

UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

REGION IX  
CALIFORNIA



50 UNITED NATIONS PLAZA  
MAIL BOX 1200; ROOM 1545  
SAN FRANCISCO, CA 94102

March 11, 2021

SENT VIA EMAIL

Rich Newman, Ed.D.  
Superintendent  
Alpine Union School District  
1323 Administration Way  
Alpine, California 91901

(In reply, please refer to case no. 09-17-1537.)

Dear Superintendent Newman:

The U.S. Department of Education (Department), Office for Civil Rights (OCR) has resolved the above-referenced complaint against the Alpine Union School District (the District). The Complainant alleged that the District discriminated against the Student on the basis of race (African American).<sup>1</sup> Specifically, OCR investigated whether the District subjected the Student to a hostile environment on the basis of race by failing to respond appropriately and effectively to notice of race-based harassment.

OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d-2000d-7, and its implementing regulation, 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin under any program or activity receiving Federal financial assistance. The District receives funds from the Department and is therefore subject to Title VI and the regulation.

OCR gathered evidence by reviewing documents and information provided by the District and the Complainant, and by interviewing the Student and the Student's parent, as well as District employees. After careful review of the information gathered in this investigation, OCR concluded that the District violated Title VI with regard to the issue OCR investigated. The District voluntarily agreed to address the noncompliance identified by OCR with respect to the issue investigated. This letter summarizes the applicable legal standards, the relevant facts obtained during the investigation, and the terms of the resolution reached with the District.

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<sup>1</sup> OCR previously provided the District with the identity of the Complainant, Student, and Parent. We are withholding their names from this letter to protect their privacy.

*Issue: Whether the District subjected the Student to a hostile environment on the basis of race by failing to respond appropriately and effectively to notice of race-based harassment.*

### Legal Standards

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. A district is responsible under Title VI and the regulation for providing students with a nondiscriminatory educational environment. Harassment based on race, color, or national origin can result in the denial or limitation of a student's ability to participate in or benefit from educational services, activities, or privileges.

A district violates Title VI and the regulations 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 (i.e., created a hostile environment); (2) the district had actual or constructive notice of a racially hostile environment; and (3) the district failed to take reasonable, timely, and effective responsive action to end the harassment, eliminate any hostile environment, prevent its recurrence, and, where appropriate, remedy the effects of the harassment. This includes a response that is tailored to fully redress the specific problems experienced at the institution as a result of the harassment.

Under Title VI and the regulations, once a district has notice of a hostile environment on the basis of race, color or national origin by another student or a third party 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 harasser, but rather for its own discrimination in failing to respond adequately. Once the district has notice of a hostile environment, it must take appropriate and effective action whether or not the student who was subjected to a hostile environment makes a complaint or otherwise asks the district to take action. So long as a responsible employee received notice, that notice will be imputed to the district.

In analyzing claims of hostile environment 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 context, nature, scope, frequency, duration, and location of the harassment incidents, as well as the identity, number, age, race, and relationships of the persons involved. OCR also considers whether other incidents motivated by race, color, or national origin have occurred at the district to this Student or others.

OCR evaluates the appropriateness of the responsive action by examining reasonableness, timeliness, and effectiveness. 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. In evaluating a district's response to notice of a racially hostile environment, OCR will determine whether the district's

response was consistent with any established institutional policies, such as discipline, grievance, and any applicable anti-harassment policies, or the district's responses to similar incidents.

The response must be tailored to fully redress the specific problems experienced at the district as a result of the harassment, including to stop the harassment from recurring, eliminate the hostile environment, and, as appropriate, remedy the effects of the harassment. A series of escalating consequences may be necessary if the initial steps are ineffective in stopping the harassment.

Other actions may be necessary to ensure a nondiscriminatory educational environment. These may include special training or other interventions, the dissemination of information, new policies, and/or other steps that are designed to clearly communicate the message that the district does not tolerate harassment and will be responsive to any student reports of harassment. The district also should take steps to prevent any retaliation against the student who made the complaint or those who provided information.

### Factual Findings

#### *Background*

The Student is African American. During the 2016-2017 school year, the Student was in XXXXX grade and enrolled at a school (School) in the District. The complaint alleged that the Student was subjected to racial harassment at the School, particularly in May of 2017.

#### *May XX, 2017 Events*

On May XX, 2017, in XXXXXX period, another student (Student 2) who is Latino, began calling the Student names like "XXXXXX XXXXXXXXXXXX skin." According to the Student, he told Student 2 to stop. The two students got into an argument. The Student told OCR that Student 2 called him names regularly, including names making fun of his hair which was bleached on the ends and curly, such as "XXXXXX XXXXX" and "XXXXXX XXXXX." The Student told OCR that he did not like being called these names. The Student said that although other white students had blond hair, Student 2 did not call them names related to their hair, but only called the Student, who is African American, these names. The Student told OCR that Student 2 called him other racial names, including "XXXX XXXXXXXXXXXX."

