



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

REGION IX  
CALIFORNIA

50 UNITED NATIONS PLAZA  
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September 30, 2016

Dr. Steve Kellner  
Superintendent  
West Sonoma County Union High School District  
462 Johnson Street  
Sebastopol, California 95472-3431

(In reply, please refer to OCR Docket Number 09-16-1264.)

Dear Superintendent Kellner:

In a letter dated April 22, 2016, the U.S. Department of Education, Office for Civil Rights (OCR), notified the West Sonoma County Union High School District (District) of the above-referenced complaint alleging discrimination on the basis of race filed by the Complainant on behalf of the Student.<sup>1</sup> In a second letter dated July 14, 2016, OCR clarified that the allegations opened for investigation were:

1. Whether the Student was subjected to harassment by other students based on race, and the District failed to respond appropriately and effectively to notice of the harassment, and;
2. Whether African-American students at XXXXXX High School (School) were subjected to a hostile environment based on race and the District failed to respond appropriately and effectively to notice of the harassment.

OCR investigated the complaint under the authority of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d, and its implementing regulation. Title VI prohibits discrimination on the bases of race, color, or national origin by recipients of Federal financial assistance. The District receives funds from the Department and is subject to Title VI and the regulation.

To investigate this complaint, OCR conducted three onsite visits and interviewed the Student, the Complainant, the Student's father, a parent of another student at the school, three School administrators and the District's Superintendent. OCR also reviewed documents and other information provided by the Complainant and the District. After careful review of the information gathered in the investigation, OCR concluded that the District violated Title VI with regard to allegation 1. Prior to OCR completing its investigation, the District voluntarily agreed to address the areas of concern identified by OCR with respect to allegation 2. The legal standards, findings of fact, and the reasons for OCR's determinations are summarized below.

### **Legal Standard**

The regulations implementing Title VI, at 34 C.F.R. §100.3(a) and (b), prohibit discrimination based on race, color or national origin by recipients of Federal financial assistance. School districts are responsible under Title VI and the regulation for providing students with a nondiscriminatory educational environment. Harassment of a student based on race, color or national origin can result in the denial or limitation of the student's ability to participate in or receive education benefits, services, or opportunities.

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<sup>1</sup> OCR identified the Complainant and Student in our notification letter to the District and is withholding their names from this letter to protect their privacy.

A district violates Title VI and the regulation if the evidence shows that: (1) the harassing conduct (physical, verbal, graphic, or written) on the basis of race, color, or national origin is sufficiently serious so as to limit or deny a student's ability to participate in or benefit from the services, activities or privileges provided by a district; (2) the district had actual or constructive notice about the harassment; and (3) the district failed to take an appropriate, prompt, and effective responsive action that is within its authority to end the harassment, eliminate any hostile environment that has been created, prevent its recurrence, and, where appropriate, remedy the effects of the harassment on the student who was harassed.

Under Title VI and the regulations, once a district has notice of harassment of a student on the basis of race, color or national origin by another student that took place in a district program, it is responsible for determining what occurred and responding appropriately. The district is not responsible for the actions of the student, but rather for its own discrimination in failing to respond adequately. Once the district has notice of harassment, the responsibility to take appropriate and effective action is the district's responsibility whether or not the student who was harassed makes a complaint or otherwise asks the district to take action. So long as an agent or responsible employee of the district or school received notice, that notice will be imputed to the district.

In analyzing claims of harassment under Title VI, OCR first considers the totality of the circumstances to determine whether a hostile environment has been created, *i.e.*, whether the harassing conduct is sufficiently severe, persistent or pervasive that it denies or limits a student's ability to participate in or benefit from the recipient's program. These circumstances include the type of harassment, context, nature, scope, frequency and severity, age, race, duration, and location of the harassment incidents, as well as the identity, number, and relationships of the persons involved. It also considers whether other incidents motivated by race, color or national origin have occurred at the school to this student or others.

If OCR determines that a hostile environment has been created, OCR then evaluates the appropriateness of the responsive action by assessing whether it was prompt, thorough, and effective. What constitutes a reasonable response to harassment will differ depending upon the circumstances. However, in all cases the district must promptly conduct an impartial inquiry designed to reliably determine what occurred. If a district's grievance procedures encompass race, color, and national origin discrimination, it must apply such procedures consistently and in a manner that does not constitute Title VI discrimination.

The response must be tailored to stop the harassment from recurring, eliminate the hostile environment, and remedy the effects of the harassment on the student who was harassed. The steps taken should be reasonable, timely, age-appropriate, tailored to the specific situation, and effective. Other actions may be necessary to repair the educational environment.

**Allegation 1: Whether the Student was subjected to harassment by other students based on race, and the District failed to respond appropriately and effectively to notice of the harassment.**

The following facts are relevant to OCR's analysis:

- The Student identifies as mixed race (African American and white). He attended the School during his XXXXXXXX and XXXXXXXX years and, as described below, participated in the School's XXXXXXXXXXXX XXXXX XXXXXXXX for the XXXXX XXXX XX XXX XXXXXX year. According to the California Department of Education (CDE), during the 2015-16 school year, the School enrolled XXXXXXXX African-American students and XXXXX white students.

- Prior to attending the School, the Student maintained at or above a “B” average, maintained friendships with his classmates, and described himself as “well-liked” by his peers. The Student reported that he did not experience bullying or harassment, racial or otherwise.
- In the summer of 2013, before the start of the Student’s XXXXXXXX year,<sup>2</sup> he began X--- paragraph redacted---X. As the Student was XXXXXXXX XXX XX XXX XXXXXXX XXXX with a group of XXXXX XXXXXXXX, Student A asked the Student “Why don’t you talk black?” The Student responded: “What does that mean?” Student A said that the Student “sounded white.” The Student did not respond and told OCR that even though he was offended by the comment, because the other students around him were not bothered by the comment, he decided not to make an issue of it.
- Over the course of his XXXXXXXX year, the Student reported to OCR that he experienced racially-motivated bullying and racial epithets and statements in the classroom, during XXXXXXXX XXXXXXXX, and at XXXXXXXX XXXXX. In particular, the Student reported that:
  - Student A used the word “nigger” frequently. He continued to use the word even after the Student asked him to stop because it offended him.
  - Three XX XXX XXXXXXXXXX (Student B, Student C, and Student D) sang a Johnny Rebel song entitled “A White Girl with a Nigger” in the XXXXXXX XXXX during the XXXXX XXXXXXXX of his XXXXXXXX XXXX. The song included the lyrics “...that scumbag motherf---er ran off with a nigger. . . . It’s enough to make a man throw up. It sure is hard to figure out how any decent girl could ever f--- a crazy nigger...Because there’s nothing quite as worthless as a white girl with a nigger...so for all you nigger-loving whores, this song is just for you.”
  - While sitting in XXXXXXXXXXXXXXXX class, Student B called the Student a “nigger.” The Student told OCR that he responded by saying “f--- you” to Student B. The Student reported that he was chastised by his substitute teacher for using strong language. When the Student explained that Student B had just called him a “nigger,” the teacher responded that Student B needed to calm down. In an interview with OCR, the Student stated that he could not remember the name of the teacher, but that he knew she XXXXXXX XXXXXXXX at the School and was filling in for his XXXXXXXXXXXXXXXX teacher that period. The Student also provided a physical description of the teacher.
  - Later in his XXXXX XXXXXXXXX, the Student told his XXXXXXX teacher that he had experienced bullying and harassment on the basis of his race by XXX XXXXXXXX XXXXXXXXXX. He asked her not to do anything or tell anyone because he was afraid of retaliation.
  - During a training session for the Safe Student Ambassador program, an anti-bullying program at the School, students were directed to put post-its on the wall with examples of bullying they experienced. The Student wrote that he was called a “nigger” and racially harassed at school. After the training ended, Student A approached the Student and said “you told everyone I call you a nigger, you know that is not true.”

