



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION IX
CALIFORNIA

April 6, 2017

Dr. James Morris
Superintendent
Fremont Unified School District
4210 Technology Drive
Fremont, California 94538

(In reply, please refer to docket number 09-13-5001.)

Dear Superintendent Morris:

This letter is to notify you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of a compliance review of the Fremont Unified School District (District). OCR notified the District on May 6, 2013 that it was initiating a review of the District's compliance with Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d *et seq.* (Title VI) and its implementing regulation, 34 C.F.R. Part 100. This compliance review assessed whether students who are Sikh and Middle Eastern are subjected to harassment on the basis of their actual or perceived shared ancestry or ethnic characteristics, and whether the District has responded appropriately to notice of such harassment in compliance with Title VI and its implementing regulation, at 34 C.F.R. § 100.3.

OCR conducted this investigation under the authority of Title VI and its implementing regulation. Title VI provides that "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. §2000d. As a recipient of Federal financial assistance from the Department, the District is subject to Title VI and the regulation.

Investigation

OCR's investigation included interviews of District staff and students, meetings and interviews with community organizations, and a review of data and documentation.

School visits and staff interviews. OCR conducted school visits at 18 District schools, including all ten of the District's junior high and comprehensive high schools and eight of its 29 elementary schools.¹ At the onsite visits, OCR interviewed administrators, teachers, counselors, noon supervisors and volunteers, and other relevant school staff.

¹ OCR chose these elementary schools for onsite visits based on reported incidents of harassment and/or demographic criteria. The District data reflected that of the seven reported incidents of harassment at elementary

Student focus groups. OCR also gathered information from approximately 700 students who participated in 109 focus groups made up of approximately two to fifteen students each.² OCR conducted between four to seven focus groups at each of the 18 school sites visited by OCR and distributed optional anonymous written surveys to focus group participants at ten school sites. The anonymous written survey consisted of six questions for elementary school students and eight questions for junior high and high school students. The surveys asked questions about whether the student experienced or observed harassing conduct based on race, color or national origin and whether the students reported the incidents. OCR collected and tabulated 189 surveys during onsite visits from focus group participants.

Meetings with community-based organizations. OCR met with community-based organizations in the area surrounding the District. In these meetings, OCR met with 15 leaders of community-based organizations, whose constituents included Sikh and/or Middle Eastern communities, interviewed approximately 50 students and families at a Sikh Gurdwara³ about their school experiences; and, with a District administrator, interviewed 12 local Muslim parents at a cultural center. During these meetings, OCR obtained information about the types of harassment and discrimination facing students at school who identified as Sikh or Middle Eastern or were perceived as such.

District documents. OCR reviewed District data from the 2011-2012 through the 2014-2015 school years. These data included the District's grievance and complaint procedures related to harassment and its policies to address harassment; incident and media reports at District school sites regarding race or national origin harassment, any complaints and responses to complaints wherein the District acknowledged that it had notice of possible discrimination, including complaint records maintained by the District and incidents that school site staff reported to OCR during onsite school visits. In addition, OCR reviewed demographics and staffing of the District schools, and documentation of proactive steps that the District had undertaken to prevent or address harassment in general and for Sikh and Middle Eastern students, and those perceived as such.

Other data. OCR also analyzed data compiled in the Civil Rights Data Collection database (CRDC)⁴ for 2011 and 2013 and by the California Department of Education (CDE) for the school years from 2012 through 2016 regarding the school site enrollment figures by race, national origin, number of English language learners, and the languages identified.

Prior to the conclusion of OCR's investigation, the District expressed its interest in resolving the review, and OCR concluded it was appropriate to do so with a resolution agreement pursuant to Section 302 of OCR's *Case Processing Manual*.⁵ The legal standards, the evidence gathered to

schools that took place during the two years preceding OCR's onsite visit, four of the incidents of alleged race or national origin harassment took place at four elementary schools which OCR then chose to include as part of the onsite. The remaining four elementary school sites were chosen based on the demographics of the student population at the school site, which appeared to include a large number of students from Sikh and /or Middle Eastern communities.

² At the elementary school level, OCR only conducted focus groups with students in the fourth through sixth grades.

³ A Gurdwara is a place of worship, reflection and community gathering for Sikhs.

⁴ The CRDC may be viewed at <http://ocrdata.ed.gov/>.

⁵ OCR's *Case Processing Manual* may be viewed at <http://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

date, the deficiencies that OCR found, and the terms of the Agreement that the District entered into are detailed below.

Legal Standards

Under Title VI and its implementing regulation at 34 C.F.R. § 100.3(a) and (b), no individual may be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination on the basis of race, color or national origin under any program or activity that receives Federal funds. A district violates Title VI and the regulation if the evidence shows that the district has created or is responsible for a hostile environment; i.e., harassing conduct (physical, verbal, graphic, or written) on the basis of race, color, or national origin that is sufficiently severe, pervasive or persistent so as to interfere with or limit the ability of an individual to participate in or benefit from the services, activities or privileges provided by a district. A district has subjected an individual to different treatment on the basis of race or national origin if it has effectively caused, encouraged, accepted, tolerated or failed to correct a hostile environment of which it has actual or constructive notice. To establish a violation of Title VI, OCR must find that (1) a hostile environment existed; (2) the district had actual or constructive notice of the hostile environment; and (3) the district failed to respond adequately to redress the hostile environment.

Even though Title VI does not expressly prohibit discrimination based solely on religion per se, discrimination against persons belonging to religious groups violates Title VI when the discrimination is based on the religious group's actual or perceived shared ancestry or ethnic characteristics rather than solely on its members' religious practices. Groups that face discrimination on the basis of shared ethnic characteristics may not be denied the protection of Title VI on the ground that they also share a common faith.

To determine whether a hostile environment based on race or national origin exists, OCR will examine the context, nature, scope, frequency, duration, and location of the harassing incidents, as well as the identity, number, and relationships of the persons involved to determine if the harassment is sufficiently severe, pervasive, or persistent. The harassment must in most cases consist of more than casual or isolated incidents to establish a violation of Title VI. The offensiveness of a particular expression as perceived by some students, standing alone, is not a legally sufficient basis to establish a hostile environment. Generally, the severity of the incidents needed to establish a hostile environment under Title VI varies inversely with the pervasiveness or persistence.

