Mr. Jamie Benson  
Superintendent  
School District of River Falls  
852 East Division Street  
River Falls, Wisconsin 54022

OCR Case No. 05-18-1304

Dear Mr. Benson:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the School District of River Falls (District). The complaint alleges that from XXXXXXX, the District discriminated against a XXXX student (Student A) on the basis of race (African American) when students repeatedly made race-based comments to Student A that created a hostile environment, and the District was aware of the hostile environment but failed to respond appropriately.

OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d–2000d-7, and its implementing regulation, 34 C.F.R. Part 100. Title VI prohibits discrimination on the basis of race, color, or national origin by recipients of Federal financial assistance from the Department of Education. As a recipient of Federal financial assistance from the Department of Education, the District is subject to the requirements of Title VI and its implementing regulation.

OCR investigated the complaint by reviewing documents provided by the Complainant and the District. In addition, OCR interviewed the Complainant and three District staff members. Applying a preponderance of the evidence standard, OCR concludes that the District violated Title VI with respect to the allegations in this complaint. The basis for OCR’s determination follows.

Applicable Policies and Procedures

The District maintains policies and procedures that prohibit race discrimination and racial harassment. The policies and procedures are available on the District’s website.¹

¹ https://drive.google.com/drive/folders/1hLr Ri3Tn7YuMraPOK8dKZqXv81WkW

The Department of Education’s mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.
Policy 411, Equal Educational Opportunities, states that the right of students to be admitted and to participate fully in District programs and activities shall not be abridged or impaired because of race.

Policy 411-Rule 1, Student Discrimination Complaint Procedures, sets out the procedures to be used to resolve complaints against the District for discrimination, including racial harassment. The procedures include a four-level complaint process:

- **Level One (Informal Complaint Procedure)** – Any person who has a complaint may discuss the concern with the building principal or Equal Opportunity Coordinator, who must investigate the complaint and reply to the complainant in writing within three school days. If the reply is not acceptable to the complainant, he/she may initiate the formal complaint procedure.

- **Level Two (Formal Complaint Procedure)** – The complaining party may report the complaint in writing to the Superintendent within five school days of receipt of the written reply at Level One. The complaint must include the nature of the complaint, facts upon which it is based, and the relief requested. The Superintendent, upon receiving a written complaint, must immediately undertake an investigation. The Superintendent reviews with the building principal, or other appropriate persons, the facts comprising the alleged discrimination. Within 10 days after receiving the complaint, the Superintendent is required to determine the action to be taken, if any, and report in writing the findings and the resolution of the complaint to the complainant. The procedures do not direct the Superintendent to report the findings to the respondent.

- **Level Three** – If the complainant is dissatisfied with the decision of the Superintendent, he/she may appeal the decision in writing to the Board.

- **Level Four** – The Board hears the appeal. The Board must make its decision in writing within 15 school days after the hearing. Copies of the written decision are to be mailed or delivered to the complainant and Superintendent.

- **Level Five** – If the complaint is not satisfactorily resolved at Level Four, further appeal may be made within 30 days to the Department of Public Instruction, Equal Educational Opportunity Office.

The District’s harassment rule and complaint procedures follow a similar format. Policy 411.1, Harassment, states that all students must be allowed to learn in an environment free from harassment, including harassment based on race. The policy provides definitions and examples of harassment. All employees are required to report any suspected acts of harassment of students. Policy 411.1 encourages staff to make informal efforts to resolve acts of harassment. However, staff are nevertheless required to report any harassment of which they are aware.

Policy 411.1, Rule, Harassment Complaint Procedures, states that anyone can report harassment to the school principal verbally or in writing. The policy includes a five-step
process for investigating complaints of harassment, including appealing the complaint to the State Superintendent of Public Instruction and to OCR.

Facts

Student A began attending XXXXXXX School (School) in the fall of XXXXXXX. She was XXXXX years old. The Complainant describes her as a friendly XXXXXXXXXXXXXXXX with an outgoing personality. According to the Complainant, over the course of the fall semester Student A became anxious and fearful of attending XXXXX due to persistent racial harassment by her peers that targeted her physical appearance as an African American. The Complainant said Student A was taunted based on her African-American features, including her hair, lips, eyes, nose, and skin color. The Complainant repeatedly brought incidents of harassment to the School’s attention, and asserts that the School failed to respond appropriately or effectively.

