Myles would not let him (or another Muslim girl, in the fourth grade) pray, and told him that he was not permitted to pray at school. Ms. Myles also refused to call on A.A. when he had his hand raised and would ignore him when he attempted to answer questions. As a result of her discriminatory treatment, A.A. felt anxious and depressed about going to school.

Ms. Myles continued to give other students in class "downtime" to talk with each other, but would prohibit A.A. from talking during these times, often telling him to "shut up." Then, on or about January 22, 2016, A.A. raised his hand in class to answer various questions but, as usual, was ignored by Ms. Myles. As he raised his hand again, Ms. Myles snapped at him, in front of the entire class, "All you Muslims think you are so smart." She then started ranting about Donald Trump, telling A.A., in front of the entire class, "I can't wait until Trump is elected. He's going to deport all you Muslims. Muslims shouldn't be given visas. They'll probably take away your visa and deport you. You're going to be the next terrorist, I bet."

On the bus ride home, A.A.'s classmates took up his teacher's anti-Muslim, anti-immigrant crusade, taunting him about the fact that his visa would be revoked because he is a Muslim, calling him a "terrorist," and accusing him of planning to blow up the bus. A.A. arrived home in tears, humiliated and despondent over his teacher's denigration of his faith and suggestion that he did not belong in the country. He felt physically ill, with a stomach ache, and did not want to return to school given the personal attacks and his inability to protect himself from the public humiliations.

On the next school day, Monday, January 25, 2016, Ms. Noor visited the school to complain about the most recent incident with Ms. Myles. Speaking with Ms. Dean, she pointed out Ms. Myles's long history of singling out her son for unfavorable treatment, including the choking incident. Ms. Dean promised to conduct a full investigation.

Instead, three days later, on January 28, 2016, Academy Board Member Brenda Nelson called Ms. Noor and asked her to come to the school at 1:30 p.m. When Ms. Noor arrived at the school, Ms. Nelson claimed that A.A. was in trouble because he had tried to open the emergency window on the school bus. A.A. denied the allegation and urged Ms. Nelson to check the security cameras inside the bus, but she claimed they were broken.

As the meeting ended, Ms. Nelson demanded that Ms. Noor “get your kids out of here. I don’t want them here.” She printed out “voluntary” withdrawal forms for both A.A. and F.A. and demanded that Ms. Noor sign them. Shocked and confused by this demand, Ms. Noor begged Ms. Nelson to allow A.A. and F.A. to remain in school until she was able to find another school to which they could transfer, but Ms. Nelson refused and again demanded that Ms. Noor immediately sign both forms. Not believing she had any other choice, Ms. Noor signed the forms. As they left the school, Ms. Noor and her children were crying and despondent.⁴

In sum, A.A. and F.A. were forced to withdraw from the Academy of Excellence because of their faith and nationality and because of Ms. Noor’s complaints about the school’s discriminatory treatment.

Unfortunately, this is not the first time the school has discriminated in this way.

It has come to our attention that Ms. Myles has called at least one other student a “terrorist” after the student, also an immigrant, covered her face with a scarf to protect against cold air. She further suggested at one point that several immigrant students were plotting in the bathroom to build a bomb. Moreover, Ms. Myles repeatedly, and for no good reason, referred to her students (many of whom are immigrants from African nations) by their national origins. For example, she addressed one as a “little African girl” and told her she had nappy hair. She called another student and her friends “your sisters from the continent of Africa” and “sun-kissed sisters from the continent of Africa.” During class, she would instruct the “Africans in the back” to calm down.

Ms. Myles also physically assaulted these and other students, dragging one out of the classroom by her hand, grabbing another by the neck and pushing her into a wall, pulling another out of the cafeteria by her jacket, and pushing over one student’s desk while he was still sitting in it. When the students complained about Ms. Myles’s behavior to Ms. Dean and Ms. Nelson, the school failed to take any corrective action. And, like A.A. and F.A., some of the students targeted by Ms. Myles were subsequently forced to withdraw, or were expelled, due to alleged breaches of minor school rules, such as talking back or not adhering to the school dress code.