Once a district has actual or constructive notice of a hostile environment it has a legal duty to take reasonable steps to eliminate it. OCR will evaluate the appropriateness of the district's responsive action by examining its reasonableness, timeliness, and effectiveness. The appropriate response to a hostile environment based on race, color, or national origin must be tailored to redress fully the specific problems experienced at the district as a result of the harassment. In addition, the responsive action must be reasonably calculated to prevent recurrence of the harassment and ensure that students are not excluded from participation in or denied the benefits of the district's program or activity as a result of the hostile environment.

Background

In the 2015-2016 school year, the District's total enrollment was 34,852 students, making it the 22nd largest public school district in California.^{6,7} The District has 42 schools: 29 elementary schools, five junior high schools, five comprehensive high schools, one Regional Opportunity Program, a continuation high school, and an adult and continuing education school. Students in kindergarten through the sixth grade attend District elementary schools. The District's junior high schools include seventh and eighth grade, and the high schools include ninth through twelfth grade.

The CRDC showed that for the most recent school year available (2013-2014), the District's largest ethnicity by enrollment was Asian (61.4% of students).⁸ This corresponds to data collected by the CDE, which demonstrates that Asian students have accounted for the largest ethnicity in the District for the last three years, as shown in the table below.⁹

District Enrollment by Ethnicity

	2015-2016	2014-2015	2013-2014
Hispanic or Latino of any race	5,278	5,324	5,399
American Indian or Alaska Native, not Hispanic	106	115	120
Asian, not Hispanic	20,661	19,583	18,782
Pacific Islander, not Hispanic	203	190	210
Filipino, not Hispanic	2,031	2,037	1,926
African American, not Hispanic	890	955	1,087
White, not Hispanic	4,616	4,890	5,176
2 or more races, not Hispanic	1,040	1,089	1,152
Not reported	27	25	35
Total enrollment	34,852	34,208	33,887

In addition, the District reports home languages other than English spoken by students to the CDE. Among the home languages other than English identified by students in the 2015-2016 school year, Hindi and Telugu -- both of which are spoken in India--were in the top five most frequent. The table below provides the enrollment numbers for students speaking languages that are spoken in India and the Middle East in the last three years. Overall, such students accounted for 20% of the total enrollment in 2015-2016, 18% in 2014-2015, and 17% in 2013-2014.

⁶ Data provided by the California Longitudinal Pupil Achievement Data System (CALPADS), California Department of Education, available at <http://dq.cde.ca.gov/dataquest/dataquest.asp> (last visited January 5, 2017). California has 1,022 school districts.

⁷ Data provided by the California Department of Education at <http://www.cde.ca.gov/ds/sd/cb/ceflargesmalldist.asp> (last visited January 5, 2017).

⁸ Data from CRDC, available at <http://ocrdata.ed.gov/Page?t=d&eid=26743&syk=7&pid=2008#> (last visited January 5, 2017).

⁹ Data provided by the California Longitudinal Pupil Achievement Data System (CALPADS), California Department of Education, available at <http://dq.cde.ca.gov/dataquest/dataquest.asp> (last visited January 5, 2017).

**Student Enrollment by Languages Originating in Regions of
India and the Middle East**

	2015-2016	2014-2015	2013-2014
Hindi	1,343	1,185	1,080
Telugu	1,302	1,064	877
Tamil	919	839	732
Punjabi	751	751	758
Farsi	488	476	501
Urdu	473	400	408
Gujarti	465	453	431
Marathi	399	303	257
Kannada	260	232	197
Arabic	213	175	167
Bengali	210	202	178
Pashto	149	128	123
Hebrew	12	9	8
Turkish	11	10	12
Assyrian	6	5	3
Kurdish	1	1	1
Total students	7,002	6,233	5,733
% of total student enrollment	20%	18%	17%

In 2010, The Sikh Coalition, a non-profit community-based organization focusing on civil and human rights issues impacting Sikhs, issued a report entitled *2010 Bay Area Civil Rights Report* (Report), which showed that according to a survey administered to over 500 Sikh students by the Sikh Coalition, the District had the highest rate of reported harassment of Sikh students among the school districts in the San Francisco Bay Area. According to the Report findings, the harassing conduct toward Sikh students took the form of physical and verbal harassment regarding students' outward appearance, including clothing related to articles of faith, and perceived race, color, national origin or cultural background. The harassment was often based on stereotypes and negative perceptions of Sikhs. The Report also noted that Sikhs were sometimes harassed because they were mistaken for Muslims, although Muslims and Sikhs are distinct from one another in terms of ethnic background, religion, and culture.

Factual Findings and Analysis

District Policies and Procedures

The District has two policies that provide processes for addressing harassment of students: a Student Bullying Policy, Board Policy (BP) and Administrative Regulation (AR) 5131 ("Policy") and a Uniform Complaint Procedure, BP and AR 1312.3 ("UCP"). These policies and procedures are posted on the District website¹⁰ and descriptions are included in the Student

¹⁰ The District's Student Bullying Policy and a complaint form can be found at: <http://www.fremont.k12.ca.us/Page/12231> (Last visited on January 5, 2017). The Uniform Complaint Procedure

Parent Handbook and Notice of Rights and Responsibilities,¹¹ which is distributed annually to every District family.

1. Student Bullying Policy (Policy)

The Policy became effective in April 2012 and states that “harassment of students by students, school employees, volunteers and visitors will not be tolerated” by the District, and that the District prohibits harassment based on a series of actual or perceived traits or characteristics, including race, color, national origin and ancestry. This Policy also prohibits retaliation against complainants.