According to the Student's XXXXXX class teacher (Teacher 1), she was outside of her class, and when she came in, the Student and Student 2 were in each other's faces. She walked the Student to the office, while another teacher walked Student 2 to the office. She said that the Student told her that Student 2 had called him "racist" names and that both students were calling each other names and they pushed each other.

When the students got to the office, the School's Interim Principal (Principal) was unavailable<sup>2</sup>, so the School secretary (Secretary) gathered information about what happened. According to the

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<sup>2</sup> Due to personnel issues at the School, the School's Principal was XXXXXXXX XX XXXXXXXXXXXX XX XXX XXXXXXXX XX XXX XXXX XXXX – XX XXXXXXXXXXXX XXXXXXXX XX XXX XXXXXXXXXXXX XXX XXX XXXXXXXX – and therefore he was very busy and not on the School campus at all times.

District, the Student told the School Secretary that Student 2 “called him a racially offensive name, ‘XXXXXX XXXXXXXXXXXX skin,’ and after Student 2 refused to stop, [the Student] pushed him.” According to the District’s written response to OCR, Student 2 told the Secretary that the Student was being loud, so Student 2 told him “‘Shut up, no one wants to listen to you,’ and after continuing to argue, the Student attempted to ‘punch’ [Student 2].”

The Secretary had the Student write a statement. In his statement, the Student wrote that Student 2 is in his class and “always” calls him names like XXXXXX XXXXXXXXXXXX skin, and he also wrote that “a lot of people” do this to him. The Student wrote that he heard Student 2 talking about him and he told him to be quiet, then they argued, and he pushed Student 2 and then was sent to the office.

The written statements from the three student witnesses to the incident described an argument and altercation between the Student and Student 2. The statements described the students arguing or “trash talking” but did not provide the specific names used. The Secretary did not follow-up to get more detail from the student witnesses regarding any racial names used. While the School took written statements about the incident from the Student and three student witnesses, the District was unable to provide OCR with a written statement from Student 2. School staff told OCR that Student 2 wrote a statement, but none was produced to OCR.<sup>3</sup>

When the Principal returned to the School on May XX, he interviewed Student 2. Student 2 was the only person who was involved in or was a witness to the incident who the Principal interviewed as part of his inquiry into the May XX incident. The Principal’s notes from his interview with Student 2 indicate that Student 2 did not tell the Principal that he called the Student any names, and instead he stated that the incident was precipitated by the Student being loud, and Student 2 telling the Student to “be quiet” and then both students “going back and forth.” Student 2 then wrote that the Student tried to punch him and he backed away and left. The Principal told OCR he could not remember if he asked Student 2 about calling the Student race-based names, as Student 2 stated the argument was over the Student not being quiet. The Principal’s notes from the interview did not indicate he asked about the race-based name calling. The Principal did not give Student 2 any discipline at that point because, he told OCR, he thought Student 2 was the victim, since the Student tried to hit him, according to Student 2. The Principal and the District said the Principal counseled Student 2 about name calling generally and using kind words. The Principal called Student 2’s parent, and informed the parent that another student tried to hit Student 2 that day – there was no indication that he informed Student 2’s parent that he had engaged in race-based name calling. The Principal told OCR he did not have time to further investigate the incident by interviewing the Student or the student witnesses before he had to leave campus for a meeting.

The Principal did not follow-up with Teacher 1 about the May XX incident and any resulting actions involving the two students. The District told OCR that the Principal had intended to follow-up with the Student, but the soonest he could, due to his schedule was XXXXXX May XX, four school days after the incident.

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<sup>3</sup> OCR requested all such student statements regarding the incident from the District.

*May XX, 2017 & Subsequent Events*

The morning of May XX, 2017, before the Principal could meet with the Student, the Student posted a video on social media about being harassed by other students at the School because of his race. In the social media video, the Student said that bullying and cyberbullying, including race-based bullying, has been a problem for him at the School. He said at his previous school he had no problems, but at the School, he has problems with bullying. He said he had no friends at the School, and he said the kids bullying him are “racist” and called him “XXXXXX marshmallow” and threatened and attempted to put him in a chokehold. The Student’s video became widely watched in the community, including by School and District administrators, that same day.

The Student told OCR that several boys at the School, in addition to Student 2, would call him names, including racial names such as “XXXXXX XXXXXXXXXXXXX hair,” and one of those students, who the Student said was a bully, also called him the n-word around the same time period, in May 2017. He said that just after the May 22 incident, a student on the bus, Student 3, grabbed his hair and threatened to put him in a chokehold, and also called him “XXXXXX XXXXXX XXXXX” to tease him about his hair.

