



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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September 29, 2023

Sent by email only to rmarino@hewlett-woodmere.net

Ralph Marino, Jr., Ed.D.
Superintendent of Schools
Hewlett-Woodmere Public Schools
One Johnson Place
Woodmere, New York 11598

Re: Case No. 02-21-1202
Hewlett-Woodmere Public Schools

Dear Superintendent Marino:

This letter is to notify you of the determination made by the U.S. Department of Education (the Department), Office for Civil Rights (OCR), with respect to the complaint filed against the Hewlett-Woodmere Public Schools (the District). The Complainant alleged that the District discriminated against [redacted content] on the basis of [redacted content] race by failing to respond appropriately to reports [redacted content] made regarding incidents that occurred in class on [redacted content] (Allegation 1). The Complainant also alleged that the District retaliated against [redacted content] for [redacted content] advocacy regarding alleged race discrimination by suspending [redacted content] on [redacted content] (Allegation 2). For the remainder of this letter, OCR will refer to the Complainant's [redacted content] as the Student.

OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI), as amended, 42 U.S.C. § 2000d *et seq.*, and its implementing regulations at 34 C.F.R. Part 100, which prohibit discrimination on the bases of race, color, and national origin in programs and activities receiving financial assistance from the Department. The regulation implementing Title VI, at 34 C.F.R. § 100.7(e), provides that no recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by regulations enforced by OCR or because one has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing held in connection with a complaint. As a recipient of federal financial assistance from the Department, the District is subject to Title VI.

Before OCR completed its investigation of Allegations 1 and 2, the District expressed a willingness to resolve the allegations by taking the steps in the enclosed Resolution Agreement (Agreement). OCR determined that a voluntary resolution is appropriate to resolve OCR's compliance concerns about Allegations 1 and 2 under Section 302 of OCR's *Case Processing Manual (CPM)*.¹ As

¹ See *Case Processing Manual* (July 18, 2022) at <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

detailed below, these concerns pertain to the District's response to the Student's and Complainant's reports of potential harassment. The District signed the enclosed 302 Agreement to resolve these concerns about Allegations 1 and 2 of the complaint on September 29, 2023.

I. Applicable Legal Standards

The regulation implementing Title VI, at 34 C.F.R. § 100.3, provide 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 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 existed; (2) the recipient had actual or constructive notice of a hostile environment based on race; and (3) the recipient failed to respond adequately to redress the hostile environment based on race.

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. 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-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 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 must be tailored to redress fully the specific problems experienced as a result of the harassment.

The following three elements must be satisfied to establish a *prima facie* case of retaliation: (1) an individual engaged in a protected activity; (2) an individual experienced an adverse action caused by the recipient; and (3) there is some evidence of a causal connection between the adverse action and the protected activity. When a *prima facie* case of retaliation has been established, OCR then

determines whether there is a facially legitimate, non-retaliatory reason for the adverse action; and if so, whether the facially legitimate, non-retaliatory reason is a pretext for retaliation.

II. Factual Findings, Analysis, and Conclusions

In its investigation, OCR interviewed the Complainant, the Student, and District staff. OCR also reviewed documentation that the Complainant and District submitted.

During school year [redacted content], the Student was enrolled in the [redacted content] grade at the [redacted content] (the School) and was participating in hybrid instruction. The Complainant informed OCR that the Student is [redacted content]. According to the most recent data available in the New York State Education Department Student Information Repository System, during school year 2020-2021, the School enrolled 1,015 students. Of these, 647 (64%) were White, 87 (9%) were Black, 164 (16%) were Hispanic or Latino, 97 (10%) were Asian or Native Hawaiian or Pacific Islander, less than 1% were American Indian or Alaska Native, and 17 (2%) were multiracial.²

A. The District's Policy Prohibiting Bullying, Harassment, and Discrimination of Students

The District's Policy 0115 on Student Bullying, Harassment Prevention and Intervention (Policy 1) prohibits discrimination such as harassment and bullying, including on the basis of race, on school grounds, school buses, and at all school-sponsored activities, programs, and events.³ The District defines harassment consistent with the New York State Dignity for All Students Act (DASA),⁴ as the creation of a hostile environment by conduct or by verbal threats, intimidation, or abuse that has or would have the effect of unreasonably and substantially interfering with a student's educational performance, opportunities, or benefits, or mental, emotional, or physical well-being; or conduct, verbal threats, intimidation, or abuse that reasonably causes or would have the effect of unreasonably and substantially interfering with a student's educational performance, opportunities, or benefits, or mental, emotional, or physical well-being; or conduct, verbal threats, intimidation, or abuse that reasonably causes or would reasonably be expected to cause a student to fear for his or her physical safety.