The Policy prohibits any “severe or pervasive physical or verbal act or conduct, including communications made in writing or by means of an electronic act,” including hate violence, harassment, threats or intimidation that has the effect or can reasonably be predicted to have the effect of placing a student in fear of harm to themselves or their property, impacting their physical or mental health; interfering with their academic performance or ability to participate in or benefit from services, activities, or privileges provided by a school.

The Policy is in effect during the school day, while students are on their way to and from school, on school-owned or operated vehicles, at school sponsored activities, or “away from school grounds if the misconduct directly affects the good order, efficient management and welfare of the school district.” The Policy states that all school personnel are responsible for intervening and reporting when they become aware of misconduct, and for protecting the victim. Principals or their designees are responsible for receiving complaints alleging violations of the Policy and while a complaint form is provided, it is not required. Oral reports are also considered “official reports” under the Policy.

The complaint form requests the name(s) of the affected students, the person making the report, the description and date of the incident, and whether the incident was previously reported. The complaint form does not include a place to specify whether the incident that the complainant is raising involves discrimination based on a protected class. The individual completing the form is directed to submit it to the school principal. The complaint form has the following notation at the bottom, “School staff is to respond to this complaint and provide the Director of Student Support Services with a summary of their investigation, all documentation and their remedy of the situation in writing.” The Policy indicates that parents/guardians of the alleged victim and the alleged perpetrator will be notified of the nature of the incident, the results of the investigation, and the type of action(s), consequences, and follow-up that will be taken to resolve the situation (as appropriate to ensure confidentiality).

can be found at: <http://www.boarddocs.com/ca/fremont/Board.nsf/goto?open&id=9KC8HV75502F#> (Last visited January 5, 2017).

¹¹ The most current Student Parent Handbook and Rights and Responsibilities can be found at: <http://www.fremont.k12.ca.us/cms/lib04/CA01000848/Centricity/Domain/5546/2016-17-Handbook-eng.pdf> (Last visited January 5, 2017).

The Policy states that if a parent/guardian believes that a situation has not been remedied, she/he may file a Uniform Complaint Procedure (UCP) complaint, and a person wishing to complain of harassment can directly file a UCP complaint without proceeding first under the Policy.

2. UCP¹²

The UCP became effective in February 2004, and was revised in January 2007 and again in October 2009. At the time OCR launched this review in 2013, the 2009 version of the UCP was in effect. Since that time, the UCP has been revised twice, once in June 2015 and once in September 2016. The revisions made to the UCP were not material and the description of the UCP herein is consistent with the 2009 and the most recent 2016 versions.

The UCP prohibits retaliation and states that the District will use the UCP to investigate complaints alleging unlawful discrimination and harassment against any protected group, including “actual or perceived” ethnic group identification, nationality, race or ethnicity, ancestry, color, 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 UCP encourages early, informal resolution of complaints at the site level whenever possible, and mediation where the parties are amenable. Complaints should be written, signed and describe an alleged violation of unlawful discrimination; if a complainant cannot reduce the complaint to writing, the District will assist the complainant in filing. Complainants can be individuals, interested third parties, or organizations.

The UCP provides that complaints must be filed within six months from the date of the alleged discrimination or from the date the complainant first obtained knowledge of the facts of the alleged discrimination, and the investigation must be completed within 60 calendar days from the date of receipt of the complaint, unless the complainant agrees in writing to an extension. The Assistant Superintendent of Human Resources is designated to investigate complaints filed under the UCP. At the conclusion of the investigation, the complainant will be provided a written report of the District’s investigation and decision, including the findings of fact, conclusions of law, the disposition and rationale for the disposition of the complaint, and corrective actions, if any are warranted. The UCP also provides that information about the relevant part of a decision may be communicated to a victim who is not the complainant and to other parties who may be involved in implementing the decision or are affected, as long as privacy is protected.

The UCP provides that harassment complaints will be investigated in a manner that protects the confidentiality of the parties and the integrity of the process, including by keeping the identity of the complainant confidential, as appropriate, except to the extent necessary to carry out the investigation or proceedings, as determined by the Superintendent or designee on a case-by-case basis.

¹² California school districts are required by state law to adopt policies and procedures to investigate complaints alleging failure to comply with state and federal laws and/or allegation discrimination or harassment. 5 Cal. Code of Regulations §4621.

Requirements for Collecting and Assessing Incidents of Harassment

The Policy requires that the Principal at each site “assess or collect” information from students regarding the extent of harassment they witness or experience at school and provides as examples anonymous surveys, focus group input, or incident report analysis. While not providing specific guidelines for how a Principal is to assess or collect incidents, the Policy provides that the Principal will obtain specific information relevant to any complaint, such as the date, time, location, written statements from the parties and any witness(es), and whether the incident was isolated or related to previous incidents.

The UCP requires that the compliance officer “shall maintain a log of complaints received”, including steps taken during the investigation and all information required for compliance.

District Response to Alleged Harassment of Which It Had Actual Notice

The District provided OCR with incident reports from school sites of harassment from the 2011-2012 through 2014-2015 school years. From that data, OCR identified 8 incidents of alleged harassment that involved students who were Sikh and/or Middle Eastern, or perceived as such. In addition to the 8 documented incidents of possible harassment, during OCR’s onsite school staff informed OCR of 16 additional incidents of harassment that were brought to their attention but that were not reflected in any documents provided by the District to OCR. These 24 incidents are described more fully below.

1. *Eleven Incidents in Three District Schools (Reports A – K)*

Of the 24 incidents that OCR identified, 11 occurred at three District schools – five incidents at a junior high school, three incidents at a high school, and three incidents at an elementary school.

At one junior high school, District data and staff members who were interviewed identified five incidents (Reports A – E) of harassment based on race, color, or national origin targeting students who were Sikh and/or Middle Eastern or were perceived to be Sikh and/or Middle Eastern. Two of these incidents took place during the 2012-2013 school year. Another incident began during 2012-2013 but continued into the following school year. The other two took place during the 2013-2014 school year, with one of those starting in the summer before school started.

