



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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REGION VIII

ARIZONA  
COLORADO  
NEW MEXICO  
UTAH  
WYOMING

July 29, 2022

Dr. Jose Delfin, Superintendent  
Los Alamos Public Schools  
2075 Trinity Drive  
Los Alamos, NM 87544

By email only to: [j.delfin@laschools.net](mailto:j.delfin@laschools.net)

Re: OCR Complaint No. 08-22-1195  
Los Alamos Public Schools

Dear Superintendent Delfin:

This letter is to notify you of the disposition of the above-referenced complaint that the United States Department of Education (Department), Office for Civil Rights (OCR), received on February 1, 2022. The Complainant is the parent of a student who plays on the XXX team for Taos Public Schools (Taos). The Complainant alleges that Los Alamos Public Schools (LAPS or the District) failed to appropriately investigate and address complaints alleging that a student player on the LAPS XXX team (LAPS Student 1) made monkey noises and gestures directed toward a student player on the opposing Taos XXX team (Taos Student 1) at a game between LAPS and Taos on XXX.

### **OCR Jurisdiction**

OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulation at 34 Code of Federal Regulations (C.F.R.) Part 100, which prohibit discrimination on the basis of race, color, or national origin in programs and activities that receive Federal financial assistance. As a recipient of Federal financial assistance from the Department, the District is subject to these laws and regulations and OCR has jurisdiction over the allegation above that the District violated Title VI.

### **Summary of OCR's Investigation**

OCR's investigation included: a) a review of documents pertinent to the complaint allegations, including the District's non-discrimination and grievance policies, training materials on non-discrimination, investigative file regarding the XXX game at issue, select student and personnel files, and other complaints of race discrimination filed with the District; b) a review of a video of the XXX game; and c) interviews of fourteen witnesses, including the Complainant, the

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

Complainant’s son (Taos Student 2), Taos Student 1, another student on the Taos XXX team (Taos Student 3), the parent of Taos Student 3 (who first complained to LAPS about the alleged monkey noises, as discussed below), one of the captains of the Taos team, LAPS Student 1, three LAPS administrators (X—phrase redacted—X), three coaches (one from LAPS and two from Taos), and one referee from the game on October 7, 2021.<sup>1</sup>

Prior to the conclusion of OCR’s investigation and interviews of all identified witnesses, LAPS expressed a willingness to voluntarily resolve the complaint allegation because it realized that its non-discrimination policies and procedures are unclear and that some of its coaches are not trained on how to respond to claims of discrimination. OCR determined that it is appropriate to resolve the allegation through a voluntary resolution agreement under Section 302 of OCR’s Case Processing Manual because OCR has identified several concerns to date regarding LAPS’s response to the alleged racial discrimination by the student player on its XXX team. As a result, OCR suspended its investigation and resolved it through the enclosed resolution agreement.

### **Legal Standards**

The regulation implementing Title VI, at 34 C.F.R. § 100.3, provides 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. Harassing acts need not be targeted at the complainant in order to create a hostile environment. The acts may be directed at anyone, and the harassment need not be based on the complainant’s or victim’s race so long as it is motivated by race (e.g., it might be based on the race of a friend or associate of the victim). 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.

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<sup>1</sup> OCR reached out to an additional two Taos XXX players, two referees, and a Taos XXX coach to schedule interviews but did not hear back.

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.

### **Facts**

Below OCR summarizes the facts it found to date based on its investigation of the complaint, including how the District’s nondiscrimination policy applied to the alleged racial discrimination at the XXX game, how the District responded to two parents’ complaints about this alleged discrimination, and whether that response failed to adequately investigate these complaints.

#### **A. The District’s Non-Discrimination and Bullying Policies**

District Policy 5130R entitled “Nondiscrimination” states that LAPS’s “programs, activities, and practices will be free from discrimination based on actual or perceived race, color, ancestry, national origin, ethnic group identification, age, religion, marital or parental status, physical or mental disability, medical condition, sex, sexual orientation, gender, gender identity, or gender expression, genetic information; or on the basis of a person’s association with a person or group with one or more of these actual or perceived characteristics.” The LAPS XXX told OCR that this policy governs the investigation of complaints of race discrimination made by members of the public. However, the policy describes the “Process for Initiating and Responding to [a] Grievance” as limited to grievances/complaints based on disability discrimination. *See* Policy 5130R (stating that “[a]ny person, including . . . members of the public who feels that they have been discriminated against by the Los Alamos Public Schools on the basis of *disabilities*, may use the grievance procedure”) (emphasis added). By contrast, the complaint form for a “5130R Discrimination Formal Grievance” covers complaints of racial discrimination and states in pertinent part, “Any person, including . . . members of the public who feels that they have been discriminated against on the basis of actual or perceived race, color, ancestry, national origin, . . . have the right to file a formal grievance.”