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<sup>2</sup> The following information regarding the Student’s experiences in his XXXXXXXX XXX XXXXXXXXXX XXXX at the School is based upon two interviews OCR conducted with the Student. The District had notice of the incidents as described in “The Complaint Investigation and Resolution Section” of this letter. However, OCR obtained additional details about the alleged incidents that were likely unknown to the District because it did not conduct a full investigation regarding the allegations.

- Student A sat behind the Student in his XXXXXXXX XXXXXXXX class. Because he frequently called the Student a “nigger” during class, the Student told OCR that he asked the teacher if he could be moved away from Student A because Student A was distracting him. The Student did not mention the use of the racial slur to the teacher. The Student told OCR that the teacher moved Student A to the seat in front of the Student.
- The Student told Student A that his use of the word “nigger” made him very uncomfortable. Student A responded that if the Student thought it was acceptable to call Student A a “honky,” Student A felt that it was acceptable for him to say “nigger.” The Student told OCR that he had never called Student A a “honky.” He told OCR that he realized it was futile to continue to discuss the issue with Student A after this conversation.
- The Student reported to OCR that the following incidents occurred during his XXXXXXXX XXXX:
  - A student played a song called “Beat on the Nigga” in the XXXXXXXX XXXXXXX XXXX. Student A approached the Student and pantomimed beating the Student while whispering and mouthing along to the song.
  - Student D showed the Student his XXXXX XXXXX, on which he had written “WPR.” Student D told the Student this stood for white power, which he said was a joke among his white friends. The Student told OCR that he believes another student told Student D that he should not have WPR on his XXXXX XXXXX, so the next day Student D replaced WPR on his mouth guard with a picture of the confederate flag.
  - The Student was walking down the street near the School when Student A drove by in a truck with several friends. Student A shouted “nigger” at the Student from the truck and drove away.
  - Throughout XXX XXXXXXX, Student F shouted “nigger” regularly when he was XXXXXXXX or XXXXXXXX XXXX X XXXX. According to the Student, this behavior was so frequent that he believed the XXXXXXXX heard it on multiple occasions. On one such occasion, a XXXXXXXX XXXXX told Student F to “knock it off.” A XXXXXXXX XXXXXXXX XXXXX also at one point told Student F to stop using that word, but Student F continued to use the word. The Student told OCR that given his experiences with the XXXXXXXX XXXXXXXX failing to respond effectively to the use of the racial slur XX XXX XXXXX, he did not believe it would make a difference to report this to anyone else at the School.
  - Student C, a XXXXXXXX XXXXXXXX, had a large sticker of the confederate flag on the back window his car, which he parked on school property. In addition, on three separate occasions the Student saw other students at the school near the XXXXXXXXXXXXXXX XXXXXXXX XXX XXXX XXXX wearing shirts with an image of the confederate flag that said “if this flag offends you, you need a history lesson.” On another occasion, a female student in one of the Student’s classes was wearing a shirt with a confederate flag, and a teacher told her it was not appropriate. She replied that the shirt was just a “Lynard Skynard” shirt, and the teacher advised her not to wear it to school again.
  - The Student reported to OCR that seeing the flag on campus made him uncomfortable, and that he had discussions with some of his classmates about whether it was acceptable to wear this imagery and expressed his concern that it was not appropriate to wear to school.

- The Student told OCR that he was often afraid while at the School and attempted to avoid contact with the students who had made racist comments. He reported to OCR that over the course of his two years at the school he felt depressed and started to eat more junk food, which exacerbated XXX XXXXXXXX.
- The Student told OCR that he felt isolated because he did not feel like any other students “had his back” when he had previously objected to racial slurs. When he got home from school each day, he was so exhausted that he failed to do his homework. As a result, his GPA suffered and he was close to falling below 2.0. He told OCR that while at the School, he felt hopeless and like an underachiever; he decided that he no longer wanted to go to college and felt like he did not have a future.
- On August X, 2015, Student C posted an image on Instagram depicting a bearded man riding a motorcycle wearing sunglasses. OCR reviewed the text on the photo, which read “Remember when white boys were proud to be white? Some still are.” Below the post, the following exchange occurred between the Student and Student C:
  - Student C: Hate on it. #whitepride
  - The Student: #totallynotracist.
  - Student C: if somebody said black pride nobody would bat an eye so no it is not racist [Student’s screenname].
  - The Student: any pride in your race (as opposed to culture) is racist, dude.
  - Student C: How could you have pride in your race? Your [sic] black, and blacks are taking advantage of the welfare system, filling prisons, the most crime, and burning OUR F---ING FLAG!
  - The Student: Lol salty you white supremacist f---?
  - Student C: Yea I’m tired of you f---ing people [Student’s screenname]
  - The Student: We people?
  - The Student: I’m pretty sure white people get more out of the social welfare system than black.
  - Student C: You’re an idiot [Student’s screenname]
  - The Student: F--- you you greasy trashy d---hole
  - Student C: I will stomp your little XXXXXXXX a-- [Student’s screenname]
  - The Student: I didn’t hear you clamoring for the rule of law when you brought XXXX XXXXX to school.
  - Student C: Who gives a f--- if I brought X XXXXX to school!?! Dude your [sic] asking for something you don’t want so shut your mouth [Student’s screenname]
  - The Student: what’re you gonna do? XXXX me you racist hypocrite?
  - Student C: Just because your [sic] a nigger and think like that doesn’t mean I do but I will punch you in the f---ing mouth [Student’s screenname].
- On August X, 2015, the Student received a message from the Facebook account of another student at the School (Student E). The exchange followed an article that the Student posted on

Facebook about people in Russia allegedly removing pigmentation from their skin. OCR reviewed the exchange, which reads as follows:

- Student E: Hey [Student] looks like your [sic] going to Russia
  - The Student: Oh? -you're [correcting Student E's grammar]
  - Student E: Now I'm gonna rip the black off you myself now
  - The Student: Are you?
  - Student E: You wait and see
  - The Student: This wouldn't be [Student C] would it? Because [Student E's] type is typically riddled with spelling errors.
- The Student saved a screen shot of each of the aforementioned social media postings/messages and shared them with his parents. His parents contacted the police and the District Superintendent to file a complaint, as described below.