- Report A: A teacher who identified herself as Sikh reported to OCR that in the 2012-2013 school year the Vice Principal asked for her help in addressing a student who touched a Sikh student’s turban and called it a “bun.” According to the teacher, the Vice Principal asked her to explain to the student why he should not touch the student’s turban. She stated that she and the administrator subsequently “checked in on” the Sikh student and believed that the incident did not recur.
- Report B: A counselor reported to OCR that in 2013-2014 two female students in different instances had each been made fun of for wearing a hijab.¹³ The counselor

¹³ A hijab is a traditional scarf worn by Muslim girls or women to cover the hair, neck and sometimes the face.

described that the Principal and Vice Principal implemented discipline for the students who were engaged in the mocking conduct.

- Report C: The Principal and Assistant Principal reported to OCR that in 2012-2013 a Sikh student who wears a turban emailed a teacher, the Principal, and the Assistant Principal to report that he had been called names such as “muffin man”, “Mr. Muffin”, and “chicken ninders” for over a year, as the alleged harassment continued into the 2013-2014 school year. The Principal reported to OCR that he believed that the teacher had made an “error in judgment” by not bringing the issue forward sooner. The Principal stated that any incidents of bullying or harassment based on national origin are to be reported to the Principal. The student referenced seven students who were involved. The School conducted interviews of students in the class. The Principal reported to OCR that he believed the name-calling was attributable to the student’s turban, he characterized the name-calling as “rampant,” and said that it would have continued until high school had the student not brought it forward.
- Report D: The Principal also referenced a summer school incident in 2013 in which a turban on the head of a Sikh student was called a “diaper” by another student. According to the Principal, the District did not take any action.
- Report E: The District data referenced an incident that occurred during the 2012-2013 school year, in which an Indian student was targeted for “skin color, clothes and manner of speech”. The Indian student filled out an incident report in which he stated that a student made fun of his name by calling him “XXXXXXXXXX,” and made fun of his clothing, how he spoke, and his skin color. The student who engaged in the conduct was suspended for having engaged in harassment. The suspension notice states that the student called the Indian student “derogatory nick names, teased him about his skin color, clothes and his manner of speech”, had been warned for similar behavior and continued to tease and “harass” students. Documentation provided by the District does not indicate the District determined that any steps were needed to remedy any effects of harassment.

At one high school, staff members described three incidents over the 2012-2013 and the 2013-2014 school years:

- Report F: The Principal and several students in focus groups separately described that a Sikh student had been mocked for wearing a turban during the 2012-2013 school year. The Principal stated that students would shout out “racist” names or “turban” at the student. The Principal stated that he met with the student’s mother frequently and that the Assistant Principals met with the Student often and provided counseling because the Student was “very needy”, would ask a lot of questions and get on other students’ nerves. The Principal stated that he “believed” that the harassment stopped. Students in the focus group stated that the Sikh student’s name was mocked often. The School site did not maintain documentation about these incidents.

- Report G: The Assistant Principal reported to OCR that “sometimes” students of Middle Eastern origin have come to his office to complain about being called “terrorists.” He stated that when that happens, he begins an investigation and if he is able to find that a particular student did make the statement, he follows the discipline process. He stated that there was one incident in the 2013-2014 school year in which he imposed discipline for a student calling another a “terrorist”. The discipline process he described involves notifying the student’s parents and requiring the perpetrator to attend Saturday school. The Assistant Principal noted that he does not always document incidents. The data provided to OCR by the District did not include any incidents at this high school of students being disciplined for calling another student a “terrorist.”
- Report H: A teacher reported hearing an exchange between a Chinese student and an Afghan student during the 2013-2014 school year in which the Chinese student responded to being called a “nerd” by calling the Afghan student a “terrorist.” The teacher stated that the two students were friends. He talked to the students and did not bring the issue to the attention of any administrators.

At one elementary school, staff members described the following three incidents to OCR. One of these incidents took place during the 2012-2013 school year. The other two incidents took place during the 2013-2014 school year:

- Report I: The Principal of the elementary school described that in 2013-2014 an Indian student was repeatedly called “XXXXXX” as a way to make fun of her name. The student also described this to OCR during an interview and was visibly upset about the name-calling. Other students in focus groups also raised the issue and were aware of the name-calling. The Principal stated to OCR that the student’s parent asked the Principal not to speak with the student directly about the incident due to the student’s sensitivity but rather to speak with the students engaging in the name-calling. According to the Principal, other than intervening in the behavior of the students who were engaged in name-calling, she did not take any other action, such as seeking supports for the student or meeting with the student’s teacher because she did not believe the name-calling was “serious.”
- Report J: A teacher reported to OCR that in 2012-2013 an Indian student was called “Gandhi” on multiple occasions by several students. The teacher filled out a complaint form and submitted it to the Principal. According to the teacher and principal, the students who were engaged in the name-calling were asked to do research on Gandhi and present their research to the class. The teacher stated that the intervention appeared to be effective in stopping the behavior.
- Report K: One teacher reported to OCR that in 2013-2014 a student from Pakistan was mocked because of his accent. The student who engaged in the mocking was referred to the Principal’s office and given an in-school suspension and community service. The Principal followed up by coming into the teacher’s class several times to check in on the student from Pakistan and to ask the teacher if anything further was needed. The teacher

stated that Principal's intervention appeared to be effective and believed that the mocking stopped.

These 11 reports reflect varying levels of responses by school administrators and staff to possible discriminatory harassment. For example, a teacher was aware of harassment of a Sikh student for over a year and did not inform an administrator (Report C); some administrators described intervening by telling students to stop the harassing conduct (Reports A, H, I, and J); and in other incidents students engaged in the harassing conduct were disciplined (Reports B, E, F, and G). In one incident, the administrator stated that he reported the incident to the District (Report D), but there is no evidence that the District took any action to address the incident.