The District also has an anti-bullying policy known as Policy 5152.5. This policy prohibits, among other things, “unlawful harassment,” which is defined as “verbal or physical conduct based on a student’s actual or perceived race, color, national origin, . . . which has the purpose or effect of substantially interfering with a student’s educational performance or creating an intimidating, hostile or offensive environment.” Under this policy, “students who are victims of

such physical or verbal misconduct” or “their parents” may report such claims and “[a]ll reports of misconduct in violation of this policy shall be promptly investigated.”

### **B. The XXX Game**

On XXX, the Taos XXX team played the LAPS XXX team in XXX. Several witnesses described the game as “intense” and “rough,” as players on both teams were pushing, kicking, and throwing elbows more than is typical in a XXX game.

As noted above, LAPS Student 1 is the XXX player who allegedly made monkey noises and gestures at the game. This student is a [X-phrase redacted-X]. During the game at issue, the Taos coaches assigned Taos Student 1, who is XXX, to guard LAPS Student 1 one-to-one, which several witnesses described as not common in XXX. According to a Taos coach interviewed by OCR, LAPS Student 1 was not happy about having a personal defender. LAPS Student 1 told OCR that he was annoyed because he kept getting hit by the player guarding him.

Two Taos coaches and one Taos player told OCR that during the first half of the game, LAPS Student 1 was yelling profane and rude comments in Spanish toward one of the Taos coaches.<sup>2</sup> LAPS Student 1 denied saying anything profane to the coach and told OCR that he told the coach only that “if you want him (Taos Student 1) to keep hitting me, he can handle my hits.”

At half time, an assistant referee escorted the Complainant and her family out of the game because of their alleged behavior in the stands. The Complainant’s child (Taos Student 2) was a member of the Taos team. At the end of half time, the head referee spoke to one of the captains of the Taos team, who complained to the referee about LAPS Student 1’s rough play. During an interview, the referee told OCR that she warned LAPS Student 1 during half time about fouling players after a play. LAPS Student 1 denied being warned by the referee during his interview with OCR.

During the second half of the game, the LAPS XXX called the Taos XXX to talk about the behavior of the Complainant’s boyfriend at the game. The LAPS XXX also talked to a Taos coach, who informed her about the disrespectful comments made by LAPS Student 1 to a Taos coach. The LAPS XXX told OCR that she did not see much of the game because she arrived just before half time and was busy during the second half dealing with these issues.

After the game, a Taos coach spoke to the referees, LAPS administrators, and LAPS coaches about the profane comments made by LAPS Student 1 to another Taos coach. The Taos coach to whom the comments were made said that he did not want any action taken against LAPS Student 1 for his comments because he is just a teenager.

### **C. Allegations of Monkey Noises and Gestures**

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<sup>2</sup> The comments, while inappropriate, were not based on a factor prohibited by the laws that OCR enforces.

Two Taos players, one who was sitting on the Taos bench (Taos Student 2) and one who was on the field during the game (Taos Student 3), told OCR that they heard LAPS Student 1 make monkey noises directed at the XXX player who was guarding him (Taos Student 1).<sup>3</sup> Taos Student 2, who is the Complainant’s son and the only XXX player on the Taos team, said he heard the monkey noises once during the game and does not recall when. Taos Student 3, who is XXX, told OCR that he heard the monkey noises twice, including once after the LAPS team scored a goal. Taos Student 3 also told OCR that he saw LAPS Student 1 once make a monkey gesture by scratching under his arms. Taos Student 3’s parent, who first complained to LAPS about the alleged monkey noises, told OCR that a XXX coach on the Taos bench also heard the monkey noises. That coach did not respond to OCR’s requests for an interview.