The School offers XXXXXXX. There were XXXX African-American students in Student A’s class, XXXX. OCR interviewed the classroom’s teacher (Teacher A), who is in XXXXXXX. When asked to describe her process for discipline in the classroom, Teacher A emphasized that a large amount of XXXXXXXXXXXXXXXX. Teacher A told OCR that she has not observed or investigated allegations of racial harassment aside from Student A’s case.

XXXXXXX Incidents

XXXXXXX The Complainant reported this incident to Teacher A before leaving the School. The Complainant told Teacher A about the students’ race-based comments and said that Student A was XXXXXXX but that staff present in the lunchroom had not intervened. Teacher A told OCR that the Complainant appeared “visibly shaken” after lunch, and that Student A was XXXXXXX.

In an e-mail later that afternoon, Teacher A wrote the Complainant to “apologize again for what happened at lunch.” She reported that Student A had XXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXX The Complainant replied with an e-mail thanking Teacher A for her message and her actions, and acknowledged, XXXXXXXX However, she also wrote, “It was truly a difficult thing to witness, in the way that a couple of the students persisted and in the way that [Student A] XXXXXXXXXXXXXXXX

A week later, XXXXXXX the Complainant reported that other students were “laughing at [Student A], or trying to XXXXX. Teacher A responded that day, writing that her classroom aide “did see this happen. Some friends around [Student A] were trying to XXXXXXXXXXXXXXXX Teacher A wrote that her classroom aide told her that students were not laughing at Student A, and that staff would keep an eye out for further incidents.
Teacher A told OCR that she notified the Principal of the XXXXXXXXXX incident, and the Principal confirmed this to OCR.

**XXXXXXX Incidents**

InXXXXXXX Student A wasXXXX before school and reported to the Complainant that XXXX making comments about her hair and skin color. On XXXX, according to the Complainant, Student A XXX before school [and] XXXXX After school that day, Student A told the Complainant thatXXXXand repeatedly taunted her by stating: ‘It’s not XXXXday, [Student A]’; XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX.

The Complainant reported these matters to Teacher A and the Principal by e-mail that evening. The Complainant said Student A was being picked on and bullied for her African-American XXXXXXXX. She wrote that Student XXXXXXXXXXXXXXXX in the e-mail the Complainant then reported the comments listed above and noted that one of the students engaging in the harassment was someone who Student A “thinks is her good friend.” This student would later be identified as Student B, a Caucasian female student. The Complainant’s e-mail described the students’ behavior as “racial targeting” and closed, “We need to know how this is happening to XXXXXX.

The Principal replied the following morning, XXXXXXXXXX telling the Complainant that she was “sad to read your email,” and requesting a meeting in person. She wrote: “Is it o.k. to perhaps do it during conference time next week or would you like to meet at a separate time, before that?” The Complainant replied that she would like to meet sooner and offered to come to school on XXXXXXXX. In her e-mail, the Complainant wrote that, earlier that morning, Student A “XXXXXX not wanting to go to school,” and had disclosed that other students told another African-American student in the class that he could not XXXX because he is black and they are white.2 The Complainant asked the Principal to let her know of any other incidents prior to the XXXXX meeting.

Later in the day on XXX Teacher A e-mailed the Complainant to tell her that Student A XXXX that day, and had disclosed to her that Student B had XXXXXXXX XXXXXXXXXXXXXXXXXX Teacher A wrote that she spoke with Student B, who admitted making comments about Student A XXXXX. Teacher A asked both Students A and B to XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX.

The Complainant asserts that Teacher A’s intervention was not appropriate. According to the Complainant, XXXXXXXXXXXXXXX where Student B’s comments had been “persistent and racially motivated.” The Complainant contends that Student A should not have been required to resolve the situation directly with Student B, and that the District should have intervened and put an end to the harassment.

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2 The Principal informed OCR that she did not investigate to determine whether that student had been subjected to racial harassment. She stated that the parents of the student have not complained to the District of discrimination or harassment.
**Meetings and Incidents**

The Complainant and her husband attended the XXXXXXX meeting with the Principal, School Counselor, and Teacher A. The Complainant described the meeting to OCR: “We expressed our concern that the incidents had gotten out of control, [and] that without effective interventions it would likely continue.” They requested that the District involve Student B’s parents, which the School staff agreed to do, and they asked staff what other steps they planned to take. The Complainant said to OCR, XXXXX offered no solutions with the exception of speaking with [Student B] again and working with the school counselor. When we stated that it was larger than [Student B], we received no response.” School staff members told OCR that, at the XXXX meeting, they discussed topics such as XXXXXXXX in addition to the Complainant’s concerns about race harassment. The District asserted to OCR that “the purpose of the meeting was to discuss the allegations raised and develop a plan to address any concerns moving forward.” However, the School staff did not prepare a plan as a result of the XXXXX meeting.