2. *Additional 13 Incidents (Reports L-X)*

Through a review of documentation maintained and provided to OCR by the District and through interviews with school administrators and staff, OCR identified 13 additional incidents of possible discriminatory harassment of students who are Sikh and/or Middle Eastern or who were perceived to be Sikh and/or Middle Eastern:

- Report L: At an elementary school during the 2012-2013 school year, a group of Latino and South Asian students were engaged in teasing and name-calling of each other. While the documents did not specify the words used by the students, the incident was documented as based on national origin. The Principal responded by meeting with the students, and following up with class visits in which she discussed discriminatory harassment with students. According to an interview with the Principal and two teachers, the incidents did not recur and the Principal's discussions with classroom students were effective.
- Report M: At an elementary school during the 2012-2013 school year, there was a record documenting "harassment of students of different heritages" on a social media site. According to the District's record of the incident, staff spoke to the students of each group after the incident about internet safety. The District's documentation does not reflect whether the students were counseled specifically about harassment based on national origin. The documents also do not reflect if a determination was made regarding whether harassment created a hostile educational environment and whether the District determined if any steps were needed to remedy any effects of harassment and prevent its recurrence.
- Report N: At an elementary school in April 2015, an incident report stated that a student was trying to take another student's turban off. He was asked to stop by the victim and the victim's friend, but the behavior continued. The student who engaged in the conduct was required to sign a contract to not engage in such behavior. A meeting was held with his parent and he was assigned to in-school detention for part of the school day through lunch. The District documentation of the incident does not identify whether a determination was made regarding whether the incident constituted national origin harassment and whether any steps were needed to remedy any effects of harassment.

- Report O: At an elementary school, in November 2015, a student told another student that he was a “dirty Indian”. District documentation reflects that the administrator spoke with the student about not making “racist remarks”. The student agreed to apologize to the victim and admitted making the inappropriate comments. District documentation does not identify whether the District determined that this incident constituted national origin harassment, and if so, whether any steps were needed to remedy any effects of the harassment.
- Report P: At another elementary school, during the 2012-2013 school year, the Principal and a teacher recalled one incident involving a student with a turban who was being teased on the way to school for wearing a turban. The Principal met with the students accused of doing the harassment, met with their parents, and suspended them. According to the Principal and teacher, the victim received counseling and they followed up to make sure the incidents did not repeat.
- At another elementary school, teachers reported two separate incidents. Both of these incidents took place during the 2013-2014 school year:
 - Report Q: One teacher reported that a student was mocked for having a thick Indian accent. She stated that she handled it by telling the student that everyone has an accent, and having the student who was engaged in the mocking apologize to the Indian student. She did not report this incident to an administrator. In an interview with OCR, the Principal stated that all incidents of bullying or harassment based on national origin are to be reported to the Principal.
 - Report R: Another teacher at the elementary school stated that she had two Indian students who were made fun of due to their accents or limited command of English. She addressed it in the classroom by telling the students to stop and did not report it to an administrator.
- At one junior high school, District data and staff member interviews identified two incidents that took place during the 2012-2013 school year:
 - Report S: An incident report states that there was “hostility” between Asian and Latino students resulting in discipline being imposed. While the District documentation does not specify the nature of the hostility and does not identify whether the District determined that this incident constituted race, color, or national origin harassment, the evidence shows that the School administrators took action to address the issue beyond solely focusing on discipline by holding a school-wide unity day, creating the anti-bullying club, and holding a town hall meeting about bullying with guest speakers in response.
 - Report T: During the 2012-2013 school year, a teacher reported to OCR that there was an incident in which a student was teased for covering her hair. According to the teacher and Vice Principal, the Vice Principal stopped the teasing by disciplining the students engaged in the teasing. The teacher

described that the school also implemented strategies to prevent future incidents such as creating an anti-bullying week and anti-bullying poster contests.

- Report U: At a high school, during the 2012-2013 school year, there was an incident in which a Sikh student was called names. District documentation does not identify what names the student was called, but notes that the incident led to “physical contact”. According to District documentation, the Assistant Principal intervened and ordered the behavior to stop. No further description is provided regarding whether a determination was made that the incident constituted national origin harassment, and if so, whether any steps were needed to remedy any effects of harassment.
- Report V: At another junior high school, during the 2012-2013 school year, a counselor told OCR that during the previous school year, an Indian student spoke with her and said that his friend teased him constantly by calling him a “terrorist” and making other “racist” comments. She spoke with the other student who was making the comments and gave him a warning. She also checked-in on the student who reported the teasing. In her check-ins with the student, she learned that the behavior had not stopped. Therefore she referred the issue to the Assistant Principal who handles discipline, which she believed was effective to stop the harassment.
- At one elementary school, District data and witness interviewed identified two incidents that both took place in the 2012-2013 school year:
 - Report W: An incident report provided to OCR by the District described an incident by a Latino student toward an Indian student, in which the Latino student “choked” the Indian student and said “All Muslims are terrorists. You are a terrorist and are going to bomb the world. You are going to blow up the world because you are a Muslim.” In response, the Principal gave the Latino student detention, met with him about his comments, and met with his mother to explain that this behavior was unacceptable. The documents do not reflect if a determination was made regarding whether the incident created a hostile educational environment. The documentation does show that the Principal took steps to address the incident beyond solely treating it as a discipline incident. Specifically, the Principal met with the Indian student and his parents. The Principal offered to provide counseling to the Indian student, but the family did not believe it was necessary. Also, at the request of the Indian student’s parent, the Principal contacted a community-based interfaith organization that provides educational presentations for schools about the Muslim faith and that had provided trainings to District administrators previously. The Principal invited the community-based organization to come and speak with staff and students at the school. At the time of OCR’s onsite visit, the school’s webpage included a section in which the Principal addressed the issue of bullying and described the community-based organization’s involvement in addressing this issue at the school.

- Report X: At the same elementary school, two teachers and a volunteer noon supervisor described an incident in which a student told a Sikh student that it looked like his brains were coming out of his head. They pulled the student aside to question why he said it, counseled him, met with his parents, and had him write an apology. According to the Sikh student's parent, who met with OCR during open office hours during OCR's onsite visit, the Principal handled the incident well, the counseling of the student who made the comments appeared to be effective, and the two boys subsequently were able to become friends.