Policy 1 requires all school personnel to report any incidents of harassment about which they have notice, and for designated District staff to investigate such reports. The results of each investigation are to be reported to both the target and accused individuals consistent with the DASA regulation, and both parties are afforded an opportunity to appeal the District's findings.

Policy 1 states that District staff, when aware of bullying and harassment, should determine if accommodations are needed to ensure the safety of the student and bring this to the attention of the building Principal. The building Principal, other appropriate staff, the student, and the student's parent will work together to define and implement any needed accommodations on an individual basis.

² See <https://data.nysed.gov/enrollment.php?year=2021&instid=800000049511> (last visited Sept. 29, 2023).

³ See <https://www.hewlett-woodmere.net/Page/234> (last visited Sept. 29, 2023).

⁴ N.Y. Educ. Law §§ 10-18 (2010).

The District informed OCR that it investigates reports of alleged racial harassment in accordance with its DASA policy. Pursuant to its DASA policy, a Dignity Act Coordinator shall promptly investigate the report and notify the parents of all students involved of the outcome of the investigation. Additionally, District staff are responsible for taking action if they become aware of any bullying, harassing, or discriminating behavior against a student. The DASA policy requires District staff to make an oral report to the Coordinator no later than one day after receipt of a report or witnessing an incident and to file a written report with the Coordinator no later than two days after making the oral report. The Assistant Principal for the ninth and tenth grades informed OCR that he serves as the Dignity Act Coordinator for these grades.

B. Allegation 1

With respect to Allegation 1, the Complainant alleged that the District discriminated against the Student on the basis of [redacted content] race by failing to respond appropriately to reports the Student and the Complainant made regarding incidents that occurred in [redacted content] English class on [redacted content]. In support of Allegation 1, the Complainant stated that the District never addressed the Student's complaints that [redacted content] English teachers (Teachers 1 and 2) had repeatedly used the n-word and the word "negro" in class.

OCR determined that in the [redacted content] marking period of school year [redacted content], the Student's English class (the class) began a unit on Harper Lee's novel *To Kill a Mockingbird*. Teachers 1 and 2 informed OCR that classroom instruction involved reading aloud from the text and listening to audio recordings of select passages. Teachers 1 and 2 stated to OCR that prior to the lesson on [redacted content], they facilitated a classroom discussion on the characters' use of racial slurs in the book in the context of the period in which the book was set.

On [redacted content], the Student attended class remotely. Teachers 1 and 2 stated that they advised students participating in person and remotely that the class would include reading aloud passages containing words that they did not use in their daily lives but that were common during the period in which the novel was set. Teacher 1 read a passage verbatim in which the character Scout used the n-word when talking to her father about how she was bullied in school.

The Student denied that Teachers 1 and 2 had facilitated a class discussion on the use of racial slurs in the book before reading the passage containing the n-word. The Student alleged that Teacher 1 read the n-word aloud verbatim from the text without prior warning or context about the use of the racial epithet.

The Student stated that when [redacted content] questioned Teacher 1's repeated use of the n-word, Teachers 1 and 2 referred to the discussion at the beginning of class regarding the historical context in which certain words in the book were used. Teachers 1 and 2 stated that they were simply reading the text and not "using" the word. Teachers 1 and 2 informed OCR that in previous school years, they read the n-word verbatim as it appeared in the text, without censoring.

In an email dated [redacted content], the Student's [redacted content] (Student A), who was also in the class, stated to Teachers 1 and 2 that [redacted content] and the Student felt uncomfortable about Teacher 1's use of the n-word in class during the discussion of the book. Student A explained that the n-word was "used to bring black people down for years and still to this day.