The Complainant asserted that, in the subsequent days, Student B and others “continued to make remarks about [Student A’s] XXXXXXX XXXXXXXXXX the Complainant wrote to the Counselor and Teacher A with an update. She wrote that Student A “is definitely XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX The Complainant asked the Counselor if it would be possible to check in with Student A “a couple times in the next few weeks?” The Counselor replied that she would do so.

The Complainant wrote later that afternoon by e-mail to inform Teacher A, the Counselor, and the Principal that Student A XXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXX.

Student A’s parent-teacher conference took place the following day, on XXXXXXX. The Complainant and her husband met with Teacher A and the Counselor. The Complainant asked that Students A and B be separated, and Teacher A agreed and said XXXXX XXXXXXXX XXXXXXXXXX Teacher A and the Principal told OCR that it was difficult in practice to keep the two students separate because XXXXXXXXXX XXXXXXXXXX at the parent teacher conference, Teacher A invited Student A’s parents to come to school and XXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXX XXX XXXXXXXXXXXXXXXXXXXXXXXXXX.

The Counselor began to speak separately on a regular basis with Students A and B. The District said that in the sessions with Student B, the Counselor would work on XXXXXXX and in sessions with Student A, the Counselor would work on XXXXXXXXXXXXXXX. The Complainant asserted that rather than focus its attention on Student A’s XXXXX, the District should have “provide[d] an effective response to the persistent racial remarks.”

The District characterized the steps School staff outlined during the XXXXXXX meeting to the parents as an “intervention plan” for Student A. However, the Principal, Counselor, and Teacher A conceded to OCR that the plan was not reduced to writing or given to the parents.
OCR asked the Principal and Teacher A whether the District informed Student B and her parent that Student B could face discipline if her behavior continued. They did not do so. When asked whether the District considered XXXXXXXXXXXXXXXXXX XXXXXXXXX, the Principal and Teacher A said they had not. The Principal said “that’s XXXXXXXXXX because of the disruption it would cause for the moved student, and stated that she was opposed to such a course of action. She said that if the Complainant had wanted XXXXX Student A XXXXXXX she would have considered the request. However, the Complainant did not want XXXXXXXXXXXXXXXXXX in order to avoid being harassed.3

On XXXXXXXX the Complainant reported to the Principal that Student B had again commented about Student A’s XXXXXXXXXXXX. The Complainant also noted that Student A told her she had been instructed to XXXXXXXXXXXXXXXXXX she asked. The Principal replied on XXXXXXXXXX that the same understanding would continue after XXXXXXXXXXXXX: the two students would stay apart, teachers would observe their interactions, and counseling would continue to be offered weekly to both. The Principal then encouraged the Complainant to ask Student A to report positive things that had happened at school, and not just negative ones.

Later in the day on XXXXXXXX, the Principal e-mailed school teachers and staff, writing, “I wanted to make you aware of a child to child issue that has been made an issue by a parent and therefore we are taking precautions…” (emphasis added). The Principal asked staff to keep Students A and B apart as much as possible due to Student B’s XXXX and/or racial comments over a period of time.” She wrote that “Transitions, lunchroom, recess, etc. all need to be watched a little more diligently please.”

On XXXXX Teacher A informed the Complainant and her husband by e-mail that a Caucasian male XXXXX student (Student C) said, of Student A, “Don’t XXXXX” Student A had reported this to Teacher A. The e-mail said that Teacher A investigated and learned that students at Student A’s XXXX table were saying XXXX (non-racial) things to Student C, and he thought Student A was one of them. He therefore decided to say something XXXX back and made the comment. Student A’s father thanked the teacher for the information, XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX he was glad Student A had reported the matter to the teacher.