According to the District, the same day that the School learned of the video, on May XX, the Student’s counselor talked to the Student about how he was doing. The Counselor told OCR that she just happened to talk to the Student that day, and that she did not know about the May XX incident, or the video when she talked with him. When they talked, the Student told the Counselor about the May XX incident involving race-based name calling by Student 2. In addition, the Student reported an incident on the bus the day before when the Student stated another student tried to put him in a chokehold – the Student referenced such an event in the video he posted on social media. The Counselor said she did not believe the bus incident was racial, and she understood the “XXXXXX XXXXXXXXXXXXX” name was about the Student’s hair rather than his race, until she saw the video, in which the Student said this bullying was because of his race. The Counselor said she reported the information to the School Principal, but did not know what happened thereafter. The Counselor told OCR that Student 2 was never sent to her for counseling regarding these incidents or otherwise.

Shortly after the Student left the Counselor’s office, another incident occurred with Student 2, during the School’s snack break. According to the Student and Student 2, Student 2 confronted the Student while he was eating, hit the Student in the face, and then a brief scuffle ensued that also involved some of Student 2’s older friends.

In his statement about the incident, the Student wrote that Student 2 started the fight. Specifically, he wrote that he was “trying to eat” when Student 2 came up to him and punched him, so he pushed Student 2 to the ground and tried to punch him and then one of Student 2’s friends tried to punch the Student as well, and the Student punched him in response. The Student wrote that then he went and told a teacher what happened, because he was protecting himself.

The Principal met with the Student on May XX, and told OCR that he talked to the Student about both the May XX and May XX incidents, and discussed name calling generally. Although the

District told OCR that the Principal reassured the Student that the School would not tolerate “any name calling or racial remarks” and he encouraged the Student to report any such incidents as they occur, the Principal told OCR he could not remember whether he talked to the Student specifically about racial names and he could not remember if he asked the Student specifically about whether Student 2 used any racial names. The Principal said that the Student told him Student 2 initiated the May XX incident in retaliation for the May XX incident. He said he did not remember name calling being raised by either student and he did not remember asking about it.

The Principal also met with Student 2 and three other witnesses to the May XX incident. The other student witness statements generally corroborated that Student 2 confronted the Student and hit him in the face, and the Student reacted by hitting and/or pushing Student 2. Other witnesses also reported that the Student was pushed by another student (1 witness), punched by another student (1 witness), and grabbed or stopped by a student while he was running away (2 witnesses). Student 2 again apparently did not write a statement, as the District did not provide a statement from Student 2 to OCR – instead, the District again provided OCR with handwritten notes from the Principal’s interview with Student 2. The Principal’s notes from his May XX, 2017, interview with Student 2 confirmed that Student 2 initiated the fight. Student 2 told the Principal that he “came up to [the Student] at snack and hit him in the face.” Student 2 did not state that the Student hit him. He stated that the Student threw milk at him and he slipped and fell. Student 2 told the Principal that his older, XXXXX grade friends then pulled the Student off of him.

In response, on May XX the Principal brought both students in and met with them together. The Principal told OCR he wanted to discuss how to handle conflict with both students. He assigned the two boys the same restorative justice assignment on conflict resolution as a corrective action, and he gave them both a week to complete the assignment. According to the District, the Principal gave this assignment to the two students “in lieu” of suspension. The Principal said he could not remember whether they specifically discussed the racial nature of the comments and racial nature of the conflict.

In assigning the restorative justice assignment, the Principal told OCR he did not make a determination as to whether the “XXXXX XXXXXXXXXXXXX” comment on May XX was racial. He explained that was not the main thing he was looking at, as he was concerned the Student attempted to strike Student 2. The Principal said he believed the “XXXXX XXXXXXXXXXXXX” comment was about the Student’s bleached hair, rather than his race, despite the fact that the Student wrote in his May XX statement that he was called “XXXXX XXXXXXXXXXXXX skin” (emphasis added). The Principal told OCR that he only understood the racial nature of the conflict after seeing the Student’s video on social media, in which the Student specifically said that racism was a problem at the School. However, the Principal could not describe anything he did specifically to address the racial aspect of the conflict. The Principal also did not provide any information to indicate that he investigated or otherwise addressed the potentially retaliatory nature of Student 2 hitting the Student for posting the video on social media regarding race-based harassment or for previously reporting Student 2’s prior race-based name calling.

Neither student completed the assignment on conflict resolution. Neither student received any disciplinary consequence, for either the May XX or May XX incidents, or for failing to complete the assignment the Principal gave “in lieu of suspension.”