None of the other witnesses who were present at the game with whom OCR spoke heard monkey noises or saw monkey gestures. These witnesses included: Taos Student 1, two Taos coaches, one of the Taos team captains, two Taos parents in the stands, one referee, one LAPS coach, and the LAPS XXX. However, one of the Taos coaches told OCR that he observed Taos Student 1 react to something that was said to him by LAPS Student 1 during the game.

Taos Student 1 told OCR that he did not hear LAPS Student 1 make monkey noises or see any monkey gestures. Taos Student 1 told OCR that LAPS Student 1 was trash talking throughout the game, including telling him he was playing like a “pig,” saying he was not good at XXX, and saying something in Spanish about his mother. Taos Student 1 also told OCR that he heard talk about monkey noises on the bus home from the game but did not realize that the noises had been directed at him. One of the Taos coaches told OCR that he too heard about monkey noises after the game from a Taos XXX coach, but that he “brushed it off” in order to “de-escalate the situation.” In his interview with OCR, LAPS Student 1 denied making any monkey noises or gestures at the game.

Taos Student 2 told OCR that he found the monkey noises to be “very offensive.” He also stated that they did not impact him in school or on the team because “it was not directed at [him]” and he is “kind of used to racist stuff.” In contrast to this testimony, both Taos coaches told OCR that they noticed a change in Taos Student 2 after the game where LAPS Student 1 allegedly made the monkey noises. One coach told OCR that Taos Student 2 became more reserved and withdrawn after the game. Both said that Taos Student 2’s performance on the field declined some after the game.

#### **D. Complaints about Alleged Monkey Noises and the District’s Response**

The day after the game on XXX, the Complainant left a voicemail for the LAPS XXX about an alleged video that was taken of her and her daughter when they were escorted out of the game. She did not receive a reply to her voicemail. The same day, the LAPS XXX received an incident report from the head referee at the game, which discussed the dispute between the Complainant’s boyfriend and the referees and the Taos captain’s request that the referee “watch” LAPS Student 1.

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<sup>3</sup> The parents of Taos Students 2 and 3 described Taos Student 1 as [X-phrase redacted-X].

On October 12, 2021, the Complainant sent an email to the LAPS XXX and the LAPS XXX<sup>4</sup> complaining about the alleged video, which was taken without her consent. In her email, prior voicemail, and subsequent phone conversation with the LAPS XXX, the Complainant did not mention the conduct of LAPS Student 1.

The same day, the parent of Taos Student 3 sent the LAPS XXX an email complaining that LAPS Student 1, who she identified by jersey number, was “taunting one of our players for the majority of the game” and “continually made monkey noises to a player who could appear to be XXX.” Her email further stated, “I realize players ‘trash talk’ each other but racial slurs are a different story.” Lastly, she expressed concern about the behavior continuing at the upcoming game between LAPS and Taos. The LAPS XXX never responded to the parent by either email or phone, nor did any other District staff or administrator.

On October 12, 2021, the LAPS XXX forwarded the parent’s email to a coach of the XXX team and stated, “if he [LAPS Student 1] is doing anything of this nature, it is unacceptable. Those trying to get to him should be getting their consequences as well but we need to handle our own.” The coach responded by email, stating that he will “talk with him [LAPS Student 1] about these accusations” and will “take this accusation seriously and address it” but that he “seriously doubts [it], as [the team has] played XXX games against a number of ethnic players and there has been never been a single incident.” During interviews with OCR, the coach and LAPS XXX independently told OCR that they also had a verbal conversation about the allegation during which the coach said that he never heard monkey noises at the game and received no complaints about such noises.

LAPS Student 1 told OCR that the coach never discussed the monkey noise allegation with him, but a few weeks later told him that school administrators wanted to talk to him about it. This discussion did not occur until the end of October, as discussed below. The coach also told OCR that he never discussed the allegation with the team or the other coaches who attended that game. The LAPS XXX told OCR that she cannot recall if she ever talked to the other coaches about the allegation.

On October 16, 2021, the Complainant emailed the LAPS XXX and LAPS XXX and stated that she just learned from her son (Taos Student 2) that he “continually heard monkey noises from a player during the game & it was not addressed by the refs or ANY STAFF members until the end of the XXX game.” She wrote, “I’m disappointed in the lack of response & I will continue to email & call until I am assured these issues are addressed & resolved.”