#### **The District's Uniform Complaint Procedure and Bullying Policies and Procedures**

- The District Board Policy (BP) 1312.3 states that all allegations of unlawful discrimination, harassment, intimidation or bullying based on race will be handled according to the District's Uniform Complaint Procedure (UCP).
- The District's Administrative Regulation (AR) 1312.3 sets forth the District's grievance procedure and provides that upon receiving a complaint, a compliance officer (either the superintendent or designee) will collect all documents and interview all witnesses with information pertinent to the complaint.
- AR 1312.3 requires the compliance officer to provide the complainant and/or their representative an opportunity to present the complaint and any evidence, or information leading to evidence, that supports the allegations in the complaint.
- AR 1312.3 further provides that all complaints will be investigated and resolved within 60 calendar days of the District's receipt of the complaint. The District's final written decision must include: 1) the findings of fact based on the evidence gathered, 2) the conclusions of law, 3) the disposition of the complaint, 4) the rationale for such disposition, 5) corrective action (if warranted), and 6) notice of the right to appeal to the CDE within 15 days and the procedure for doing so.
- BP 5131.2 defines cyberbullying to include the creation and transmission of harassing communications and/or direct threats using a telephone, computer, or any wireless communication device. The policy provides that within one day of receiving a report of bullying, a school employee shall notify the principal of the report, whether or not a uniform complaint is filed. Within two days of receiving a report of bullying, the principal shall notify the district compliance officer. The policy provides that when a student uses a social networking site or service to bully or harass another student, the Superintendent or designee may file a request with the social networking site or service to suspend the privileges of the student and to have the material removed.
- BP 5131.2 also provides that when a report of bullying is submitted, the principal or a district compliance officer shall inform the student or parent/guardian of the right to file a formal written complaint in accordance with AR 1312.3, and that any complaint of bullying shall be

investigated and, if determined to be discriminatory, resolved in accordance with the law and the district's uniform complaint procedures.

- BP 5131.2 stipulates that students who commit an act of bullying of any type may be required to attend counseling, behavioral intervention and education. If the behavior is severe or pervasive as defined in Education Code §48900, the student may be subject to suspension or expulsion in accordance with district policies and regulations.
- The District's Non-Discrimination and Harassment policy at BP 5145.3(a) specifies that students who harass other students shall be subject to appropriate discipline up to and including counseling, suspension, and/or expulsion.
- The District provides parents and guardians with annual notification of the District's policies in the parent handbook, the District and the School websites, and postings at the District schools. The District's 2014-2015 Student and Parent/Guardian Handbook tells parents and guardians the bases upon which a UCP complaint may be filed, the process for filing a complaint, and the contact information for the District compliance officer.

### **The Complaint Investigation and Resolution**

- The Complainant contacted the Superintendent regarding the aforementioned Instagram post on August X, 2015. (At the time, the Student had not received the Facebook message). The next day, Vice Principal 2 contacted the Complainant by phone. The Complainant declined to discuss the issue with Vice Principal 2 and requested that the Superintendent contact her directly.
- On August X, 2015, the Superintendent contacted the Complainant by phone. The Complainant described the Instagram post to the Superintendent. They agreed to meet in person to discuss the incident on August XX, 2015. The Complainant sent a confirming email and attached a screenshot of the Instagram post. In that email, the Complainant stated that she was particularly concerned about Student C because he had been disciplined in the recent past for bringing a weapon to school. The Complainant also told the Superintendent that Student C had a confederate flag on the truck that he drives to school, and expressed concern that a number of the individuals who "liked" the Instagram post were also students at the School.
- On August X, 2015, the Student's father sent a follow up message to the Superintendent notifying the Superintendent about the August X, 2015 Facebook threat from Student E, who he described as being friends with or in communication with the Student C.
- Sometime before the meeting, the Student told his parents about other alleged incidents of bullying and harassment that had occurred at the School. The Student's family drafted a document which listed the additional incidents of harassment as described by the Student occurring during XXX XXXXXXXX XXX XXXXXXXXXX XXXXX. The document stated that during the Student's XXXXXXXX XXXX the following incidents, described in more detail above, occurred:
  - Student A asked the Student why he didn't talk black while XXXXXXXX XX XXXXXXXX.
  - Student A used the N-word frequently, even after the Student asked him to stop.
  - Students B, C, and D sung the Johnny Rebel song in the presence of the Student.
  - Student B whispered the N-word to him in XXXXXX XXXXXXXX class and the substitute teacher chastised the Student for his response.
  - The Student told his XXXXXX Teacher about the harassment he experienced and the XXXXXX teacher did not report this to administrators or the Student's parents.

- The document stated that during the Student's XXXXXXXXXX XXXX, as described in more detail above, the following incidents occurred:
  - Student A pantomimed beating the Student while whispering and mouthing along to a song with the lyrics "Beat on a Nigga."
  - Student A shouted "Nigger" from a truck at the Student while he was walking to school.
  - Student C had "WPR" written on his XXXXXXXXXX and told the Student it stands for white power. He later replaced it with a confederate flag.
  - During a XXXX XXXX to XXXXXXXX various comments and allusions were made about the neighborhood being "poor", "dangerous", and "black." These comments made the Student feel uncomfortable.
  - Student F regularly shouted the word "Nigger" during XXXXX XXX XXXXXXXXXX XXXX XX XXX XXXXXXXX or XXXXXXX XXXX X XXXX. X XXXXX overheard this and told him to knock it off, but the behavior continued.
- The document concluded with a description of the social media incidents, described in more detail above, that prompted the Complainant to contact the District:
  - Student C posted a white supremacist meme on Instagram and threatened the Student in the comments section.
  - Student E wrote a threatening Facebook message to the Student.
- On August XX, 2015, the Complainant, the Student, and the Student's father arrived at the District office for a meeting to discuss the incidents. The Complainant distributed a copy of the aforementioned list of racially harassing incidents and a copy of the social media postings. The Superintendent, Principal, Vice Principal 1 and Vice Principal 2 were also in attendance. OCR interviewed all parties who attended the meeting, and each described the meeting as tense and emotional.
- Upon entering the room, the Complainant asked if she could record the meeting. The Superintendent told the Complainant that she could record the meeting, but that he would ask her to turn off the recording when discussing minors other than the Student for privacy reasons. The Complainant agreed, but when the conversation turned to a discussion of the other students involved in the incidents and the Principal requested that she turn off the recording device, the Complainant stated that she became upset. She and her family left the room.
- The District staff reported being surprised by the family leaving the room abruptly. A few minutes later, the Student's father returned and asked if they could continue the meeting. The Complainant, the Student, and the Student's father all returned to the room.
- The Superintendent and Principal told OCR that the parents requested that all questions be directed to them during the meeting. The Superintendent stated that the Student's father informed them that the family had recently met with the police regarding the social media threats. The Student's father stated that they were disappointed with how the police questioned the Student and told the District staff that he would not allow his son to be "victimized again."<sup>3</sup>

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<sup>3</sup> OCR reviewed the police report of the family's visit, which relayed that when the Complainant voiced her concern that it was a scary time to be black, the officer "advised [her] that it is also dangerous to be a cop."