In each of the 13 incidents described above, the administrator or teacher intervened by either telling the students engaged in harassing behavior to stop the behavior, requiring an apology, or implementing more formal consequences, such as in-school suspensions, counseling, and/or parent conferences. In 9 of the 13 incidents (Reports L, O, P, Q, S, T, V, W, and X), staff members described some steps taken to provide supports to the victim of the harassing behavior and/or to prevent future recurrence such as checking in-on the student or offering counseling to the student, creating anti-bullying events at the school, or building cultural awareness through training. In one of the incidents (Report N), staff members only described to OCR that they treated the incident as a discipline matter. In 3 of the 13 incidents (Reports M, R, and U), the staff members described instructing the student engaged in harassing behavior to stop but did not consider whether further actions were needed to address the effects of the harassment for the harassed student or to prevent the recurrence of the harassing conduct.

Implementation of District's Policies and Procedures

1. Knowledge of District Policies

Every administrator and teacher interviewed by OCR stated that he or she was aware that the District had policies regarding harassment and the steps that the District and their respective schools were taking to address harassment. Similarly, while the administrators and teachers whom OCR interviewed were aware of the Policy and complaint forms, very few were aware of the UCP as a means of providing a parent/guardian or student a means of filing a complaint based on race, color or national origin.

2. Reporting to Administrators

OCR found three incidents of teachers not reporting incidents of potential bullying/harassment to an administrator. As described above in Reports T and U, the teachers described two incidents of mocking students due to accent or English proficiency, but did not report these incidents to the Principal at their respective sites. In Report H, a high school teacher did not inform an administrator of an exchange in which students were using the word "terrorist."

3. Documentation

Documentation of harassing conduct differed across school sites. Of the eight principals interviewed at elementary schools, six stated that they completed or had the student complete a complaint form when there was a report of harassment. Six elementary school principals stated

that they also keep their own log or documentation of incidents of harassment for their own records. Two stated that they did not maintain such documentation. Two of the six elementary school principals who maintain documentation stated that they also report any such incidents to a District administrator.

Of the administrators interviewed at five junior high schools, at four junior high schools the principals and assistant principals interviewed stated that they completed a complaint form for bullying or harassment incidents. Additionally, at two of the junior high schools, the administrators stated that they also maintained their own log or documentation of incidents of harassment for their own records.

At two high schools the principals and assistant principals stated that they completed a complaint form for harassment incidents. At one of the high schools, the administrators stated that they do not complete such a form for a harassment incident. At two of the high schools, the description of actions taken to document incidents conflicted between principals and assistant principals. The principal at each of the two high schools stated that a complaint form was completed for each incident, while the two assistant principals at those two high schools stated that they did not complete the forms for such incidents.

4. Training Provided to Staff

Every teacher and administrator interviewed by OCR stated that the District provided training to school sites on how to address bullying. Most of the administrators, teachers, and other staff interviewed stated that they also received training about race, color, or national origin harassment and how to recognize harassment that may be discriminatory in nature. However, the majority of administrators interviewed by OCR reported having received little or no training on conducting investigations of alleged harassment based on race, color or national origin.

A number of administrators and school site staff members advised OCR that they wanted additional training on how to conduct investigations of allegations of discriminatory harassment, on the differences between bullying and discriminatory harassment, and on instruction for students and professional development for staff on the cultures and traditions of the Middle East and South Asia.

Harassing Conduct Reported to OCR by Students and Community-based Organizations

During focus groups with students at school sites and through anonymous surveys submitted by students during focus groups, students described incidents of harassing conduct by peers and some incidents by staff based on race, color, national origin or shared ancestry, such as: slurs and name calling; negative comments related to turbans, patkas¹⁴, and hijabs; and comments related to ethnic identity such as accent, food, or students' names. Some examples shared with OCR of types of harassment that students face included being called names or targeted based on skin color, clothing related to articles of faith, native language, accent or English language skills, type of food eaten, the amount of facial or body hair, or due to having names that were less-common or unfamiliar to staff or peers. Specific examples included:

¹⁴ A patka is a head covering worn by Sikh children or an under-turban worn by adults.

- Students reported being called “terrorist”, “bomber”, “Osama Bin Laden”, “raghead”, “sand digger”, or being told to “go back to their country”. Sikh students who wore turbans or patkas described name calling and comments such as “turbanator”, “donut head”, “turban boy”, or “egghead.” They also reported being asked to “open” their turban or being asked whether there was something inside, such as a rock, pet, or bomb.
- Students in junior high and high schools reported concerns about comments made by peers during history and cultural lessons related to Sikhism, Islam, the Middle East, and South Asia. Students described, for example, being told by peers in class while studying Islam that “you started 911” and being called “terrorist.”
- At five of the ten junior high and high schools, students of multiple racial identities reported the pervasive use of the “n word,” particularly toward students with darker skin or darker complexions, regardless of racial or ethnic identity, or being called derogatory names related to skin color such as “rotten brownie” and “chocolate midget” by peers.
- Students who wore hijabs reported being disparaged in various ways, including, for example, an elementary school student being asked why she wore “a silly piece of cloth”, or a student at a junior high school being asked if she had lice under her hijab. Several female students referred to perceived harassment because they wore bindis.¹⁵
- Students who spoke English with an accent reflective of their native language were disparaged or mocked for their accents or their English language skills. At one school, students told OCR that a substitute teacher who spoke with an Indian accent was openly mocked by students. In another example, junior high students reported that a teacher makes fun of some students’ accents in class.
- Students reported that their names were mocked and intentionally mispronounced by peers and some staff. For example, students at elementary schools reported that other students would modify their names to mock them by calling them “XXXXXX,” “XXXXXX,” or other words instead of their names. At a junior high school, students reported that one student’s name was intentionally mispronounced by other students and an employee of the school as a way to make fun of the student’s name reflecting his Indian national origin.