On October 17, 2021, the LAPS XXX responded to the Complainant’s email of October 16, 2021. With respect to the alleged monkey noises, the LAPS XXX wrote:

Once the game starts, the refs control what goes on during the game. My staff did not report hearing them. I did address this with my coach after you brought

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<sup>4</sup> [X-sentence redacted-X].

it to my attention and he understands that we do not tolerate any behavior of this sort in our program.

The following day, on October 18, 2021, the Complainant wrote another email to the LAPS XXX and the LAPS XXX explaining that her son, who is the only XXX player on the Taos team, felt terrible when he heard the monkey noises, and she called them an “act of racism.” Her email also identified the player who was making the monkey noises by jersey number. Her email further stated that “[i]f the kids on the Taos bench heard it, the coach from Los Alamos & [sic] the refs had to hear it as well.” Her email requested to speak to the LAPS XXX that day by phone, noting, “I feel like as a parent with a kid who has faced racism and discrimination on the grounds of the Los Alamos school district, I should feel secure this issue will be handled.” Her email concluded with: “I would like to be assured this will not happen again, not only to my son but to any other kid who plays against Los Alamos.”

On October 19, 2021, the Taos and LAPS XXX teams played another XXX game at XXX. Although she does not typically attend away games, the LAPS XXX attended this one and stayed close to the LAPS bench to make sure there were no issues. The LAPS XXX told OCR that she and the Taos XXX talked about the monkey noise allegation at that game, and that the Taos XXX said that he did not think there was much to it. The Taos coaches, players, and parents that OCR interviewed said that they were not aware of LAPS Student 1 making any discriminatory comments or gestures at the second game. LAPS Student 1 and the LAPS XXX told OCR that a few Taos fans made racial comments towards LAPS players at that game.<sup>5</sup>

On October 20, 2021, the Complainant forwarded the October 12<sup>th</sup> email about the monkey noises from the parent of Taos Student 3 to the LAPS XXX and complained that this parent had not received a response from LAPS to her report of racism. The Complainant additionally stated that she was disappointed that nobody had been held accountable for their actions – not LAPS Student 1 (who was permitted to play on October 19<sup>th</sup>), the referees, or anyone else.

On October 21, 2021, the LAPS XXX called the head referee to discuss the monkey noise allegation. The referee sent a statement to the LAPS XXX after the call, explaining why the Taos captain had asked her to “watch” LAPS Student 1 (*i.e.*, because he was allegedly fouling Taos players after the play). The referee additionally stated that she closely watched LAPS Student 1 during the second half for late fouls and did not hear “anything like monkey noises” coming from him, nor did any Taos player report to her that LAPS Student 1 was making monkey noises. She further stated that if she had she heard monkey noises, LAPS Student 1 would have gotten a XXX and been ejected from the game.

In the last week of October 2021, the LAPS XXX and the XXX of Los Alamos High School interviewed LAPS Student 1 for the first time about the monkey noise allegation. Both witnesses

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<sup>5</sup> The LAPS XXX told OCR that she attempted to get a statement from one of the parents who allegedly heard racial comments directed at LAPS players, but that the parent did not respond. Before OCR had a chance to investigate further whether LAPS responded appropriately to the complaints about the alleged racial comments made by Taos fans, LAPS requested to voluntarily resolve the complaint.

told OCR that LAPS Student 1 denied making the monkey noises and complained about how he was treated during the game. The XXX told OCR that he likely took notes of that conversation, but no notes were provided to OCR despite several requests.

The XXX told OCR that he also had brief conversations about the monkey noise allegation in the hallway with two XXX students on the LAPS XXX team who were at the game in question. The XXX told OCR that neither student reported hearing monkey noises, but OCR was unable to confirm this because no notes were taken of these conversations. According to LAPS Student 1, one of the XXX students interviewed by the XXX was on the LAPS bench during the game and the other student was playing on the other side of the field from LAPS Student 1.

On October 25, 2021, two weeks after the LAPS XXX first received notice about the monkey noise allegation from the parent of Taos Student 3 and nine days after the Complainant had raised the allegation with the LAPS XXX and the LAPS XXX, the latter spoke with the Complainant by phone to discuss the monkey noise allegation. The XXX told the Complainant that the District had found no evidence that the monkey noises happened. During the call with the XXX, the Complainant confirmed that no additional incidents of racism occurred at the second game between LAPS and Taos on October 19, 2021.