- The Complainant told OCR that she told the District staff that she was extremely concerned by the social media postings and the incidents of racial harassment experienced by the Student in XXX XXXXXXXX XXX XXXXXXXX XXXXX. She expressed her concern for the Student's safety and what she described as a "culture of racism" at the School.
- In interviews with OCR, both District staff and the family stated that the focus of the meeting was on the social media incidents, and that the District would investigate the complaint in two phases. The first phase would involve investigating the social media threats because they were the most immediate and involved concerns of physical safety. The second phase would involve investigating the other incidents of racial harassment that had occurred during the Student's XXXXXXXX XXX XXXXXXXX XXXXX. The District also agreed to investigate the Complainant's concerns that certain staff members were aware of harassment and racist language from previous years but failed to take action in response to them. After the meeting, the Complainant emailed the list of incidents to the Superintendent.
- In the meantime, the District offered to excuse the Student from school on XXXXXXXXXX XXXXXXXX XX, 2015 XXXX XXXXX XXX XX XXXXXXXX through XXXXXXX XXXXXXX XX, 2015, so that the District could interview Student C and Student E XX XXX XXXXX XXX XX XXXXXXXX. The parents agreed to this arrangement.
- On August XX, the Student's father emailed the Superintendent asking about the timeline for the investigation and requesting that they set up a time to meet to discuss the investigative findings. On August XX, the Superintendent responded that it was difficult to give an exact timeline for the completion of the investigation, but that he was confident they would have a full report to share with the family by August XX, 2015, after which they could meet to discuss the report. The Student's father agreed to meet on August XXXX, and asked that the Superintendent provide an update on XXXXXXX August XXXX, so that they could determine whether or not they felt comfortable with the Student returning to school on XXXXXXX August XXXX. The Superintendent agreed to update the family on the status of the investigation by XXXXXXX afternoon.
- The District assigned the responsibility for interviewing Student C and Student E to Vice Principal 1. Vice Principal 1, however, told OCR that she did not have a copy of the Facebook exchange that was provided to the District by the family.
- Vice Principal 1 reported speaking with Student E XX XXX XXXXX XXX XX XXXXXXXX. In her notes from the interview, Vice Principal 1 stated that she told Student E that she heard about Facebook "banter" over the summer that was "race related." Student E denied posting anything online "in regards to that." Student E stated that he would delete his Facebook account because he was worried that someone had improperly used his account. Vice Principal 1 reminded Student E that the School did not tolerate racism or harassment of any kind. She told Student E that he was not in trouble and that the school would not be taking any action with respect to this incident. In an interview with OCR, Vice Principal 1 stated that she never followed up to determine whether Student E deleted the Facebook account.
- At the end of that day, Student E's mother contacted the School regarding this incident. Vice Principal 1 spoke to Student E's mother, who was upset that Vice Principal 1 had accused her son of posting offensive material online. Vice Principal 1 told the parent that the school would not allow derogatory comments towards others, and if Student E thought his account was hacked, the family should contact the police.

- Student C did not report to the School XXX XXX XXXXX XXX XXXXX. Vice Principal 1 called Student C's home, but her calls went unanswered.<sup>4</sup>
- On August XX, 2015, the Principal contacted the Student's father by phone with an update on the investigation. That afternoon, the Superintendent followed up with an email summarizing the status of the investigation. The Superintendent communicated his hope that the Student would return to school on XXXXXX, August XXXX. The Student's father responded that the family was not comfortable with the Student returning prior to the conclusion of the first phase of the investigation for safety reasons. X---paragraph redacted---X.
- On August XX, 2015, the family emailed the Superintendent asking if they were still scheduled to meet on August XX, 2015 to discuss the investigation. The Superintendent stated that they could meet on August XXXX, but that they should be aware that one of the students involved in the social media incidents had not reported to school and thus the District had not been able to complete the investigation. The family asked if there was any progress on the investigation of the other incidents, and asked why the District had not attempted to contact Student C or his parents at home since he had not reported to school. The District responded that Student C would X---paragraph redacted---X.
- The Student's father asked whether the District would interview the 16 students who liked Student C's Instagram post, and included a list of names of students that corresponded to the Instagram usernames on the post. In addition, he asked if the District would be interviewing Student A, who had been involved in ongoing racial harassment over the last two years. The Superintendent never responded in writing to the questions in this email.
- OCR asked each District staff member whether they made any attempt to contact the Student or his parents to gather additional information after the August XX, 2015 meeting. They had not. OCR also asked District staff whether the Student's parents had ever communicated that the District was prohibited from speaking to the Student after the meeting, and no District staff could recall any such statement.
- On August XX, 2015, the Principal issued a letter to the family regarding the results of the investigation. It included the following information:
  - A statement that the central issues being investigated were the threatening social media postings and the purpose of the investigation was ensuring a safe environment for the Student to return to school.
  - A description of the social media threats as "incidents of harassment."
  - A description of the interview that Vice Principal 1 had with Student E and a notification that Student C had not reported to school and was "pursuing other education options."
  - A statement that given this information, the District determined it was safe for the Student to return to school without daily contact from these two individuals. The letter did not address how the District planned to keep Student C or E from having contact with the Student.
  - A statement that the Principal had met with XXX XXXX XXXXXXXX XXXXXXXX XXXXX to discuss the racial harassment allegations from the past two years while the Student was

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<sup>4</sup> Vice Principal 1 later learned through the counseling department that Student C would be XXXXXXXX XX XXXXXXXXXXXX XXXXX. Student C reported to the School on September X, 2015, at which point he was interviewed by Vice Principal 1 as described below.