The Principal replied on XXXXXXXXXX, to the husband and Teacher A and wrote, “I believe we are being overly cautious to inform you of every incident/interaction. Perhaps we are hyper focusing on this?” She noted that Student A had said that her parents instructed her to report any incidents to them. “I believe that we want to be sure you get an adult perspective of what happened prior to [Student A] coming home. Normally, this might not be something that is brought to a parent’s attention if it is dealt with at school and it doesn’t occur multiple times. Is [Student A] able to share positive things that are said and/or happening at school too? I sure hope so, because whenever I see her,XXXXXXXX.” The Complainant and her husband did not respond to the Principal’s message.
OCR asked the Principal to elaborate on the sentiments she expressed in her XXXXX e-mail. She said that she had observed Student A become more XXXXover the course of the school year. The Principal attributed this to Student A’s parents’ insistence that she report issues she experienced with other children, which included minor encounters like a complaint about a XXXX song, and annoyance over XXXXX. The Complainant agrees that Student A became more XXXXover the course of the school year. However, she attributes this change in Student A to unaddressed racial harassment.

**XXXXX Incidents and District Investigation**

On XXXXX, Student A reported to a paraprofessional that a female Caucasian XXXX student (Student D) told Student A that her skin lookedXXXX. The Complainant later reported to Teacher A that what the student had said was, “Your skin looks XXXXXXXXXXXX and I XXXXX.” Teacher A said she spoke with Student D XXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXX. According to Teacher A, Student D apologized to Student A. Teacher A told OCR that she notified Student D’s parents about the incident as well. The Complainant told OCR that when she asked Student A about the incident, Student A XXXXXXXXXX.

Student A’s parents responded that day by e-mail, and raised two additional incidents regarding Student A at school: “XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX. The parents’ XXXXX e-mail closed: “We are feeling helpless as these situations continue.”

The Principal replied in an e-mail stating that in her 35 years in education, she had not “encountered something exactly like this.” She suggested the parents get outside counseling or therapy for Student A, apologized for what had taken place, and said she was open to other suggestions. She did not, however, forward the matter to the Superintendent or initiate the District’s formal investigatory procedure. Teacher A told OCR that the incident involving XXXX had been a misunderstanding by a Caucasian XXXX student (Student E) who had been XXXXXXXXXXXXXXXX. The District did not provide a response to the Complainant regarding the “disgusting” comment.

On XXXXX, the Counselor offered to have Students A and D participate in a XXXX as a remedy for Student D’s comments. The Complainant declined. The Counselor told OCR she had Student D make an apology card for Student A, but Student D was not able to deliver it because Student A stopped attending the school. The Complainant removed Student A XXX XXXX from the School on XXXX, and notified the District that she was considering enrolling them elsewhere.

On XXXXX, the Complainant dropped off a packet of materials to the District’s office. These included copies of the e-mail exchanges referenced above, and a cover letter announcing the family’s intention to withdraw XXXXX from the District. The District characterized this packet of materials as “a formal harassment complaint.” However, the letter
is not styled as such, and appears intended for the district in which the Complainant hoped to enroll her children. The letter begins, “Thank you for considering our application to open enroll in XXXXX.” The letter, which is one page long, goes on to narrate the events leading to the family’s decision to leave the District, and addresses the school district they hoped to enter.

The District stated in its narrative response to the complaint to OCR: “The District proceeded under its District Policy to address this concern.” The Superintendent conducted an investigation. He spoke with the Principal, Teacher A, and the Counselor. He did not interview Student A or other students. Teacher A provided unclear information to OCR as to whether the Superintendent observed her class or merely visited the class in order to speak with her. The Superintendent met with Student A’s parents on XXXXX, to discuss their concerns. On XXXX the Superintendent issued a written determination, stating, “please consider this letter as my formal reply to your claims of discrimination and/or bullying.”

The Superintendent’s decision narrated many of the incidents described above and summarized the School’s response to each matter. The Superintendent was unable to substantiate some comments, such as comments about Student A being “XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX.

However, the Superintendent also wrote, “I find confirmation of your specific examples of other XXX students making comments that referenced [Student A’s] African-American race XXX He wrote, “it is understandable that this behavior was also perceived to be discriminatory.” He went on, “Yet, in all cases the XXXXX staff still took measures to address these concerns within the entire class of students—or with individuals—if identified.” The letter emphasized XXXXXXXXXXXXXX The letter concluded: “I find no evidence of XXXXX staff ignoring or permitting hurtful comments to persist.” The Superintendent wrote, “the school district cannot monitor the activities of students at all times and eliminate all incidents of bullying.”

The Superintendent’s letter did not inform Student A’s parents of their right to appeal the decision. The District stated in its response to the OCR complaint that the parents “did not appeal this matter.”