The School did not discipline Student 2 for his racial name calling on May XX, or for physically attacking the Student on May XX. The interventions were conducted by the Principal and were not specific to race-based harassment. They consisted of the Principal’s above described counseling regarding name calling, that to the Principal’s recollection, did not include any discussion specifically about racial name calling, and the conflict mediation the Principal conducted with both students – which also was not specific to race – and in which the Principal discussed handling conflict and gave the two students an assignment, that neither completed. The School also moved Student 2’s XXXXXX class. Although the District’s response to OCR stated that Student 2 was referred for counseling, the District provided no evidence of this to OCR and Student 2 was not sent to the School Counselor regarding these incidents or otherwise. In addition, the Student was not referred to counseling for these incidents, but, as explained above, he only talked to the Counselor on May XX by happenstance, not as part of a specific School response to these incidents, and before Student 2 hit him at snack that day. No other services or interventions were provided for the Student.

The Principal sent the Student’s parents an email on May XX, 2017, thanking them for talking with him on XXXXXX May XX. He explained that students’ “physical and emotional safety” were their highest priorities, and they were eager to work to ensure the Student “feel[s] safe and comfortable at school” and he proposed a meeting with the Superintendent.

According to the District, the Superintendent met with the Student’s parents and the Student on May XX, 2017. The Student’s Parent and the Superintendent discussed the events described here, including the racial nature of the harassment. They discussed having the Student serve on the Superintendent’s Student Advisory Committee, developing a new student orientation, having positive school culture assemblies, and encouraging more parental involvement including a “XXXX Club” on campus. The Principal was not involved in the May XX discussion between the Student’s parents and the Superintendent.

According to the District, on May XX, 2017, the Superintendent issued a letter to the District community, acknowledging the Student’s social media video and stating that the District’s highest priority is ensuring the physical and emotional safety of all its students. The Superintendent’s message stated that “one of our key priorities is to provide a safe and secure learning environment for our students.” “We are aware of a recent video posted by a XXXXX school student expressing concerns about bullying.” The message went on to say that “harassment intimidation or bullying will not be tolerated.” The Superintendent’s message did not use the term “race,” or otherwise specifically refer to the race-based nature of the harassment the Student experienced.

The District’s response to OCR stated that it did not receive a formal complaint about this matter, and therefore did not conduct a formal investigation. According to the District, District staff interviewed witnesses and took statements and took appropriate corrective measures.

The District told OCR that in addition to steps it took specific to the Student, it also took broader steps to build a positive cultural climate and continued to implement those steps at least through 2017-2018. According to the District, the Superintendent also met with site principals and discussed building stronger character education programs at their schools. The District created a separate webpage for bullying.<sup>4</sup> The District's bullying webpage did not mention race-based bullying or harassment, although some of the links reference race-based bullying, but do not address it in depth. The District also held a student leadership summit to build positive school culture, and the District was working with the Santa Clara County District Attorney's Office to provide trainings on antibullying in schools and cyberbullying – these materials were also not specific to race-based bullying or harassment.

The District also held an in-service training for principals to review protocols for investigating bullying incidents. In addition, the Superintendent spoke with site principals regarding race and race-based harassment, and the need to develop a more including environment for all students. And, after OCR interviewed District and School administrators for this investigation, on May X, 2018, the District held a training for its principals on the procedures for addressing allegations of bullying and harassment, including by reviewing the District's Board Policy on bullying/harassment, the complaint processes for allegations of bullying/harassment, and the District's Uniform Complaint Process (UCP). According to the District, "[t]his training w[ould] help ensure that each school site is better prepared to appropriately respond to future concerns of student bullying and harassment."

According to the District, in 2018 its Board of Trustees also adopted a revised version of its UCP Board Policy. The updated version of the District's UCP is substantially similar to the version that was in effect during the time at issue in this case in 2017, and according to the District, the revisions it adopted were meant to ensure that its UCP was consistent with the applicable state laws and regulations.<sup>5</sup>

#### *Impact of the Events & District Response on the Student*

As an African American, the Student was racially isolated at the School and in the District. With 1,745 students enrolled in the District during the 2016-2017 school year, just 2.1% (37 students) were African American, according to data from the California Department of Education (DataQuest).<sup>6</sup> Out of a total enrollment of XXX students at the School, the Student was one of XX African American students, or XXXX% of the student body. In 2016-2017, according to California Department of Education data, there were no African Americans working in the District as teachers, administrators, certificated staff, pupil services (e.g., counselors, nurses, school psychologists), or as full-time classified staff; and there were no full-time classified African American staff at the School.<sup>7</sup>

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<sup>4</sup> Available at <https://www.alpineschools.net/o/ausd/page/bullying-prevention--46>.

<sup>5</sup> The District's UCP updated in 2018, BP 1312.3, is available here <https://drive.google.com/file/d/1drRqsLmlD3mHbcYtHxSQ36ze0LVqcC5D/view>.

<sup>6</sup> <https://dq.cde.ca.gov/dataquest/>.

<sup>7</sup> These areas listed are the categories for which the California Department of Education, DataQuest, provides race/ethnicity.