XX XXX XXXXXXXX XXXX. The letter stated that XXX XXXX XXXXXXXX XXXXX “was surprised to hear what had been allegedly said.” XXX XXXXX maintained that he had never heard of any of these incidents happening during XXXXXXXX XXXXXXXX XX XXXXXXX X XXXX.<sup>5</sup>

- With respect to the allegation that a substitute teacher had not appropriately addressed the use of a racial slur directed at the Student, the letter stated that the teacher was “not a regular [District] employee” and therefore “nothing was investigated there.”
  - With respect to the allegation that the Student told his XXXXXX teacher about the harassment XX XXX XXXXXXXX XXXX, a statement that because the teacher was out XX XXXXXXX XXXXX for the entire year, the District was unable to follow up with her directly.
  - The final line of the letter stated: “This letter concludes my investigation into this matter.”
- In an interview with OCR, the Student’s father stated that the Principal called the family on August XX to describe the investigative findings. When they asked if the District would continue the investigation of the other issues raised, the Student’s father stated that the Principal was noncommittal. The Principal told OCR that he did not follow any particular District procedure in conducting the investigation, but rather was focusing on ensuring that the Student was able to return to school.
  - On September X, 2015, Student C reported to school. Vice Principal 1 spoke with Student C, telling him not to continue the discussion he had with the Student on social media over the summer. She also told him that the school did not tolerate racist comments or harassment. According to Vice Principal 1, Student C did not deny making the posting and did not say much in response. He told Vice Principal 1 that he understood that the behavior should not come to campus. There was no disciplinary action taken against Student C. When OCR asked Vice Principal 1 why Student C was not disciplined for his behavior, she stated that it was outside of the School’s jurisdiction to discipline a student for off-campus behavior. However, Vice Principal 2 told OCR he did believe that the School could discipline students for incidents that occurred using social media because those issues would affect the students when they returned to campus.
  - In an interview with OCR, the Superintendent maintained that the investigation was to be completed in two phases, and that the August XX letter was meant to capture what had happened up to that point and mark the end of phase one. However, the investigative findings letter explicitly addressed all of the categories of allegations raised and states that “this concludes my investigation in this matter.” Also, on September X, 2015, the Superintendent emailed a copy of the August XX letter to the family and stated that this was the “final report...regarding our investigation into the issues you raised.” On September XX, 2015, the District’s attorney sent a letter to the Complainant’s attorney that included the following statement: “The District has investigated the alleged incidents (XXXXXXX XXXX and XXXXXX and [sic] XXXXXX) concerning prior school years that [the Complainant] raised on August XX, 2015. The investigation did not yield evidence to substantiate the complaints.”
  - Because of these inconsistencies, OCR inquired about the steps the District took to complete phase two of the investigation. The Superintendent indicated that the District was unable to proceed to phase two because the family had not accepted the investigative findings of phase

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<sup>5</sup> The Student was never X---paragraph redacted---X. The Principal did not speak to any of XXX XXXX XXXXXXXX.

one. The Superintendent also stated that they did not interview the other students alleged to have used racial slurs because there was not an adult witness for the incidents. In addition, on February XX, 2016, shortly after XXX XXXXX XXXX XXXXX XXXXXXXX XXXXXXXX XX XXXXXXX XXXXX XXX XXXXXXXX XXXXXXXX XX XXX XXXXX, Vice Principal 1 emailed the Principal to summarize the investigation she conducted in August 2015 and stated that Student A “was not part of the concerns brought forth.”

- When OCR asked the Principal what actions the District or School took to prevent the recurrence of the racial harassment, he stated that Student E had denied responsibility so with regard to that incident it was a “done deal.” He also stated that since Student C decided to XXXXX XXX XXXXX XX XX XXXXXXXXXXXX XXXXX XXXXXXX, it looked like the threats were handled. When OCR asked the Principal what was done to address the harm to the Student, he stated only that he did not have a perspective on what he could do help the Student because he had not interacted with the Student before.

### **Disenrollment and Current School**

- X---paragraph redacted-X.
- On September XX, 2015 the Complainant spoke to the School’s XXXXXXXXXXXX XXXXX XXXXXXXXXXXX. She learned that the Student had been marked absent from each of his classes starting on September X, 2015. The Complainant requested XXXXXXXXXXXX XXXXXXXXXXXX XXXXX XXXX for the Student because the family was still not comfortable with the Student returning to the School. The Complainant and the Student’s father told OCR that they were particularly afraid for the Student’s safety because of a widely publicized and racially motivated mass murder of African Americans in a Charleston, South Carolina church in June 2015.
- At the time of the request, the Student had not completed XXX XX XXX XXXXXXXXXXXX XXXXX XXXXXXXXXXXX. X---paragraph redacted---X, he would have to speak to the Principal to request to be placed on a waiting list.
- In an interview with OCR, the Student stated that during his time XX XXXXXXXXXXXX XXXXX he felt isolated and increasingly more depressed. He was afraid to return to school because the individuals who threatened him knew that he had reported them to the School, but they had not been disciplined. He stated that he believed that notifying the students of his complaint but not disciplining them was sending a message that the behavior was “ok,” and “like painting a target on my back.” He felt it was unfair that he had to be stuck at home all day when he had not done anything wrong.
- On September XX, 2015, the Complainant’s attorney wrote a letter to the District requesting XXXXXXXXXXXX XXXXXXXXXXXX XXXXX for the Student, a one week extension to complete the assignments given to him on September XX, and asking that his absences from September X through September XX be cleared.
- On September XX, 2015, the District’s attorney responded to Complainant’s attorney. She stated that the District had determined that XXXXXXXXXXXX XXXXX was not an appropriate educational alternative for the Student because he had fallen behind on his work. She denied the request to participate in XXXXXXXXXXXX XXXXXXXXXXXX XXXXX and stated the Student must return to the School no later than September XX, 2015, unless he chose to enroll elsewhere. She also granted the extension request and stated that the Student’s work would be due on October X, 2015.

- OCR inquired about the decision to deny the Student's request XXX XXXX XXXX XXXXXXXXXXXX XXXXX in light of the family's continued concerns about the Student's safety on campus. The Superintendent told OCR that the District was concerned that the XXXX XXXX XXXXXXXXXXXX XXXXX XXXXXXXX XXX XXX XXX XXXXXXXXXXXX, and because the student was college-bound they wanted to keep him on an A-G compliant curriculum.
- On September XX, 2015, the Complainant's attorney sent another letter to the District's attorney. She indicated that the family was in the process of enrolling the Student in another school and required additional time to complete the enrollment process. She also stated that the family did not believe the school took appropriate action in response to their complaint of harassment because it appeared that no "reprimand, punishment, education opportunities, or support system was established in response to the investigation." As a result, the family was concerned for the Student's ability to learn in a safe environment at the School, and asked that the Student not be required to return to the School during the transition to his new school. They also reported that the Student had completed most of XXX XXXXXXXXXXXX XXXXX XXXXXXXXXXXX, and requested that the absences be expunged from his record.
- On September XX, 2015, the District's attorney responded by letter granting the Complainant's requests provided that the Student submit XXX XX XXX XXXXXXXXXXXX and provide the District with proof that he had enrolled in another school.
- On October X, 2015, the Student transferred to his Current School. The Complainant reported that the Student was on academic probation XXX XXXXXXXXXXXX at his Current School because of the poor grades he received during his XXXXXXXX XXX XXXXXXXXXXXX XXXXX at the School.
- The Student reported that he initially had mixed feelings about transferring, thinking that it would be good to be in a new environment where he would not be subjected to harassment, but also feeling like he was being punished for speaking up about racial harassment at the School.
- In an interview with OCR, the Student reported that he was getting back on track academically, and did not experience any racial harassment or bullying during XXX XXXXXXXX XXXX at the Current School. The Student reported that in his first few weeks at the Current School, he was transferred into an AP XXXXXXXX class, and that he was planning to take AP XXXXXXXXXXXX and AP XXXXXXXXXXXX during XXX XXXXXXXX XXXX. The Student's GPA at the Current School was 3.67 for the spring 2016 semester. The Student also joined XXX XXXXXXXX XXXX at his Current School, and reported that he had not experienced racial harassment XX XXX XXXXXXXXXXXX XXXX.
- The Student nonetheless reported that his fear of the students who had racially harassed him at the School continues. He told OCR that after he transferred schools he had a brief encounter with Student B when he was walking home after school. A van pulled up and honked at him and Student B leaned out of the car and looked at the Student in a manner the Student felt was intended to intimidate him.