A number of junior high and high school students stated in anonymous surveys that they would not tell an adult about harassment because doing so would be ineffective in ending the harassment; others stated that they feared retaliation or being labeled a “snitch” if they informed an adult about harassment. Students who participated in the OCR focus groups were aware of anti-harassment efforts at their respective schools and opinions expressed during focus groups varied widely regarding whether students perceived the efforts as effective. For example, some

¹⁵ A bindi is circular in shape and worn as adornment on the center of the forehead, commonly by Hindu or Jain women or girls.

students during focus groups touted the anti-bullying clubs, contests, assemblies, guest speakers, and “upstander” or leadership practices as effective in preventing and addressing harassment at their schools. Some students believed that these same efforts were not effective. Of the 18 schools in which OCR conducted focus groups, at 13 of the schools, the majority of students who participated in focus groups stated that the environment at their school was safe and supportive, even if some of the students also stated that they were not interested in telling staff about incidents of perceived harassment. At three of the elementary schools, one junior high school, and one of the high schools, students did not expressly state that the school environment was safe and supportive and additionally, more often during focus groups expressed a belief that the school site teachers and administrators were aware of harassment and not engaged in efforts to address it effectively.

District’s Proactive Steps to Address Harassment and Provide a Nondiscriminatory Education Environment

When OCR began this investigation in 2013, the District had already implemented several strategies designed to address harassment and provide a nondiscriminatory educational environment for Sikh and Middle Eastern students.

Efforts directed specifically toward preventing harassment of Sikh students included:

- In 2011 and 2012, the District and the Sikh Coalition collaborated in reviewing and revising a draft of the District’s Policy to ensure that the policy adopted by the District included language about harassment based on race, color, or national origin;
- Sending a copy of the Sikh Coalition Report to all principals in the District in 2011;
- The Superintendent meeting with the local Sikh community at the Fremont Gurdwara to introduce himself and build relationships within the community in 2011 and 2012; and
- In 2012, the District adopted a resolution which proclaimed November 2012 as Sikh Awareness month. The District celebrates Sikh Awareness month each November.

The District also reached out to Middle Eastern community members. These efforts to address the harassment of Middle Eastern students have included:

- The Superintendent visiting an open house at a local mosque in Fremont to introduce himself in 2011;
- The District contacting a community-based non-profit organization in 2012 that provides services and advocacy for the Muslim community, and that organization began doing presentations for students and District staff to build their cultural awareness and provide recommendations for creating a safe school environment for students of Middle Eastern origin;
- Creating a monthly Saturday parent workshop for parents of Afghan heritage in 2013;
- Building a partnership with the University of California, Berkeley and California State University, East Bay to provide mentorship to Afghan students in 2013; and
- Organizing appearances by the Superintendent on a local Afghan TV station in 2012 and 2013.

During its meetings with community organizations, community leaders described the Superintendent’s proactive efforts to increase the cultural competency of school site administrators and to strengthen the District’s bullying policy to include harassment based on race, color, or national origin.

Other proactive efforts by the District include its compiling of curricular tools to provide resources to school sites to raise awareness of the culture and contributions of Sikhs and communities from the Middle East, the launching of a comprehensive campaign involving district-level contests and events, and school site initiatives at each school. The District’s website provides resources to students and parents to address harassment, including specific web-pages, a power-point addressing harassment, as well as the Policy and complaint forms.

The District has implemented initiatives in schools to address harassment which include poster, art and essay contests; incorporating messages about reporting harassment into curricula; holding cultural awareness events; organizing student clubs that focus on leadership and addressing harassment; promotion of positive “upstander” behavior; and the implementation of restorative justice and social and emotional learning strategies. In addition, District schools have invited local organizations such as the Sikh Coalition to speak to staff and/or students about cultures and traditions in the Middle East and South Asia and the Islamic Networks Group (ING) to promote cultural awareness. Schools also held “Not in Our School” presentations for staff and students to assist them in addressing intolerance. Many District schools have invited parents to make presentations on such cultural celebrations as Diwali,¹⁶ Eid,¹⁷ Chinese New Year; some schools hold annual multicultural weeks or cultural fairs; and a teacher at one high school started an ethnic studies program. During the 2014-2015 school year, the District administered a school violence, victimization and safety survey to students during the 2014-2015 school year, which included questions about verbal harassment. In November 2014, ten certificated District staff and eight students attended the International Bullying Prevention Association Conference in November 2014.

Analysis

1. District Response to Reports Alleging Harassment

As described above, for the years 2011- 2012 through the fall semester of 2015, the District reported a total of 24 incidents of alleged harassment on the basis of race, color, or national origin of students who were Sikh and/or Middle Eastern, or perceived as Sikh and/or Middle Eastern.

¹⁶ Diwali, which is a Hindu holiday celebrated in many South Asian nations, is also known as the “Festival of Lights.”

¹⁷ Eid typically refers to Eid al-Adha, a Muslim holiday that is celebrated in Middle Eastern and Southeast Asian nations with significant Muslim populations.

Reports A through K

The incidents described in Reports A through K took place at three District schools: five of the incidents occurred at one junior high school, and three incidents each occurred at a high school and at an elementary school; each incident involved alleged verbal harassment related to the students' identities as Sikh and/or Middle Eastern, or for being perceived as such. Reports C, F, G, H, I, and J specified terms which were used to verbally harass the students (*i.e.*, “terrorist”, calling a student with a turban names including “muffin man”, “chicken ninders”, and “Mr. Muffin”, calling a student “turban” rather than his name, “Gandhi”, and “XXXXXX”). Reports A, B, D, E and K also describe other verbal harassment that was directed toward the students' ethnic identity or English language skills (*i.e.*, conduct directed toward skin color, clothes, and manner of speech, mocking accents, calling a turban a “bun”, referring to a turban as a “diaper”, making fun of students' hijabs). In Reports C, F, and I, the evidence obtained indicated that the harassing incidents had been repeatedly occurring.