[Student A] know[s] [Teacher 1] said it because it was in the book and for literature purposes, but regardless it's still very harmful." Student A also provided links to articles about why teachers should not say the n-word. Teachers 1 and 2 stated to OCR that they did not respond to Student A's email, but planned to have a class discussion the next day regarding the issues that Student A raised in [redacted content] email. Teachers 1 and 2 stated that the complaints from the Student and Student A were the only complaints they received about their use of the n-word during the class lesson. The Student and Student A were the only [redacted content] students in the class.

On [redacted content], the Student attended school in person and participated in a class discussion about the use of racial slurs, including the history of the n-word and how racial slurs could be harmful to people. After class, a student (Student B) reported to Teachers 1 and 2 that the Student recorded the class on [redacted content] cell phone. Later that day, the Assistant Principal met with the Student regarding the recording. The Assistant Principal stated that the Student informed him that [redacted content] recorded the class because [redacted content] had concerns about the use of the n-word and wanted to record the discussion to show [redacted content] friends and parents so they could hear the class discussion and [redacted content] reactions to it. The Assistant Principal stated that he did not interpret the Student's concerns about the use of the n-word during a class discussion of the book to be a complaint of racial harassment because the Student did not state that [redacted content] felt that [redacted content] was being discriminated against or harassed based on [redacted content]. Rather, the Assistant Principal stated that the Student explained that [redacted content] had issues with the use of the n-word because Teachers 1 and 2 read it verbatim from the book.

On [redacted content], the Assistant Principal met with the Student about other videos of class discussions that were posted on [redacted content] social media account. The Assistant Principal informed OCR that the Student told him, "teachers in this school say racial slurs all the time." The Assistant Principal stated that the Student's comment had nothing to do with his reason for meeting with [redacted content], and he told [redacted content] that if [redacted content] had concerns about comments [redacted content] teachers made, then [redacted content] or the Complainant should contact the Student's teachers. The Assistant Principal stated that he did not interpret the Student's comment to be a complaint of racial harassment because [redacted content] did not state that [redacted content] wanted to make a report. The Assistant Principal further stated that he believed that the Student's comment was vague and that he thought that [redacted content] was trying to "deflect," which students do when they are facing potential disciplinary consequences for violating the District's Code of Conduct.

After meeting with the Student, the Assistant Principal contacted the Complainant to notify her of the Student's posting and recording of classroom lessons. The Assistant Principal stated that during the conversation, the Complainant complained about the use of the n-word in the book. The Assistant Principal advised the Complainant that any concerns [redacted content] had with the book should be raised with Teachers 1 and 2 and the Chairperson for the English Language Arts Department (the Chair).

On [redacted content], the Complainant, her husband, her advocate, the Student, the Principal, and the Assistant Principal met to discuss possible disciplinary action relating to the Student's recordings. During the meeting, the Complainant and the Student expressed their concerns that Teachers 1 and 2 read the n-word verbatim in class. The Principal and Assistant Principal asserted

to OCR that they did not interpret the Complainant's or the Student's stated concerns about Teachers 1 and 2's use of the n-word during class to be a complaint of racial harassment. The Principal informed OCR that he told the Complainant that if she had concerns about the book to contact the Chair and Teachers 1 and 2.

By email to Teachers 1 and 2 dated [redacted content], 2021, the Student reiterated [redacted content] concern that saying the n-word is unacceptable. The Student reported that earlier that day, during class while reading a passage from the book, Teacher 2 said "negro" multiple times. The Student also reported that Teachers 1 and 2 had not apologized for using the n-word.`

Teachers 1 and 2 stated that they did not interpret the Student's email to be a complaint of racial harassment; rather, they believed that the Student was trying to explain to them why it was inappropriate to use the n-word. Teachers 1 and 2 informed OCR that they did not respond to the Student's email, and instead forwarded the email to the Principal, the Assistant Principal, and the Chair.