The XXX and Complainant spoke again on November 4, 2021. The XXX stated that she took the Complainant's concern very seriously, and that the District would "follow [its] normal investigation protocols and take appropriate action if necessary." The Complainant responded that the complaint had not been taken seriously because the District never responded to the initial email from the parent of Taos Student 3.

The Complainant emailed the LAPS XXX again on November 23, 2021, complaining that there has been a "lack of response & communications" about her concerns. She additionally stated that she would have expected the District to follow up with the parties affected by the racism, which had not happened. The LAPS XXX was surprised because she thought there had been sufficient investigation of the complaint. She therefore decided to write a letter summarizing the steps the District had taken and its findings. She did not do any additional investigation.

On December 6, 2021, the LAPS XXX and XXX met to go over the timeline for their investigation. They took notes on a white board, a photo of which was provided to OCR. No other notes regarding the District's investigation have been provided to OCR.<sup>6</sup>

On December 10, 2021, the LAPS XXX sent the Complainant a three-page letter summarizing the District's investigation and findings. The report states that the LAPS XXX talked to coaches of the LAPS team and referees at the game and that she "found nothing to corroborate the allegations" of monkey noises. The report does not state that the District spoke to the Taos XXX

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<sup>6</sup> The District provided two statements to OCR from the LAPS XXX and the XXX administrator who was at the game, but both of those statements appear to have been written right after the game because they address the issue with the Taos fan and not the allegation of monkey noises.



or any players, but District witnesses told OCR that they briefly spoke to the Taos XXX and three LAPS players, including LAPS Student 1. The LAPS XXX, LAPS XXX, and the XXX told OCR that they did not talk to any Taos players, including the sons of the two parents who complained about the alleged monkey noises. When OCR asked the XXX why the District did not interview any Taos players, she said it was because the Taos XXX had not received any complaints, but “maybe we should have spoken to the Complainant’s son.” The XXX told OCR that it would have been “out of the norm” to talk to Taos players and usually incidents of this kind are dealt with “administration to administration.” The LAPS XXX told OCR that she did not talk to the Complainant’s son because she “didn’t think to reach out to him” and did not talk to the other Taos players on the bench because “in my mind I may have figured they are going to say they heard it and we would say we didn’t.”

### **Legal Analysis**

While OCR was in the process of conducting interviews of District witnesses, the District requested to resolve the allegation in this case through a voluntary resolution agreement. At the time of that request, the District indicated that it was already planning to revise and consolidate its non-discrimination policies and increase employee and coach training on its non-discrimination policies and investigative procedures because it had identified these areas for improvement through this case and other matters.<sup>7</sup>

OCR determined that it is appropriate to resolve the allegation through a voluntary resolution agreement under Section 302 of OCR’s Case Processing Manual because OCR has identified several concerns to date regarding the District’s response to the allegations of racial discrimination by one of its XXX players against players on the Taos XXX team.

First, OCR has concerns about the adequacy of the District’s investigation to determine if LAPS Student 1 engaged in harassment based on race or color by making monkey noises and gestures toward a XXX on the Taos team (Taos Student 1) and whether this player or other players on the Taos team experienced a racially hostile environment during the XXX game. The District never contacted one of the two Taos parents who complained about the alleged monkey noises to learn more about the allegation from her, her son who told OCR he witnessed the noises (Taos Student 3), or her other family member who allegedly heard the monkey noises too. The District also never interviewed the Complainant’s son (Taos Student 2), who told OCR that he heard the monkey noises, nor the Taos player to whom the monkey noises were allegedly directed (Taos Student 1). The District also made no effort to identify or interview any of the other Taos players on the bench, despite the Complainant’s statement in an email to the District that those players likely heard the monkey noises. Even if it may have been more challenging for the District to interview players from the other team, the District could have but did not reach out to the Taos coaches who were next to the players on the bench to determine if the Taos coaches had heard anything or had interviewed the Taos players on the bench about the monkey noises.

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<sup>7</sup> The XXX informed OCR that coaches who are not considered “employees” of the District were not formerly included in anti-discrimination training but will be included going forward.

OCR also has concerns that no one from LAPS watched the video footage that the District had of the game at issue and that the District concluded that the alleged monkey noises did not happen without even watching the footage.<sup>8</sup> OCR also notes that the District has no records of the important interview of the student accused of making the monkey noises. OCR additionally finds it concerning that the only other LAPS players that the District talked to about the allegations were not near LAPS Student 1 on the field at the time of the alleged monkey noises, and that the District conducted these conversations only briefly in the hallway without creating any record of them.