The Student told OCR that generally, other students at the School were not very nice. The Student said that he understood that the name calling referencing his skin and hair, including as “XXXXXX XXXXXXXXXXXX hair,” was attacking his race as an African American boy at the School, and was not just because he had bleached hair. He said that some students would also make fun of his name. According to the Student, the name calling made him sad, made him cry, and made him want to leave the School. He told OCR that it felt weird to him at the School because there were so few other African American students there, and in his class he was the only African American student. The Student told OCR that he did not think the School would do anything if he reported the racial name calling, since he told his teacher and nothing happened to Student 2. The Student also told OCR that after posting his video about race-based treatment he experienced, which received a lot of attention XXX XXX XX XXX XXXX, other students made fun of him. He said that this also was not addressed. OCR does not have information regarding whether the Student complained of these incidents to anyone at the School. He believed if he returned to the School, students would continue to tease him about the video he made about being racially harassed at school.

According to the Student’s father, after some initial efforts to address the racial harassment, including his May XX meeting with the Superintendent, the District never responded further. He told OCR that while the District met with the Student when the May incidents occurred, the District did not take sufficient action to address what occurred. He told OCR that the last time he heard anything from the District was from the Superintendent. The District was supposed to include the Student on the Superintendent’s Student Advisory Committee, but according to the Student’s father, the Student was sick the day of the meeting and they did not move the meeting. He explained that they held the meeting without the Student and when he asked for the notes, he was provided the notes, which consisted of brief bullet points, with some parts incomprehensible. The notes reflected an approach to school climate that did not seem to specifically address race-based harassment.

The Student’s father told OCR that he believed that the District tried to treat this as bullying rather than race harassment. With school starting in late August of 2017, the Student’s father was concerned because he believed the District had not done anything to address the racial harassment and prevent it from recurring, and he did not feel safe sending his son back to the School. Therefore, the Student’s father pulled his son out of the District prior to the beginning of the 2017-2018 school year.

*District Racial Harassment Policies and Procedures*<sup>8</sup>

The District Board Policy (BP) 5145.3 “Nondiscrimination/Harassment” prohibits “unlawful discrimination, harassment, intimidation, and bullying of any student” on the basis of race, color, or national origin, among other bases. BP 5145.3 defines such discrimination, harassment, intimidation, and bullying to include “physical, verbal, nonverbal, or written conduct . . . that is so severe and pervasive that it affects a student’s ability to participate in or benefit from an educational program or activity; creates an intimidating, threatening, hostile, or offensive education environment; has the effect of substantially or unreasonably interfering with a student’s academic performance; or otherwise adversely affects a student’s educational

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<sup>8</sup> Unless otherwise noted, these were the policies and procedures in place during the 2016-2017 school year.

opportunities.” BP 5145.3 also prohibits retaliation for filing a complaint or report of such discrimination, harassment, intimidation, or bullying. In terms of consequences, BP 5145.3 states that “[s]tudents who engage in discrimination, harassment, intimidation, bullying, or retaliation . . . shall be subject to appropriate discipline, up to and including counseling, suspension, and/or expulsion.”

According to BP 5145.3, the Superintendent will provide training to students, parents, and employees regarding “discrimination, harassment, intimidation, and bullying, including, but not limited to the District’s nondiscrimination policy, what constitutes prohibited behavior, how to report incidents, and to whom such reports should be made.”

BP 5145.3 designates the Director of Human Resources and Pupil Services as the “Coordinator for Nondiscrimination” (Coordinator) to handle complaints of such discrimination and inquiries regarding the District’s nondiscrimination policies. According to BP 5145.3, any student who is subjected to, or observes such discrimination should report it to the Coordinator, principal, or any other staff member regardless of whether the victim files a complaint. And, any school employee who observes an incident of such discrimination “shall report the incident to the Coordinator or principal, whether or not the victim files a complaint.”

“Upon receiving a complaint of discrimination, harassment, intimidation, or bullying, the Coordinator shall immediately investigate the complaint in accordance with the district’s uniform complaint procedures specified in AR 1312.3.”

BP 1312.3 states that the District’s UCP will be used to investigate “[a]ny complaint alleging unlawful discrimination, including discriminatory harassment, intimidation, or bullying, in District programs and activities against any person based on his/her actual or perceived characteristics of race . . . .” In addition, BP 1312.3 also states that the District’s UCP “shall be used to investigate and resolve . . . [a]ny complaint alleging retaliation against a complainant or other participant in the complaint process or anyone who has acted to uncover or report a violation subject to this policy.”