### **Analysis & Conclusions of Law**

OCR found that the District violated Title VI because the evidence showed that: (1) the harassing conduct on the basis of race was sufficiently serious so as to limit or deny the Student's ability to participate in or benefit from the District's program; (2) the District had actual and constructive notice about the harassment; and (3) the District failed to take an appropriate, prompt, and effective responsive action that was within its authority to end the harassment, eliminate any hostile environment that was created, prevent its recurrence, and remedy the effects of the harassment on the Student.

First, OCR considered the totality of the circumstances when it found that the Student was subjected to a hostile environment because of racially-motivated conduct he experienced—conduct that was severe enough to limit the Student’s ability to participate in and benefit from the District’s program. Specifically, the Student was subjected to harassment when he was called racially derogatory names and threatened on social media in August of 2015 by other students at the School. The Student was called a nigger, told that someone would “...rip the black off [him]”, “stomp [his] XXXXXXXX a--”, and “... punch [him] in the f--ing mouth.” Student C, who had been previously disciplined for bringing a weapon to school, also made additional racially inflammatory statements, asking the Student “[h]ow could you have pride in your race? Your [sic] black, and blacks are taking advantage of the welfare system, filling prisons, the most crime, and burning OUR F----ING FLAG!” Furthermore, OCR found that several white students who attended the School “liked” Student C’s post.

To the extent that there was a dispute about who authored the second set of threats sent through Facebook, OCR found that a preponderance of evidence supported the conclusion that they were authored by a student at the School. First, the threats came two days after the first set of Instagram threats from Student C. Second, the language used was consistent with (or similar to) the language used by Student C in his Instagram threat. Third, the threat came from a Facebook account registered to a student at the School, and the language used indicated that it came from someone who knew the Student and was upset with him. That evidence is not consistent with a theory that someone other than a student at the School sent the message. Without further investigation, OCR does not reach a finding about which student authored the threats (or whether Student C and Student E may have collaborated in some way), but finds that a preponderance of evidence supports a conclusion that the message was sent by a student or students at the School.

OCR also found that the harassing conduct was sufficiently serious as to limit the Student’s ability to participate in the services, activities or privileges provided by the District. These incidents occurred in a school that enrolled approximately XXX African-American students and approximately XXXXX white students per year. The Student reported that he did not feel like any other students “had his back” when he had previously objected to racial slurs. In that context, OCR found that the Student’s fear of attending school with a student(s) who had threatened him with physical violence on account of his race was reasonable. Moreover, as a result of the harassment the Student suffered, he felt isolated and depressed, and he and his family no longer felt the school was a safe environment for the Student. Accordingly, the District agreed to place the Student XX XX XXXXXXXXXXXX XXXXX XXXXXXXX for a temporary period of time. However, both the District and the family acknowledged this was not an appropriate learning environment for the Student who, among other things, was on a college track.

Second, OCR found that the district had actual notice of the harassment. The Student and the Complainant informed the District about the social media threats and harassment in August of 2015 by calling and informing District staff and also providing photographic evidence via email. Once the District received notice of racially motivated physical threats by students at the School that contemplated future violent action against the Student of a nature that impacted the Student’s ability to feel safe returning to School, it was obligated to respond appropriately.

Finally, OCR found that the District failed to take appropriate, prompt, and effective responsive action to end the harassment, eliminate any hostile environment, prevent its recurrence, and remedy the effects of the harassment on the student who was harassed. As a first step, the District needed to conduct a thorough and impartial inquiry to reliably determine what occurred after receiving notice of harassment. The District’s investigation was not sufficient in this respect. Prior to issuing findings, the District interviewed only one of the students alleged to have harassed the Student on social media and none of the students identified as having “liked” the Instagram post. As noted above, when Student E

was interviewed he told the District that his Facebook account was “hacked.” OCR’s interviews with School staff show that the District did not conduct sufficient investigation to determine whether the Student’s assertion that he was hacked was plausible, or if it was plausible, to ascertain who was responsible for the alleged hack. Vice Principal 1, who conducted the investigation, told OCR she did not even have a copy of the social media exchange when she questioned Student E about it and did not follow-up to ascertain whether Student E deleted his Facebook account. OCR found no evidence that the District took any action to investigate the Facebook threat beyond this single conversation with Student E.

In addition to the direct threats of violence toward the Student, the Student notified the District of allegations of additional harassment that occurred during XXX XXXXXXXX XXX XXXXXXXX XXXX. The Student provided the District with names of the individuals who allegedly harassed him, and names of additional witnesses to the alleged harassment, some of whom included District employees. The District’s investigation of these incidents consisted solely of a short conversation with the XXXX XXXXXXXX XXXXXXXX XXXXXX, who said he was unaware of any problems. However, the XXXX XXXXXXXX XXXXXXXX XXXXXX was not the XXXXXXXXXX XXXXXX during XXX XXXXXXXX XX XXXXXXXXXX XXXXXX, and so would not have had direct knowledge of alleged incidents of racist conduct. The Principal estimated that the School had approximately nine XXXXXXXXXX XXX XXXXXXX XXXXXXXXXX XXXXXXXXXX XXXXXXXX, but he did not speak to any of them.

The Student also described an incident where another student allegedly called him a racial slur and a substitute teacher was notified of the incident. The District told OCR in interviews that they were unable to identify the substitute teacher because they did not have enough information about what day the incident occurred, and thus could not determine which substitute teacher was involved. However, in an interview with OCR, the Student provided a physical description of the teacher, and reported that he believed the teacher was an XXXXXXXX teacher at the School. The School, however, did not follow up with the Complainant or the Student to ensure that they had the relevant information to identify the teacher.

In addition, four of the incidents on the list that the family provided to the District involved a single student (Student A) who had allegedly harassed the Student over the course of two years using racial slurs. However, the District did nothing to follow up with this student. In fact, when reporting back to the Principal in February 2016 XXXXX XX XXXXXXXX XX XXX XXXXX XXXXXXXXXX XXX XXXXXXXXXX, Vice Principal 1 stated that Student A “was not part of the concerns brought forth,” which was directly contradicted by the list the parents provided to the District in person and by email, which included the student’s name repeatedly.