Second, OCR has concerns that the District was not planning to report back to the Complainant about its investigation of her allegation and did so only because the Complainant continued to express dissatisfaction with the District’s investigation. When the District did respond, it sent the report of the investigation only to the Complainant and not to the other Taos parent who had complained about the alleged race discrimination first. As a result, the District never responded to the emailed complaint from the parent of Taos Student 3 on October 6, 2021, and never told her that the District investigated her complaint or the results of that investigation.

Third, though the coach of the LAPS XXX team told the LAPS XXX that he would take the allegation from the parent seriously and address it, the information he provided to OCR suggests otherwise. He told OCR that he never talked to the other LAPS coaches about the allegation, nor did he discuss the allegation or expectations for behavior with his team. LAPS Student 1 told OCR that the coach “mentioned” the allegation only “slightly” when he said that administrators would pull the student out of class to discuss it. Also of concern, the LAPS coach told OCR that he has not received training on the District’s non-discrimination policies and procedures and does not know how to respond to a complaint of racial discrimination in the XXX program. In addition, he and the LAPS XXX told OCR and the Complainant, respectively, that what occurs on the field is the referee’s responsibility, thereby suggesting that they may not fully appreciate their responsibilities for investigating and redressing any racial discrimination that occurs in the District’s athletics programs.

Fourth, OCR has concerns about the lack of clarity in the District’s non-discrimination policies and procedures. District witnesses told OCR that Policy 5130R governs complaints of race discrimination by the public. However, the policy talks only about complaints of discrimination based on disability, and the District’s bullying policy seems limited to District students, leaving unclear how District employees or members of the public may initiate a complaint and how the District will respond to complaints of race discrimination made by a member of the public who is not a District student, as was the case here. OCR also notes that the inconsistency between the broader scope of the complaint form and the narrower scope of the grievance process set forth in District policy may create confusion for members of the public and school community who seek to file complaints of racial or other discrimination with the District.

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<sup>8</sup> OCR watched the footage and did not hear any monkey noises or see any monkey gestures. However, none of what the players were saying was audible and the camera followed the XXX and not LAPS Student 1.

Based on the evidence to date, OCR agrees with the District that it should revise its non-discrimination policies and procedures to ensure that students, parents, and other members of the public know how to file complaints of discrimination based on race or color in its athletic programs. OCR also agrees with the District that it should provide training on these policies and procedures to its administrators, employees, and athletic coaches so that they know how to respond to such complaints and to ensure that the District appropriately investigates such complaints.

### **Conclusion**

As discussed above, during OCR's investigation, the District agreed to voluntarily address OCR's concerns to date regarding the sufficiency of its investigation and the lack of clarity in its nondiscrimination policies. The enclosed Resolution Agreement requires the District to clarify its non-discrimination and harassment policies and procedures and provide training to its school and District administrators, its high school employees, and all athletic coaches on how to identify, investigate, and respond to alleged incidents of racial harassment.

The Agreement, when fully implemented, will fully resolve the compliance concerns in this case consistent with the requirements of Title VI and its implementing regulations. The provisions of the Agreement are aligned with the allegations and issues raised by the Complainant and the information that was obtained during OCR's investigation to date and are consistent with applicable laws and regulations. OCR will monitor the District's implementation of the Agreement through period compliance reports about the status of its terms. OCR will provide the District with written notice of any deficiencies regarding its implementation of the terms of the Agreement and will require prompt actions to address such deficiencies. OCR will provide the Complainant with a copy of its final monitoring letter. If the District fails to implement the Agreement, OCR will take appropriate action, as described in the Agreement.

The case is now in the monitoring phase. The monitoring phase of this case will be completed when OCR determines that the District has fulfilled the term of the Agreement and is in compliance with the statutory and regulatory obligations at issue in this case. When the monitoring phase of this case is complete, OCR will close this case and send a letter to the District, stating that this case is closed.

This concludes OCR's investigation of the complaint. 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 may 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 with OCR.

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

We appreciate the District’s cooperation in the resolution of this complaint. If you have any questions, please contact XXX, the OCR attorney assigned to this complaint, at [X-phrase redacted-X].

Sincerely,

XXX

Enclosure: Resolution Agreement