Pursuant to AR 1312.3, “all UCP related complaints shall be investigated and resolved within 60 calendar days” of receipt, unless the complainant agrees to an extension. The compliance officer shall issue a “Final Written Decision” within 60 days of the District’s receipt of the complaint. This decision shall be provided in writing to the complainant, and shall include (1) findings of fact; (2) conclusions of law; (3) disposition of the complaint; (4) the rationale for such disposition including for complaints of discrimination, a determination as to whether unlawful discrimination occurred, including for specific aspects of a hostile environment, where appropriate; (5) corrective actions; and, (6) notice of the right to appeal. For complaints alleging a hostile environment, the Final Written Decision may also include, according to AR 1312.3, (1) the affect on one or more students’ education; (2) type, frequency, and duration of the harassment; (3) the relationship between the victim(s) and offender(s); (4) the number of people engaged in the conduct and the target(s) of the conduct; (5) size of the school and other context; and, (6) other incidents at the school involving other individuals.

According to AR 1312.3, mediation is one possible tool to address the complaint. However, mediation is voluntary, and according to the policy, “shall not be offered or used . . . where there is a reasonable risk that a party to the mediation would feel compelled to participate.”

In addition, according to AR 1312.3, for complaints involving retaliation, unlawful discrimination, or bullying, appropriate corrective actions for the offending student “may include, but are not limited to,” (1) transfer from a class or school; (2) parent/guardian conference; (3) education regarding the impact of the conduct on others; (4) positive behavior support; (5) referral to a student success team; (6) denial of participation in extra-curricular or co-curricular activities; and, (7) disciplinary action such as suspension or expulsion.

The District also has a Board Policy on general bullying that is not based on a protected area such as race, color, or national origin, BP 5131.2 “Bullying.” BP 5131.2 describes a process in which any student parent or other individual who believes a student has been subjected to bullying may report the incident to any school employee. Upon receiving a report of bullying, 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, described above. And, “[a]ny complaint of bullying shall be investigated and, if determined to be discriminatory, resolved in accordance with law and the District’s uniform complaint procedures specified in AR 1312.3.”

In addition, BP 5145.9, “Hate Motivated Behavior,” explains that any student who believes s/he is a victim of, among other conduct, harassment or bullying motivated by hostility towards their ethnicity shall contact the Principal, and the Principal shall “immediately investigate the complaint in accordance with school-level complaint process/grievance procedures as described in AR 5145.7 – Sexual Harassment.” AR 5145.7 says if a complaint of sexual harassment is submitted to the principal, s/he “shall, within two school days, forward the report to the compliance officer to initiate investigation of the complaint. The compliance officer shall . . . investigate and resolve the complaint in accordance with law and district procedures specified in AR 1312.3.” As described above, AR 1312.3 requires such investigations of alleged discrimination to be carried out pursuant to the District’s UCP.

According to the District’s Coordinator for Nondiscrimination, the race-based incidents on May XX and May XX, 2017, described above should have been investigated pursuant to the District’s UCP. At the time of these incidents, the Coordinator for Nondiscrimination explained that such investigations were led by site principals who sometimes discussed their findings with the Superintendent. After the incidents in this case, the District adopted a different approach to such alleged harassment. Under this subsequent approach, when a principal learned of alleged racial harassment, the principal would gather information and review it with the Coordinator for Nondiscrimination. They would develop written findings to determine whether racial harassment occurred and review the site’s response to assess whether the harassment has been sufficiently addressed, even if a formal complaint had not been made.

Analysis

*Notice of Conduct Sufficiently Severe to Deny or Limit Student's Ability to Participate in or Benefit from Services*

To determine whether a student was subjected to a hostile environment on the basis of race by a district, in violation of Title VI, OCR first looks to whether the conduct at issue was sufficiently severe, pervasive, or persistent, so as to deny or limit the Student's ability to participate in or benefit from the services, activities, or privileges provided by the District, and whether the District had notice of a hostile environment based on race. And, as explained above, OCR considers the totality of the circumstances to determine whether a hostile environment was created, including the context, nature, scope, frequency, duration, and location of the harassing incidents, as well as the identify, number, age, race, and relationships of those involved, and whether other race-based incidents have occurred at the District.

Here, on the same day – May XX, 2017 – the Student provided actual notice to the District regarding the initial incident of racial name calling by Student 2. The Student informed his teacher, and wrote a statement that was available and provided to the Principal as part of his investigation of the incident. In addition, the same week on May XX, 2017, via a social media video that the Principal and Superintendent told OCR they watched, the Student provided actual notice to the District of the overall race-based bullying he was experiencing, which he described as both verbal name calling, and physical. The same day, May XX, 2017, the Student also verbally informed the School Counselor of the racial name calling and an alleged attempt by another student to put him in a chokehold on the bus. And, later in the day on May XX, 2017, the School, including the School Principal, had actual notice from the Student, Student 2, and other witnesses, that Student 2 – the same student who had racially harassed the Student just four days earlier on May XX – hit the Student in the face, unprovoked. And, the Principal and School had notice that when the Student attempted to defend himself after Student 2 attacked him, several of Student 2's older friends, including some XXXXX graders, helped defend Student 2 by physically intervening. Thus, as of May XX, 2017, the District had actual notice of several race-based incidents.