The Complainant argues that, throughout Student A’s semester, “While the school was often kind in their responses, the incidents did not stop.” She also contends that “The complaints provided to River Falls were not responded to in a timely or evenhanded manner. River Falls never took effective action to remediate the racial harassment.”

Applicable Legal Standards

The Title VI regulation, at 34 C.F.R. § 100.3(a), states that no individual may be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination on the basis of race under any program that receives Federal financial assistance.

Racial harassment is a form of discrimination prohibited by Title VI that can result in the denial or limitation of a student’s ability to participate in or receive education benefits,
services, or opportunities. To show racial harassment under a hostile environment approach, the evidence must establish that: (1) a hostile environment on the basis of race existed, \textit{i.e.}, harassing conduct (physical, verbal, graphic, or written) occurred that was sufficiently severe, persistent or pervasive to interfere with or limit the ability of an individual to participate in or benefit from the services, activities or privileges provided by a recipient; (2) the recipient had notice of the hostile environment; and (3) the recipient failed to respond adequately to address the hostile environment.

In analyzing claims of harassment based on race, OCR considers the totality of the circumstances to determine whether a hostile environment has been created. These circumstances include the context, nature, scope, frequency, duration, and location of the harassment incidents, as well as the identity, number, and relationships of the persons involved. For younger students, an incident that might not be considered extremely harmful to an older student might nevertheless be found severe and harmful. Therefore, the severe, pervasive or persistent standard must be understood in light of the age and impressionability of the students involved and with the special nature and purposes of the educational setting in mind.

Additionally, OCR must take into account the relevant particularized characteristics and circumstances of the target of the harassment, especially the individual’s race and age, when evaluating the severity of racial incidents at an educational institution. If OCR determines that the harassment was sufficiently severe that it would have adversely affected the enjoyment of the recipient's educational program by a reasonable person, of the same age and race as the victim, under similar circumstances, OCR will find that a hostile environment existed. The reasonable person standard as applied to a child must incorporate the age, intelligence, and experience of a person under like circumstances to take into account the developmental differences in maturity and perception due to age.

Finally, racial acts need not be targeted at the complainant in order to create a racially hostile environment. The acts may be directed at anyone. The harassment need not be based on the ground of the student’s or complainant’s race, so long as it is racially motivated. Additionally, the harassment need not result in tangible injury or detriment to the victims of the harassment.

Once a recipient has notice of a racially hostile environment, the recipient has a legal duty to take reasonable steps to eliminate it. Thus, if OCR finds that the recipient took responsive action, OCR will evaluate the appropriateness of the responsive action by examining reasonableness, timeliness, and effectiveness. The appropriate response to a racially hostile environment must be tailored to redress fully the specific problems experienced at the institution as a result of the harassment. In addition, the responsive action must be reasonably calculated to prevent recurrence and ensure that participants are not restricted in their participation or benefits as a result of a racially hostile environment created by students or non-employees.

The regulation implementing Title VI does not contain an explicit requirement that districts adopt and implement complaint procedures to address allegations of discrimination based on race. However, grievance procedures that encompass race discrimination can be part of a prompt and effective response to harassment or other forms of discrimination prohibited by
Title VI. In addition, a recipient that has adopted discrimination complaint procedures must apply the procedures in a manner that does not constitute Title VI discrimination.

Analysis

OCR finds that a hostile environment on the basis of race existed for Student A at her School. Other students subjected her to frequent racial taunting over the course of her XXXXXXX student in the District, which enrolls few African-American students. The harassment began in XXXX and continued until XXXXXX, when Student A’s parents decided to remove her from the School.

On a regular basis—and sometimes as often as multiple times per week—students mocked and taunted Student A with respect to her appearance as an African American. They targeted her XXX. On other occasions, students shunned Student A and another African-American student because of their skin color XXX—a comment, that, in light of the context, encompassed race. Students also told Student A that they did not XXX because of her skin color and called her “disgusting” when she XXXXXX.

In reaching this determination, OCR carefully considered the XXXXXXX XXXXXXXXX in as well as the nature of the comments in question. The evidence indicates that XXXX students XXXXXXXXX XXXXXXXXX XXXXXXXXX XXXXXXXXX XXXXXXXXX XXXXXXXXX XXXXXXXXX XXXXXXXXX XXXXXXXXX XXXXXXXXX XXXXXXXXX XXXXXXXXX While the comments in question were not severe racial epithets, they were persistent and pervasive over the course of the semester. OCR finds that the racial harassment was sufficiently persistent and pervasive from an objective standpoint to create a hostile environment.