The Academy’s conduct is unacceptable, and it violates Title VI. Ms. Myles’s “harassment negatively affected the ability and willingness of [A.A.] to participate fully in the school’s education program and activities” in violation of Title VI.⁵ Indeed, A.A. became distraught and dreaded attending school, which greatly limited his ability to benefit from the school’s curricular and extracurricular offerings. And, of course, once he and his sister were forced to withdraw from the Academy, both were unable to participate at all in the school’s programming.

⁴ After missing two weeks of school, the children were able to enroll in another public school. But the family still suffers the anguish caused by the Academy’s discriminatory practices.

⁵ See Letter from Russlynn Ali, *supra* note 1, at 5-6.

The Academy's discriminatory practices are especially troubling in light of the renewed wave of anti-Muslim bigotry and xenophobia that has washed across the country recently. Unfortunately, this fear-mongering is infiltrating our public schools, leading school officials and students to target Muslims and immigrants like our clients. We cannot stand idly by as our public schools become hostile environments for students based on their faith and national origin.

Every student, regardless of race, color, national origin, or religion, among other protected characteristics, should feel safe and welcome in our public schools. The American Civil Liberties Union and the ACLU of Arizona have long worked to safeguard this principle, and we know that the U.S. Department of Education's Office for Civil Rights is committed to this same vision. But, absent action by this office or another agency, there appears to be nothing standing in the way of the Academy's continuation of these practices.⁶ Indeed, the school has a disturbingly high rate of withdrawals,⁷ and we are deeply concerned that a number of these withdrawals were coerced by the school for discriminatory reasons.

Accordingly, pursuant to 34 C.F.R. § 100.7 (2014) (conduct of investigations) and 34 C.F.R. § 100.8 (2014) (procedure for effecting compliance), we request that your office investigate the Academy of Excellence for failure to comply with Title VI.⁸ We ask that you take all actions required to effectuate compliance and restore Title VI's protections to all students at the Academy, as well as take all other actions necessary to make our clients whole.

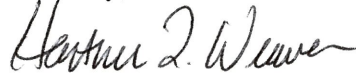
⁶ Although Ms. Noor, A.A., and other students repeatedly reported these infractions to school officials, the school took no action to stop the abuse and bigotry Ms. Myles directed toward her students. On the contrary, they covered up Ms. Myles's conduct: When local police conducted an investigation of the physical assault against A.A., Ms. Dean and Ms. Nelson denied any problem. Plus, the police investigation of the assault was cursory and inadequate, relying solely on the misrepresentations offered by Ms. Dean, Ms. Nelson, and Ms. Myles and failing to interview any students in A.A.'s class. Moreover, we have learned that Ms. Myles instructed her students about what to say and leave out regarding A.A. should they ever be asked about her treatment of him.

⁷ According to records obtained from Academy of Excellence, more than 45% of the students who attended the school from 2011 to 2015 (the most recent year data is available) "voluntarily" transferred to attend another school each year. During the 2014-15 school year, the transfer rate was 62%.

⁸ We understand that Ms. Noor previously submitted an initial complaint by phone to the Department of Education in early 2016. We submit this complaint letter to provide additional information and clarification. However, if this information cannot be considered as an addendum to our clients' original complaint, we respectfully request a waiver of the usual 180-day deadline. Any delay in filing was for good cause: In anticipation of filing this complaint, we have sought relevant public records from the Arizona State Board for Charter Schools, the Arizona Department of Education, and the Academy of Excellence, which repeatedly obstructed compliance with our request and only produced documents after multiple threats to file a lawsuit under the state public-records law. We also hired an investigator to uncover additional witnesses in the matter so we could, in this complaint, provide a fuller picture of (and offer evidence documenting) the Academy's discriminatory practices. These actions caused the delay in filing and justify a waiver of the 180-day deadline, if necessary. Moreover, a waiver is justified because, as discussed above, the Academy has, over time, engaged in a pattern of discriminatory conduct, and we believe that the unlawful conduct has continued even after our clients' forced withdrawal from the school.

In the meantime, please do not hesitate to contact us via email (hweaver@aclu.org) or phone (202.675.2330) for additional information or to discuss this complaint further.

Sincerely,

A handwritten signature in black ink that reads "Heather L. Weaver". The signature is fluid and cursive, with the first name being the most prominent.

Daniel Mach, Director
Heather L. Weaver, Senior Staff Attorney
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