On [redacted content], the Principal assigned the Student a [redacted content] out-of-school suspension (OSS) for recording class discussions in the class on [redacted content], and posting the recordings to social media, in violation of the Code of Conduct and the District's policies. The Complainant appealed the Student's suspension to the Superintendent on [redacted content]. In the appeal, the Complainant complained about (i) Teacher 1's and Teacher 2's use of racial slurs, and that the District had refused to acknowledge "ongoing harm perpetuated by the condoned use of racial slurs"; (ii) the District's failure to take any "actions to rectify the problem in the classroom and the spillover effect it has on [the District's] community culture"; (iii) the District's dismissing the seriousness of the Student's allegations; and (iv) Teachers 1's and 2's decision to use "racially charged" words and the District's "woefully inadequate response" had traumatized the Student.

On [redacted content], the Complainant contacted the Principal by email, reiterating her concern about the use of racial slurs and requesting that the District provide the policy for how students should report "racially charged issues." The next day, the Principal responded and advised the Complainant to write a letter to Teacher 2 and the Chair stating her concern regarding curricular content specific to the book. The Principal also told the Complainant that she could file a DASA complaint with the Assistant Principal. The District informed OCR that the Complainant did not file a DASA complaint or write a letter to Teacher 2 and the Chair.

On [redacted content], the Complainant met with the Chair and the Interim Deputy Superintendent and discussed the use of offensive words in the book, the posting of the lesson on social media, and the need to make clear to whom students can express their concerns. At the end of the meeting, the Deputy Superintendent agreed to bring to the attention of the Superintendent the following matters: (i) professional development for administrators, faculty, and staff on the issue of equity/belonging for all in August 2021; (ii) work on planning professional development that addresses cultural sensitivity in the classroom and the District; and (iii) an independent body/committee to address concerns of students. By email dated [redacted content], 2021, the Complainant thanked the Chair and the Deputy Superintendent for meeting with her and asked that the District implement (i) professional development on cultural sensitivity regarding what constitutes offensive and highly charged terms when discussing constructions of race, racism, racial inequality, and colonization in texts; (ii) create a safe school environment that does not

condone the use of racial slurs and racially charged language and to disseminate such rules; and (iii) create an independent bias committee where students can report incidents without fear of retaliation and informing students that such committee exists. On [redacted content], 2021, the Deputy Superintendent spoke to the Complainant about her email. The Deputy Superintendent told her that the District had scheduled professional development with an equity component for August 2021, and he had discussed the independent committee initiative with the Superintendent.

The District informed OCR that during school years 2019-2020 and 2020-2021, the District did not receive any complaints of racial harassment under Policy 1 or the DASA policy. On June 1, 2020, the District received an “open letter” from a group of alumni, students, parents, faculty, and community members calling for the District to take action to address the racial climate in the District. In addition to specifying ten demands to promote a more inclusive environment, the letter highlighted anecdotes collected on social media from students and other community members. Three anecdotes describing racial discrimination were attributed to individuals whose names and other personally identifiable information were not disclosed. The context of the anecdotes indicated that the alleged incidents took place prior to school year 2019-2020.

The District informed OCR that in response to the “open letter,” the District formed an equity task force consisting of staff, student, and alumni members, which met on October 1, 2020, January 2, March 4, and June 8, 2021. The District also informed OCR that in response, it took several actions, including (i) expanding the District’s curriculum to incorporate diversity; (ii) increasing diversity in hires; (iii) starting a collegial circle on cultural sensitivity; (iv) offering principals a professional development training on dismantling racial bias in classrooms for children of color; and (v) providing professional development to staff in the areas of diversity and cultural sensitivity.