The evidence also establishes that the racial harassment was sufficiently persistent and pervasive, from a subjective standpoint, to affect Student A’s ability to access the District’s educational programs and activities. Both the Complainant and the Principal agree that, over the course of the semester, Student A became more XXXXXXXXX XXXXXXXXX. There is ample credible evidence from the Complainant that Student A did not wish to attend school because she feared further harassment from her peers. On an occasion XXXXXXXXXX XXXXXXXXX. The Superintendent’s response to this encounter was to cast doubt on whether XXXXXXXXX XXXXXXXXX. This encounter is significant not as an additional act of harassment, but as an indication of the effects of in-school harassment on Student A, and the District’s narrow response to those effects. The appropriate inquiry was whether Student A was so fearful of harassment that she exhibited XXXXXXXXX XXXXXXXXX.

The evidence is undisputed that the District had notice of the harassment. The Complainant made Teacher A aware of the first instance on XXXXX and each subsequent instance by e-mail. Teacher A also received reports directly from Student A. The Principal told OCR that she learned that the Complainant had raised concerns about studentsXXXX on Student A on or shortly after the XXXXX encounter in the cafeteria. OCR reviewed multiple e-mail exchanges in which the School, including the Principal, was put on notice that Student A was being racially harassed and that her parents wanted the harassment to stop. Although the
Principal received notice of the racial harassment, she did not notify administrators or advise the Complainant that she could file a formal complaint with the Superintendent.

The evidence establishes that the District failed to take effective action to immediately stop the harassment, prevent its recurrence, and remedy its effects on Student A. The District did not disregard reports of harassment, and took some steps after each report. It responded promptly, and often in a concerned and caring fashion. However, viewed cumulatively, the District’s interventions were not effective. They did not put an end to the harassment or prevent it from recurring. The District did not launch a formal investigation of the harassment until XXXXXX, when the Complainant announced her intention to withdraw Student A from school. The District’s policies require the District to investigate written or verbal complaints of harassment, and there is no requirement that a complaint take any particular form. The Complainant’s e-mails should have prompted the District to open an investigation weeks sooner. When the Superintendent did conduct a formal investigation, he did not interview any students, instead speaking to the teacher, Principal and Counselor, and then refuting, point by point, the Complainant’s allegations. He offered no resources for the District to remedy the effects of the harassment on Student A.

OCR concludes that that steps the District took in response to the Complainant’s reports of harassment were not effective. Student A continued to face harassment that continued over the course of the semester until the Complainant felt obliged to remove her from school. For example, District staff offered to bring Student A together with her harassers, either on the XXXXXXXXXXXXX. These interventions, while perhaps pedagogically indicated XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX were not appropriate responses to reports of repeated racial harassment that had undermined a XXX student’s sense of self over a period of months. Nor was it appropriate to expect Student A to XXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXX.

Similarly, the District’s attempt to offer counseling to Student A was intended not to help her overcome the effects of the harassment, but to teach her self-esteem and self-advocacy. The District at no time imposed discipline on the students who harassed Student A, nor considered moving her most persistent harasser, Student B, XXXXXXXXXXXXX. While the District is correct that such a move would have been disruptive to Student B, it suggested as an alternative that Student A be moved, notwithstanding the potential disruption in her educational opportunities. In any event, whether or not it was necessary to discipline Student B or move one of the students to another class, Title VI obliges the District to take effective steps to put an end to racial harassment of which it has notice and the steps it took were not effective in that regard.

Conclusion

For the reasons set out above, OCR finds the District has violated Title VI by failing to respond effectively to a hostile environment on the basis of race of which it had actual notice. The enclosed agreement, when fully implemented, will remedy the violation of Title VI.

The 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 file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the complainant may file another complaint alleging such treatment.

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

OCR wishes to thank the District, and particularly Mr. Richard Verstegen, counsel to the District, for its cooperation and courtesy during OCR’s investigation. If you have questions about this letter, you may contact Ms. Catherine Martin, Equal Opportunity Specialist, at 312-730-1592 or catherine.martin@ed.gov.

Sincerely,

Dawn R. Matthias
Team Leader

cc: Richard Verstegen, esq.

Enclosure