Based on the evidence obtained and reviewed by OCR, OCR finds deficiencies in the District's responses to the incidents described by Reports A through K. The evidence concerning these Reports did not indicate that the District determined whether the alleged harassing conduct created a hostile environment and, if so, whether it took steps to eliminate it and prevent its recurrence and, where appropriate, remedy the effects of the harassment on the student who was harassed and, if necessary, on the broader school community. In addition, the teacher in Report H failed to report the incident to the school principal, as required by the District's Policy. Further, with the exception of Report E, the evidence did not indicate that the incidents were handled in accordance with the District's Policy, which states that “[S]chool staff is to respond to this complaint and provide the Director of Student Support Services with a summary of their investigation, all documentation and their remedy of the situation *in writing* (emphasis added).”

Reports L through X

Reports L through X describe incidents that occurred at ten different schools within the District, seven of which were reported to the District, which provided documentation that it maintained concerning the incidents. As described earlier, school administrators engaged in varying levels of record-keeping regarding incidents of alleged bullying or harassment based on race, color, or national origin. In interviews with District administrators about all 13 incidents, OCR learned that schools responded to the incidents in varying ways to address the conduct, including counseling students to stop the behavior, requiring an apology, and implementing discipline. OCR also noted that in nine of the incidents (Reports L, O, P, Q, S, T, V, W, and X) school staff took steps to support the student who was the target of the harassing conduct, including checking-in on the student, offering counseling, and creating anti-bullying events.

OCR notes that in 4 of the 13 incidents (Reports L, S, W, and X), the evidence indicates that school administrators took responsive actions to incidents of bullying or harassment that were tailored to redress problems experienced as a result of the incident (*i.e.*, offering counseling), and that were reasonably calculated to prevent the recurrence of harassment (*i.e.*, the Principal discussing discriminatory harassment with students; convening a school-wide unity day; creating

an anti-bullying club; convening a town-hall meeting about bullying; creating an anti-bullying week and poster contests; and inviting a community-based organization to conduct trainings about the Muslim faith).

OCR finds deficiencies in the District's handling of the incidents in Reports L, M, N, O, Q, R, S, U, and V, because the documents did not reflect that the District made a determination regarding whether the alleged harassment created a hostile environment and, if so, whether it took steps to eliminate it, prevent its recurrence and, where appropriate, remedy the effects of the harassment on the student who was harassed and, if necessary, on the broader school community. In addition, there is no documentation of the incidents described in these Reports, as required by the District's Policy. Furthermore, the teachers in Reports Q and R failed to report the incidents to an administrator, as required by the District's Policy.

2. Implementation of District policies

OCR's review noted that a number of school site staff and administrators did not know that they were responsible for reporting and intervening when they become aware of misconduct. Additionally, they stated that they received little training on how to conduct an investigation in response to notice of perceived harassment based on race, color or national origin.

Ten District administrators whom OCR interviewed stated that, contrary to the District's Policy, they did not regularly document incidents of harassment. OCR also noted that 18% students in junior high and high schools who responded to OCR's surveys reported they would not report harassing conduct to a school staff member and a number of students in focus groups identified that their reluctance to report was based on perceptions that District staff would not respond effectively and/or that they would be subject to retaliation or further ridicule by students after reporting.

3. District's Proactive Efforts

OCR's investigation also showed that the District has implemented several proactive efforts to address harassment of and provide a nondiscriminatory educational environment for Sikh and Middle Eastern students. These efforts were reported and described to OCR by District staff and administrators and also by leaders at community-based organizations that work with constituencies who are from Sikh and Middle Eastern communities. As described above, these efforts include strengthening the District's Policy; engaging in outreach amongst Sikh and Middle Eastern communities by District leadership; bringing in community-based organizations to increase District and school site cultural awareness and competency; creating parenting workshops for parents of Afghan heritage and mentorship opportunities for Afghan students; and prioritizing the issue of anti-harassment at school sites through the creation and dissemination of curricular tools, and the launching of anti-harassment initiatives. Every staff member and administrator interviewed by OCR was aware of and could describe school site and District-wide anti-harassment efforts.

Conclusion

Prior to the completion of OCR's investigation, the District requested to enter into the enclosed Resolution Agreement (Agreement), and OCR determined that it was appropriate to do so. On January 12, 2017, the District signed the enclosed Agreement which, when fully implemented, is intended to address the deficiencies identified during OCR's compliance review investigation. As specified in the Agreement, the District has agreed to:

- Issue and widely publicize a statement that the District does not tolerate acts of harassment based on race, color or national origin, including information encouraging reporting.
- Schedule training 1) for staff on cultural responsiveness and sensitivity, and on processing, documenting, investigating and/or resolving complaints of harassment based on race, color or national origin; and 2) for students on understanding harassment and promoting respect and appreciation of all cultures;
- Review its accommodations and excused absence policies to ensure that they do not discriminate against students based on race, color or national origin;
- Provide a forum for, and facilitate conversations with, District students to improve cultural awareness and discuss questions and concerns about harassment based on race, color or national origin;
- Establish a working group of District personnel, community representatives, parents and students to make recommendations regarding the effectiveness of the District's harassment-prevention efforts;
- Conduct a climate survey to assess the educational environment for District students and develop a monitoring program to assess the effectiveness of its harassment-prevention efforts;
- Host a parent and community meeting, in conjunction with OCR, to discuss its commitments under this Agreement;
- Regularly report to OCR regarding implementation of the above and of key data items.

Based on the commitments made in the enclosed Agreement, OCR is closing the investigation phase of this compliance review as of the date of this letter. When fully implemented, the Agreement is intended to address the compliance concerns raised in this investigation. OCR will monitor the implementation of the Agreement until the District is in compliance with the statutes and regulations, which were at issue in this review.

OCR's determination in this matter 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.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has participated in the complaint resolution process. If this happens, such individuals may file a 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, it will seek to protect, to the extent provided by the law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

OCR thanks the District, particularly Superintendent Morris, for its cooperation and courtesy during the compliance review investigative process. If you have any questions regarding this letter, please contact the Civil Rights Attorneys who investigated this matter, Shilpa Ram, at shilpa.ram@ed.gov, Laura Welp, at laura.welp@ed.gov, or Chief Attorney Anamaria Loya, at anamaria.loya@ed.gov.

Sincerely,

/s/

Laura Faer
Regional Director

Enclosure