In an interview with OCR, the Student elaborated on the harassment he experienced during XXX XXXXXXXXXX XXX XXXXXXXXXX XXXXXX at the School. This additional context, which the District did not have access to based upon its failure to interview the Student or the Complainant during its investigation, explained what contributed to the Student and his family’s fear of returning to the School. It also would have given the District vital information to guide its investigation of the incidents alleged. For example, the District would have known that the substitute teacher alleged to have witnessed the Student being called a racial slur on campus may have been a regular classroom teacher and not, as the District noted in its investigation findings, a non-employee of the District.

The District asserted to OCR that it was prohibited from speaking with the Student to gather further information about the harassment allegations. OCR found that this assertion was not supported by the evidence. Although OCR found evidence that the Student’s parents asked District staff to direct all questions to them at the August XX, 2015 meeting, OCR did not find any evidence that the Student’s parents prohibited the District from talking to the Student after that the initial meeting. OCR asked each District staff member whether they made any attempt to contact the Student’s parents to gather

additional information after the initial meeting. They had not. OCR also asked District staff whether the Student's parents had ever communicated that the District was prohibited from speaking to the Student *after* the meeting, and no District staff could recall any such statement. OCR found no evidence that District or School staff ever contacted the Student or his parents to ask for any clarifying information after the initial meeting. Furthermore, that initial meeting focused primarily on the two recent social media incidents, which meant that the District gathered almost no information from the Complainant or Student to investigate the prior incidents beyond what was provided at the meeting.

In an interview with OCR explaining the scope of the investigation, the Superintendent maintained that the investigation was to be completed in two phases, and that the August XX, 2015 letter was meant to capture what had happened up to that point and mark the end of phase one. OCR found that the assertion was not supported by the evidence. The last sentence of the August XX, 2015 states that "[t]his letter concludes my investigation into this matter." Then, on September X, 2015, the Superintendent again emailed a copy of the August XXXX letter to the Student's family and stated that this was the "final report...regarding our investigation into the issues you raised." Similarly, on September XX, 2015, the District sent a letter to the Complainant that reported that "[t]he District has investigated the alleged incidents (XXXXXXXX XXXX and XXXXXX and [sic] XXXXXX) concerning prior school years that [the Complainant] raised on August XX, 2015."

The Superintendent stated that the investigation was not completed because the family had not accepted the investigative findings of phase one. OCR also did not find this assertion credible. If the District had intended to continue its investigation after its August XX, 2015 letter, it would have not have written to Student's family on three separate occasions that it had completed its investigation. Moreover, regardless of whether or not the family "accepted" phase one of the investigation, the District had a continuing obligation to investigate racial harassment of which it had notice. District staff acknowledged that beyond the interview of Student C on September X, 2015, no additional investigation of the complaint occurred after August XX, 2015 until a XXXXXXXXXXX XXXXXX XXXXX XXX XXXXXXXXXXX XXXXXXXXXXX approximately five months later.

The Principal acknowledged to OCR that he was not following any District procedure to investigate incidents of harassment, which required that he "interview all witnesses with information pertinent to the complaint." In this regard, the District did not interview the relevant XXXXXXXXXXX XXXXXX, the students who were alleged to have harassed the Student, or obtain additional details from the Complainant and/or the Student to determine if there were any other staff members or students with relevant information. Based upon its failure to take investigative steps necessary to determine what occurred and the failure to follow its own grievance procedures, OCR found that the District's investigation was not appropriate.

After conducting an appropriate investigation, the District would have needed to determine what action was necessary to prevent recurrence of harassment and eliminate any hostile environment. OCR had no evidence that at the time the District issued its investigative findings it had considered any such action beyond the conversations with the accused students and their admonishment to the two students not to do it again. Vice Principal 1 stated the School was unable to discipline either student because the incidents occurred online and in the summer. However, other district staff acknowledged that actions can be taken to address conduct of students that occurs online or during the summer, if the incidents create an issue when the students return to campus. OCR also notes that there are a number of options for preventing recurrence and eliminating any hostile environment available to the District, including mediation, educational, and counseling services for the students involved and creation of a safety plan for the Student.



OCR also found that the School also did not take sufficient action to address the harm to the Student. In OCR's interview with the Principal, he was unable to identify any action the School took to address the harm to the Student, beyond allowing the Student to participate in XXXXX XXXX XXXXXXXXXXXX XXXXX. OCR found that removing the Student from school did not repair the harm to the Student as a result of the harassment. The Superintendent reported to OCR that there was some internal discussion about what supports might be provided to the Student when he returned. However, OCR found no evidence that anyone at the District communicated to the Student or his family that they were willing or able to provide support to the Student that would remedy the harm that he suffered as a result of the harassment he experienced. The Student told OCR that he felt that the District's response caused more harm and made him feel more vulnerable, because he viewed the failure to properly investigate or take appropriate action with respect to the other students involved as confirmation that his concerns were not taken seriously and it made it more likely that the students would continue to harass him or retaliate against him for reporting.

In sum, OCR found that the Student was subjected to harassment based on race, and the District failed to respond appropriately to notice of the harassment. For these reasons, OCR found the District violated Title VI and its implementing regulations with regard to the allegation investigated.

**Allegation 2: Whether African-American students at the School were subjected to a hostile environment based on race and the District failed to respond appropriately and effectively to notice of the harassment.**

In addition to the facts above, the following additional facts are relevant to OCR's analysis:

- On January XX, 2016, XXX XXXXX XXXX XXXXX XXXXXXXXXXX XXXXXXXXXXX X XXXXXXXXXXX XXXXXXX XXXXX XXX XXXXXXXXXXX XXXXXXXXXXX XX XXX XXXXXX. In response, one of the School's teachers led a discussion XXXXX XXX XXXXXXX in his class. One African-American student in the class was very disturbed by the in-class discussion (this student's parent told OCR that the student called him from the school crying because she said the teacher and the other students were using foul language, blaming the Student for making the School look bad, and calling him an instigator). OCR confirmed with the District that this student texted her parent during class, and the parent called to have her immediately removed from the classroom. OCR also confirmed with the District that she and her sibling immediately transferred to another school.
- The Complainant told OCR that after XXX XXXXXXXXXXXX XX XXX XXXXXXXX XX XXX XXXXX XXXXXXXXXXX, other current and former students and parents of color contacted her and her family regarding similar experiences they had at the School.
- The District also provided OCR with emails sent to the School from one current parent and two former students after XXX XXXXXXXXXXXX XX XXX XXXXXXXXXXX XXXXXXX. The emails raised concerns with the culture around race at the School. The current parent reported that she had to pick up her biracial daughter from school several times in the previous year because she was upset over racial comments made about the incidents in Ferguson, Missouri that were in the news at that time. The parent wrote that XXX XXXXXXX brought up a lot of feelings for her family, and she wanted to validate the Student's experience and say that she hoped the School took the Student's claims seriously.
- After XXX XXXXXXXXXXX XXXXXXX XX XXX XXXXX XXXXXXXXXXX, two mixed-race students at the School wrote an article in the school newspaper about their experiences regarding race at the School. That article concluded XXXX XXX XXXXXXXXXXX "experience with racist and ignorant people at [the School] was not an isolated incident, and it wasn't an aberration." The article also quoted a

teacher as saying that, "I am disgusted at how little attention the issue of racism is given at [the School]" and noted that some students were fearful of talking about race to the school newspaper because of potential backlash.