Based on the foregoing, OCR identified a compliance concern under Title VI because four District employees, including Teachers 1 and 2, the Principal, and the Assistant Principal, received repeated and clear notice that two [redacted content] students did not feel comfortable in their required high school English class based on their teachers’ utterance of the n-word in class, and yet the District did not treat these multiple communications from the Student, Student A, or the Complainant as raising a complaint of racial discrimination requiring a response under Title VI. OCR determined that the District had actual notice of a potential racially hostile environment in the class from the Student’s and the Complainant’s complaints about Teacher 1’s and Teacher 2’s use of the n-word and the word “negro” during class, based on Student A’s email to Teachers 1 and 2 on [redacted content], 2021; the Student’s discussions with the Assistant Principal on [redacted content], 2021; the Complainant’s and the Student’s meeting with the Assistant Principal and the Principal on [redacted content], 2021; the Student’s email to Teachers 1 and 2 on [redacted content], 2021; the Complainant’s appeal of the Student’s suspension submitted to the Superintendent on [redacted content], 2021; and the Complainant’s email to the Principal on [redacted content], 2021. OCR determined that in response to such notice, the District referred the Complainant to Teachers 1 and 2 and the Chair to discuss a curricular concern,⁵ and notified the Complainant that she could file a DASA complaint with the Assistant Principal. While New York

⁵ OCR does not make educational determinations regarding the appropriateness of a particular curriculum selected by a school district for a particular grade level or classroom, including the selection of literature to be read by a class. Congress has specifically directed that the Department, including OCR, not “exercise any direction, supervision, or control over the curriculum, program of instruction . . . of any educational institution, school, or school system.” 20 U.S.C. section 1232a.

state law may require the filing of a DASA complaint to initiate a district investigation of potential racial discrimination in its education program, Title VI does not require the filing of a written complaint of racial discrimination to trigger a recipient's duty to respond in a reasonable, timely, and effective manner to notice of a potential racially hostile environment in a federally funded program or activity. Despite this duty, OCR did not find that the District conducted a complete investigation into whether the repeated use of a racial epithet in the classroom subjected students to a racially hostile environment. For example, OCR noted that the District did not interview any students other than the Student and Student B. OCR also noted that the District did not offer any supports or remedies to the Student, Student A, or other students who may have been subjected to racial harassment, such as offering to allow the Student or Student A switch to another [redacted content] English class to fulfill their graduation requirement.

On September 29, 2023, the District signed the attached resolution agreement to voluntarily resolve Allegation 1 under Section 302 of OCR's *CPM* to address OCR's concerns that the District did not conduct a complete investigation of possible racially harassing conduct, did not determine whether the Student, Student A, and other students were subjected to a racially hostile environment, and did not offer supportive services to the Student, Student A, or other students.

C. Allegation 2

With respect to Allegation 2, the Complainant alleged that the District retaliated against the Student for [redacted content] advocacy regarding alleged race discrimination by suspending [redacted content] on [redacted content], 2021. The Complainant stated that following the Student's complaints to District officials regarding Teacher 1's and Teacher 2's use of the n-word during class, including in an email to Teachers 1 and 2 on [redacted content], 2021, the District issued [redacted content] in the afternoon of [redacted content], 2021.

As stated above, on [redacted content], 2021, Student B reported to Teachers 1 and 2 that the Student, who had attended class in person, recorded the class. Specifically, Student B told Teachers 1 and 2 that he could see the Student's cell phone recording as it was propped up against the screen of [redacted content] laptop. Teachers 1 and 2 reported to the Assistant Principal their concern that the Student recorded portions of the class in which there was a class discussion on the use of the n-word in the book and that the class discussion might be taken out of context. Teachers 1 and 2 stated to OCR that they had privacy concerns about the recording because students would not feel comfortable participating in class discussions if they knew that they were being recorded.

Later that day, the Assistant Principal met with the Student regarding the recording. The Assistant Principal informed OCR that the Student admitted to recording the class sessions on [redacted content]. The Assistant Principal stated that the Student informed him that [redacted content] recorded the classes because [redacted content] had concerns about the use of the n-word and wanted to show the recordings to [redacted content] friends and parents so they could hear the class discussions and [redacted content] reactions. The Assistant Principal informed the Student that District policy does not permit recording or photographing classroom activities whether in person or during remote instruction.