Based on a totality of the circumstances, these incidents were sufficiently severe, pervasive, and persistent, so as to deny or limit the Student's ability to benefit from the services, activities or privileges provided by the District. In particular, the unprovoked physical attack he experienced just days after Student 2 had verbally attacked him due to his race, limited and ultimately denied the Student the ability to participate in and benefit from the District's program. Moreover, the Student also reported additional racial name calling and physical threats and an attack from other students, including on the bus, which also contributed to a racially hostile environment for the Student. The Student reported that these incidents made him sad, he cried, and he felt isolated at the School. The Student told OCR that he did not believe reporting further harassment would help, as he had reported these incidents and nothing had happened to Student 2, and he was subsequently harassed by other students for speaking out. Moreover, when the District failed to take adequate action to respond to these incidents, including by not taking any action to discipline or otherwise address Student 2's racial harassment, the Student did not feel safe returning to School and the Student's father did not feel safe sending him back to the School.

Therefore, the Student's father removed him from the School and placed him in another District for the 2017-2018 school year. The broader context in which these events occurred is also relevant, as the Student was already racially isolated as one of just a few African American students in the District and at the School. In addition, according to California Department of Education data, the District also had no African American employees, including no teachers, counselors or other staff that the Student had access to, at the School or otherwise in the District.

OCR found that the harassing conduct denied the Student equal access to the School's program based on his race, and any reasonable person in the Student's position would also have been so denied – as a XXXXXX grader and member of a racially isolated group, African American students, who was verbally and physically attacked based on his race.

#### *Investigations & Responsive Action*

Next, OCR assesses whether the District took reasonable, timely, and effective responsive action to (1) end the harassment, (2) eliminate any hostile environment, (3) prevent its recurrence, and (4) where appropriate, remedy the effects of the harassment. This includes a response that is tailored to fully redress the specific problems experienced at the School as a result of the harassment. And, as explained above, in all cases a District must promptly conduct an impartial inquiry to reliably determine what occurred, and a District's response should be consistent with relevant institutional policies.

Here, the School investigated both the May XX and May XX incidents, by taking statements from the students involved. However, after both incidents, the School staff failed to obtain a written statement from Student 2, who engaged in the race-based name calling and later hit the Student. After the first incident, the Principal viewed Student 2 as the victim, since the Student may have tried to hit him in response to the name calling. The Principal therefore did not appropriately address the fact that Student 2 engaged in racial name calling. The Principal called Student 2's parents to report the incident, but did not call the Student's parents. The Principal took no steps specifically designed to address Student 2's race-based conduct. These steps were insufficient to end the harassment by Student 2, and the Student reported further physical harassment four days later. After the second incident on May XX, 2017, when Student 2 hit the Student in the face unprovoked, the Principal treated the two students as if they were equally to blame, talking to them together about addressing conflict and giving them the same restorative justice assignment "in lieu of suspension." The Principal could not recall whether he specifically addressed the racial nature of the verbal and physical attacks by Student 2, and OCR found no evidence the Principal addressed the potentially retaliatory nature of Student 2's May XX attack on the Student, despite the importance of preventing retaliation for reporting harassment, and the District policies (BPs 5145.3 and 1312.3), which specifically prohibit such retaliation. This was not a prompt, impartial and reliable inquiry, and it impeded the District's efforts to take reasonable, timely, and effective action to end the harassment, eliminate the hostile environment, prevent its recurrence, and remedy its effects.

The School staff, including the Principal, focused on the incidents as bullying, and failed to adequately address the race-based nature of the incidents, despite evidence of racial name calling – including the Student's reports of these incidents as race-based via the video he posted on

social media, in his written incident statement, and verbally to his teacher –and the related physical harassment by Student 2. Similarly, and as discussed below in more detail, the responses proposed by the Superintendent focused mainly on general bullying and climate issues in the District and at the School, and did not adequately address race-based harassment, especially with respect to the Student and the hostile environment he experienced. These responses, which did not adequately address the uniquely harmful nature of discriminatory race-based harassment of the Student, also did not constitute a reasonable and effective response to end the harassment, eliminate any hostile environment, prevent its recurrence, or remedy the effects of the racial harassment for the Student or for the broader School and District community. Moreover, these responses – which did not adequately address the race-based nature of these incidents – were not adequately tailored to fully redress the specific problems at the School and in the District.

OCR also found that the District’s response to these incidents was not consistent with its policies for addressing reports of discrimination. Specifically, these incidents were not investigated pursuant to the District’s UCP, BP 5145.9, and AR 5145.7. And, although no written complaint was made by the Student’s father, he and the Student verbally complained about the race-based harassment to the Principal and Superintendent. According to the District’s “Hate Motivated Behavior” policy, BP 5145.9, upon receiving a report of hate motivated behavior, a principal shall “immediately investigate” in accordance with the District’s Sexual Harassment policy, AR 5145.7, which requires a UCP investigation. The District’s Coordinator for Nondiscrimination acknowledged that these incidents should have been investigated pursuant to the District’s UCP, and since these incidents, the District adopted a different approach to ensure they are handled appropriately.