- The District told OCR that since the Student left, it had not done any formal survey or outreach to African-American students to assess the climate. The results of the 2013-14 and 2015-16 California Healthy Kids Surveys for the School included the following:
  - In 2013-14, 14% of ninth graders at the School reported being harassed on school property on the basis of race, ethnicity or national origin. While only 6% of white students reported being harassed on the basis of race, ethnicity or national origin, 26% of Latino students and 21% of mixed-race students reported the same. Data for African-American students was not available from the survey due to the small size of the African-American population at the School.
  - In 2015-16, 12% of eleventh grade students at the School reported being harassed on school property on the basis of race, ethnicity or national origin. (No data broken down by race or ethnicity was available).
  - For 2013-14, 72% of white freshman scored "High" on School Connectedness, 58% of mixed race freshman and 61% of Latino freshman scored the same. Similarly, in 2015-16, 64% of white juniors scored "High" on school connectedness, compared to 50% of mixed-race juniors and 52% of Latino juniors. Data for African-American students was not available from the survey due to the small size of the African-American population at the School.
- OCR inquired about proactive measures the District had taken to improve the culture around race at the school. The District reported the following proactive measures, which were all taken after XXX XXXXXXXX XXX XXXXXXXXXXXX XX XXX XXXXXX XXXXXXXXXXXX:
  - Starting in February 2016 the District Superintendent and administrators at the schools in the District participated in a conference offered by the Sonoma Office of Education entitled "Equity at the Core."
  - In early March 2016 the District invited Calvin Terrell, a speaker and educator who presents to school districts on racial healing and justice, to conduct an assembly with students. He also held an evening session with parents. The presentation focused on bullying and harassment and included examples of racial harassment, among other things.
  - The School convened a steering committee composed of teachers, counselors, students, and administrators to discuss a response to the concerns raised. The response included professional development for staff and educational programming for students.

### **Analysis**

Based on the facts gathered to date, OCR's investigation raised concerns that other African-American students at the School may have been subjected to a hostile environment on the basis of race and that the District did not respond appropriately to notice of the harassment. The facts obtained in the investigation thus far show that the Complainant gave notice to the District that a number of students at the School were frequently using the word "nigger" and playing and singing racist and white supremacist music on school grounds. The Student also told OCR that when XXX XXXXXXXX XXXXXXXX observed another student repeatedly saying the word "nigger," XXX XXXXXXXX responded by telling the student to

knock it off, which did not stop the student from using the word. In addition, the Student reported that on at least four occasions he witnessed other students wearing shirts to School showing the confederate flag, including several instances where students were wearing a shirt that said "If this flag offends you, you need a history lesson." The Student also reported that one of the students who was harassing him had a confederate flag sticker on his truck. The Student reported to OCR that he felt the presence of the confederate flag on school grounds was not appropriate and contributed to his discomfort on campus.

OCR also had concerns about a hostile environment for African-American students based on the response to XXX XXXXX XXXXXXXX XXXXXXXX about the Student's complaint. At least one African-American student was so uncomfortable with the discussion XXX XXX XXXXXXXX in a class, which allegedly included a statement that the Student was an instigator and making the School look bad, that she and her sibling left the school immediately and transferred schools. The District told OCR that staff spoke to students in the class and the teacher and concluded that nothing inappropriate had occurred. Several other students and parents contacted both the Complainant and the School to validate the experiences that Student and Complainant described, and an article in the School's student newspaper included quotes from other members of the community who shared these concerns.

Similarly, California Healthy Kids Survey data produced by the District also raised concerns for OCR that students of color at the School may have been subjected to a hostile environment. For example, in 2013-14 (when the student was in ninth grade), 14% of ninth graders at the school reported being harassed on school property on the basis of race, ethnicity or national origin. This harassment was concentrated among students of color. While only 6% of white students reported being harassed on the basis of race, ethnicity or national origin, 26% of Latino students and 21% of mixed race students reported the same. Similarly, in 2015-16 (when the Student was a junior), 12% of eleventh grade students at the School reported being harassed on school property on the basis of race, ethnicity or national origin.

Finally, the investigation to date raised concerns that to the extent a hostile environment existed, the School did not respond appropriately and effectively. The administrators interviewed by OCR stated that the climate for African-American students at the school was welcoming and friendly, and that other than the instant complaint, they had never received a complaint of racial harassment or discrimination from anyone at the School. Prior to completing the investigation, which would have included among other things, interviews with students, parents, and teachers, focus groups, and a review of discipline records and complaints, the District expressed an interest in voluntarily resolving this allegation pursuant to section 302 of OCR's case processing manual. OCR determined that voluntary resolution was appropriate, and the District entered into the attached Resolution Agreement (Agreement), which is described further herein.

## **Conclusion**

Without admitting to any violation of law, the District entered into the enclosed Agreement which resolves the compliance determination regarding allegation 1 and the concerns identified in allegation 2. The enclosed Agreement is aligned with the complaint allegations and the findings and information obtained by OCR during its investigation. It requires that the District (i) offer counseling and tutoring services to the Student, (ii) disseminate an anti-harassment statement to students and parents; (iii) draft written guidance and provide training on harassment to all School faculty and administrators; (iv) provide training to all District employees involved in receiving or investigating complaints of harassment; (v) conduct a mandatory orientation session for students about the District's harassment policies; (vi) conduct a climate survey for all teachers, students, and parents concerning the environment and potential racial harassment at the School; (vii) provide that age-appropriate instruction about racial harassment be incorporated into the curriculum; and (viii) provide OCR with documentation of all reports or incidents of harassment for the 2016-17 school year.

Based on the commitments made in the enclosed Agreement, OCR is closing the investigation of this complaint as of the date of this letter, and notifying the complainant concurrently. When fully implemented, the Agreement is intended to address all of OCR's compliance concerns in this investigation. OCR will monitor the implementation of agreement until the District is in compliance with the statute(s) and regulations at issue in the case.

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. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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 filed a complaint or participated in the complaint resolution process. If this happens, the Complainant may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, 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.

Thank you for your cooperation in resolving this case. If you have any questions about this letter, please contact the OCR attorneys assigned to this case: Abony Alexander at [Abony.Alexander@ed.gov](mailto:Abony.Alexander@ed.gov), (415) 486-5590 or Blake Thompson at [Blake.Thompson@ed.gov](mailto:Blake.Thompson@ed.gov), (415) 486-5630.

Sincerely,

/s/

Zachary Pelchat  
Team Leader

Enclosures

cc: Nancy L. Klein, Legal Counsel for the District (by email only)