Board Policy 5695 “Student Use of Personal Devices” (Policy 2) states that the display or use by students of personal electronic devices is prohibited unless specifically permitted by a teacher or administrator. Board Policy 4526 “Network and Technology Acceptable Use Policy” (Policy 3) states that “students are not permitted to record classroom instruction without the express permission of the teacher.” Additionally, the District informed OCR that at the beginning of school year 2020-2021, it provided all students with a document entitled “Digital Etiquette and Expectations for Online Learning” (Policy 4), which states that students, parents, guardians, and family members are prohibited from “recording, taking photos or taking a screenshot(s) of a videoconference session or any content presented in any form during the remote learning session.” The Code of Conduct and the School’s Student/Parent Handbook also state that students may be disciplined for violating Policy 3. The Handbook states that “classes are not considered ‘public meetings.’ Therefore, students are not free to make audio/video tapes or other recording devices (including portable cell phones and other electronic devices) of classes or of students at their own discretion. Violations may result in disciplinary consequences.” Policies 3 and 4, and the Handbook state that students who violate these policies may receive disciplinary sanctions including suspension from school.

The Assistant Principal stated that he instructed the Student that [redacted content] should not post the recordings to social media because it would be a violation of the privacy rights of Teachers 1 and 2 and [redacted content] classmates. The Assistant Principal told the Student that if [redacted content] had posted the recordings to social media, [redacted content] should remove them. The Assistant Principal stated that the Student did not acknowledge that [redacted content] had posted the recordings to social media. The Assistant Principal informed the Student that there could be disciplinary consequences for recording class discussions and posting them to social media, and that he needed to consult with the Principal, who was not in the building that day, but he was hopeful the consequence for this incident could be a verbal warning.

The Student denied that [redacted content] admitted to recording the class on [redacted content], 2021. [Redacted content] stated that [redacted content] told the Assistant Principal [redacted content] had only recorded the class on [redacted content], 2021, and the Assistant Principal already knew that [redacted content] had posted the recording to [redacted content] TikTok social media account.⁶ The Student denied that the Assistant Principal told [redacted content] to remove the recording from TikTok.

Later on [redacted content], 2021, Teacher 2 and the Chair contacted the Complainant by telephone and told the Complainant that District policy prohibited recording classroom discussions; that the Assistant Principal had met with the Student and given [redacted content] a warning about recording in class; and that the Student’s conduct could lead to suspension, but because Teacher 2 felt that she did not want to stifle the Student’s desire to discuss important ideas, the Assistant Principal had decided that a verbal warning would be sufficient. The Chair and Teacher 2 also informed the Complainant that they had learned that the Student posted the classroom recording

⁶ The TikTok video portrayed the Student at home, repeatedly asking Teachers 1 and 2 why they were using the n-word when they were reading from the book. Teachers 1 and 2 stated in the video that they do not censor the words that they read from books. Teachers 1 and 2 also stated that no student had ever complained about their use of the n-word when reading from the book.

from [redacted content], 2021, on TikTok, and asked the Complainant to have the Student remove the recording.

On [redacted content], 2021, a teacher (Teacher 3) reported to the Assistant Principal that there were three or four posts of the class discussions about *To Kill A Mockingbird* on the Student's TikTok account. The Assistant Principal stated that one of the videos showed portions of the computer screen from the class on Google Meets, and that the video was edited to obscure Teacher 1's face, but her name and the names of several students in the class remained visible. After consulting with the Principal and showing him the videos, the Assistant Principal met with the Student, showed [redacted content] the videos posted on [redacted content] TikTok account (one had been removed), and told the Student that [redacted content] conduct was in violation of the Code of Conduct and that [redacted content] could face disciplinary consequences.

The Student denied posting additional recordings to TikTok subsequent to [redacted content] meeting with the Assistant Principal on [redacted content]. The Student also denied posting the video that displayed the names of students and Teachers 1 and 2. The Student stated that another classmate sent [redacted content] that video.

After meeting with the Student, the Assistant Principal contacted the Complainant to notify her that the school would send a letter regarding the Student's conduct and that [redacted content] might be suspended. By letter dated [redacted content], 2021, the Principal notified the Complainant that he was considering suspending the Student for up to five days because the Student violated the Code of Conduct, Policy 2, and the Handbook by using [redacted content] cell phone to record class discussions and posting them on social media; and posting portions of the recordings to social media after the Assistant Principal directed [redacted content] not to. The Principal directed the Complainant to contact him to arrange an appointment to discuss the possible suspension.