Pursuant to the District’s UCP, an investigation would have been conducted within 60 days and included written notice of the determinations and a right to appeal. The “Final Written Decision” would have included findings of fact and conclusions of law as well as a determination as to whether unlawful discrimination occurred. With respect to a hostile environment, the findings would also have addressed, where appropriate, any corrective actions. In addition, while AR 1312.3 allows for mediation, it clearly requires that such mediation may not be compelled, yet mediation and a restorative justice assignment for the students was the only intervention the Principal used. Instead of conducting a thorough response to these events pursuant to the District’s UCP, the School conducted the inquiry described here, which apparently did not require Student 2 to provide written statements as the Student and other witnesses were required to do, ignored or omitted clear evidence of the race-based nature of the incidents and the potentially retaliatory nature of the May XX physical harassment, and which resulted in treatment of the Student and Student 2 as if they were equally culpable for Student 2’s race-based harassment of the Student. The District also could not explain why no action was taken when neither student completed the restorative justice assignment the Principal gave them “in lieu of suspension.”

After arranging a meeting for the Student’s parents with the Superintendent on May XX, 2017, the Principal did not follow-up with the Student or his parents. The Student was not provided counseling or any other supports to address the race-based verbal and physical harassment (his visit with the counselor was not initiated by the School as a response to either incident) and he

received the same discipline as Student 2 for the May XX, 2017 incident, even though he was the victim of Student 2's unprovoked physical attack. In addition, although the District had notice via social media and statements to the Student's counselor of other alleged race-based attacks, including being placed in a chokehold, the District did not investigate these alleged incidents.

As described above, the Superintendent met with the Student and his parents on May XX, 2017, and discussed ways to improve the climate at the School. The Superintendent agreed to have the Student join the Superintendent's Student Advisory Committee and discussed other possible actions. The Superintendent also issued a statement to parents in the District. However, the Superintendent's statement to the District community did not acknowledge the race-based nature of the bullying of the Student, and only discussed bullying generally. Similarly, the steps to address climate in the District were not adequately focused on race-based discrimination and harassment. Notes from the Student Advisory Committee showed a non-race focused approach to school climate in response to these incidents. As such, while these steps may have been helpful for overall climate, without more, they were insufficient to eliminate the hostile environment for the Student, prevent the recurrence of harassment specifically related to these events and directed at the Student, or to remedy the effects of the racial harassment on the Student. Notably, these steps were not sufficiently tailored to fully redress the specific problems experienced at the institution as a result of the racial harassment, as required by Title VI.

Taken together, the District's response to notice of race-based harassment and a hostile environment for the Student was not reasonable or effective to end the harassment, eliminate the hostile environment, prevent its recurrence, and remedy the effects of the harassment. The Student and his father observed the District's response to the events on May XX and May XX, 2017 – including the failure to acknowledge the race-based nature of the events and the need to address race in examining overall student climate issues, as well as the specific actions of Student 2 including the failure to take specific steps to address Student 2's race-based conduct, the failure to investigate and address the actions of Student 2's friends during the May XX incident, the failure to follow-up on the assigned restorative justice project, the failure to investigate the Student's other allegations of race-based harassment, and the failure to provide the Student with counseling or other meaningful supports. And, based on the District's response, during the summer break the Student and his father determined that the Student was not safe in returning to the School. They did not believe the District had taken sufficient steps to eliminate the hostile environment for the Student, remedy its effects, and prevent a recurrence. Thus, as a result of the District's inadequate response to notice of the race-based harassment the Student experienced, the Student was denied the ability to benefit from the District's educational services, activities, and privileges in violation of the regulations implementing Title VI at 34 CFR § 100.3(a)-(b).

## **Conclusion**

This concludes OCR's investigation of this complaint.

Based on the commitments made in the enclosed Resolution 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 Resolution Agreement is intended to address the

noncompliance identified by OCR. OCR will monitor the implementation of the Resolution Agreement until the District is in compliance with the terms of the Resolution Agreement. Upon completion of the obligations under the Resolution Agreement, OCR will close 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, retaliate, 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.

OCR would like to thank the District and its counsel, Jordan Bilbeisi, and Superintendent Dr. Richard Newman, for your cooperation and assistance in resolving this case. If you have any questions regarding this letter, please contact OCR attorney Brian Lambert, at [Brian.Lambert@ed.gov](mailto:Brian.Lambert@ed.gov).

Sincerely,

/s/

Anamaria Loya  
Chief Regional Attorney

cc: Jordan L. Bilbeisi, Partner, Fagen Friedman & Fulfrost LLP (via email)

Enclosure: Resolution Agreement