As discussed above, on [redacted content], 2021, the Complainant, her husband, her advocate, the Student, the Principal, and the Assistant Principal met to discuss the Student's possible suspension. During the meeting, the Principal and Assistant Principal discussed the Student's recording and posting of classroom discussions and how [redacted content] conduct was a violation of District policies. The Student stated that the videos were posted before the Assistant Principal spoke with [redacted content] on [redacted content]; that the Assistant Principal knew this when he initially spoke with [redacted content]; and [redacted content] would have removed the videos from TikTok if the Assistant Principal had asked [redacted content] to do so. Additionally, the Complainant and Student expressed their concerns that Teachers 1 and 2 read the n-word verbatim in class.

On [redacted content], 2021, the Principal issued the Student a [redacted content] OSS for violating the Code of Conduct and Policies 2 and 3. The Principal informed OCR that he determined a [redacted content] OSS was appropriate because the Student did not abide by District policy. The District informed OCR that there were no other students who were accused of violating Policies 2 or 3 or any similar policies during school years 2019-2020 and 2020-2021.

OCR determined that the Complainant, the Student, Student A, the Complainant's husband, and advocate engaged in protected activity when on [redacted content], 2021, they complained to the District about Teacher 1's and Teacher 2's use of the n-word while reading aloud from *To Kill a*

Mockingbird during class; and that the Student experienced an adverse action on [redacted content], 2021, when the District imposed the two-day OSS. OCR has concerns that the District failed to appropriately identify and respond to the Student's, Student A's, the Complainant's, and the Complainant's husband's and/or advocate's protected activity, including their concerns about reading aloud racial epithets from the book during class without sufficient contextualization; and about the timing and apparent causal connection between the repeated protected activity and the District's disciplining the Student. OCR further noted that on [redacted content], 2021, the District initially informed the Student and the Complainant that the Student would receive a verbal warning as a consequence for recording class discussions and posting them to social media, but following the Complainant's and Student's intervening protected activity on [redacted content], 2021, the District disciplined the Student by imposing a [redacted content] OSS for [redacted content] alleged misconduct. On September 29, 2023, the District signed the attached resolution agreement to voluntarily resolve Allegation 2 under Section 302 of OCR's *CPM* to address OCR's concerns.

D. Obligations Under the Resolution Agreement

Under the Agreement, the District will offer counseling to the Student and Student A in connection with the reported racial harassment, and assess whether the Student and/or Student A requires other remedial services; expunge from the Student's record all entries and notations related to the [redacted content] OSS issued to the Student on [redacted content], 2021, and provide written confirmation to the Complainant that all references to the suspension have been removed from the Student's record. In addition, the District will train all District administrators and all staff at the School who are directly involved in processing, investigating, and/or resolving complaints of racial discrimination, including harassment, regarding the District's duties under Title VI and the District's policies and procedures for resolving complaints of discrimination, including harassment, on the bases of race, color, and/or national origin. At a minimum, the training will cover the responsibilities of District/School employees to recognize, report, and respond to such complaints of discrimination, including harassment, whether written or oral. The District will also provide training to students at the School regarding the District's obligations under Title VI and how to report instances of discrimination, including harassment, on the bases of race, color, and/or national origin; and notify all students in the District and their parents in writing of the District's obligations under Title VI and how to report instances of discrimination, including harassment, on the bases of race, color, and/or national origin. Further, the District will conduct school climate surveys to assess the climate at the School with respect to race, color, and/or national origin; and report to OCR all alleged or actual instances of discrimination, including harassment, based on race, color, and/or national origin at the School for school year 2023-2024.

OCR will monitor the District's implementation of the Agreement. Upon the District's compliance with the terms of the Agreement, Title VI, and its implementing regulations at 34 C.F.R Part 100, which were at issue in this case, OCR will close the case.

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 the right to file a private suit 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 that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint against the District with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions, please contact Gary Kiang, Senior Attorney, at (646) 428-3761 or gary.kiang@ed.gov; or Andy Artz, Compliance Team Leader, at (646) 428-3901 or alexander.artz@ed.gov.

Sincerely,

/s/

Rachel Pomerantz