



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

July 23, 2018

VIA ELECTRONIC MAIL

John E. Deasy, Ph.D.
Superintendent
Stockton Unified School District
XXXXXXXXXXXXXXXXXXXXXXXXXXXX

(In reply, please refer to OCR Docket Number 09-17-1684.)

Dear Superintendent Deasy:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the Stockton Unified School District (District). The Complainant alleged that the District discriminated against the Student on the basis of race.¹ Specifically, OCR investigated the following issues: 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.

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, 34 C.F.R. Part 100. Title VI prohibits discrimination on the bases of race, color, or national origin in programs and activities operated 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 interviews and 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 and its implementing regulation with regard to the issue OCR investigated. The legal standards, facts gathered, and the reasons for OCR’s determinations are summarized below.

Issue: 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.

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. 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

¹ OCR previously provided the Recipient with the identity of the complainant and student. We are withholding their names from this letter to protect their privacy.

national origin can result in the denial or limitation of the student's ability to participate in or receive education benefits, services, or opportunities

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 – severe, persistent, or pervasive – 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, reasonable, timely, 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.²

Under the 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 if it fails to respond adequately. Once the district has notice of harassment, the responsibility to take appropriate, timely, responsive, and effective action is the school's responsibility whether or not the student who was harassed makes a complaint or otherwise asks the school to take action. So long as an agent or responsible employee of the school received notice, that notice will be imputed to the school.

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 have occurred at the school to this complainant or others.

OCR evaluates the appropriateness of the responsive action by assessing whether it was timely and effective. What constitutes a reasonable response to harassment will differ depending upon the circumstances. However, in all cases the district must timely conduct an impartial inquiry designed to reliably determine what occurred. If a district's grievance procedures encompass race 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. A series of escalating consequences may be necessary if the initial steps are

² For further explanation, please see the 1994 Investigative Guidance entitled, "Racial Incidents and Harassment Against Students at Educational Institutions," Part X, Federal Register, Vol. 59, No. 47, March 10, 1994, 11448-11454.

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.

Facts

The following facts are relevant to OCR's analysis:

The Student is an African American XX-year-old girl who was in the XXXXXX grade at a school in the District (School) during the 2017-2018 school year. On or about August XX, 2017, she transferred to the School. According to the Student's mother, from the outset, when she asked the Student about her day, the Student said that other students did not like her because she is black, and she reported racial language being used toward her.

Use of Racial Slur

The Student told OCR that during the first month of school or so, Student 1, a white and/or Hispanic male XXXXXX grader, said "What's up n*****," to the Student and her friend Student 2 (who is also African American) during passing periods and/or XXXXX period, every day, more than once a day. The Student stated to OCR that she told Student 1 that he was not supposed to say that, and to not say that to her, but he responded that he had a pass to say the n-word from his friend who is black and also used the n-word.

The Student told OCR that she talked to the Principal about being called the n-word, and when she did, the Principal told her about her experience of racism as a young person. According to the Student's mother, that conversation happened on September XX, 2017 or earlier. School records show that on September XX, 2017, the Assistant Principal counseled Student 1 on the impact using that language can have on another student. The Principal told OCR that the documentation referred to a comment made to both the Student and her friend Student 2, and that the Assistant Principal addressed the issue. The Assistant Principal told OCR that she did not recall how the incident came to her, and she thought that the student referenced in the documentation about the incident was Student 2.

The Assistant Principal told OCR that when she spoke with Student 1 about calling the other student the n-word, he said that he was just saying hi to the other student. The Assistant Principal did not ask Student 1 how many times he had used the n-word toward the other student. She concluded that given Student 1's individual circumstances, the conduct did not warrant a disciplinary referral under the District's guidelines based on the nature of the language and Student 1's intent, which she described as not malicious, not to hurt or put someone down, and not specific to race. Instead, she took a Positive Behavioral Intervention and Support (PBIS) approach and counseled Student 1 and followed up with his parent/guardian for this first offense. The Assistant Principal stated that she also held a restorative session with Students 1 and 2.

OCR reviewed the 2015-16 and the 2017-18 Regulations for Student Discipline and Behavioral Interventions. These guidelines list offenses by the California Education Code. The Principal told OCR that the School treated Student 1's use of the n-word as a violation of the code provision that prohibits committing an obscene act or engaging in habitual profanity or vulgarity. Under the guidelines, the recommended intervention for a first offense is use of a school's PBIS structure, teaching and rewarding appropriate behavior, and engaging in positive relationship building, with a note that there must be significant interventions before suspension.

Student 1 and the Student attended all of their classes together, and they remained in classes together, after the September 2017 report of Student 1's name-calling until the Student's schedule changed in January 2018. The Student told OCR that after the restorative session, Student 1 did not call her the n-word again, but she and Student 1 just did not talk at all, and she felt uncomfortable around him.

Picture Incident

On September XX, 2017, during XXXXX period, Student 3, a white or Hispanic male XXXXXX grader, gave the Student's friend (Student 2) a picture of an African woman with the Student's name written on it, and he either said it was the Student (according to the Student) or asked if it belonged to the Student (according to Student 3). Student 2 brought this to the Student's attention, and the Student knocked Student 3's glasses off of his face. Student 3 threw an eraser at the Student. The Student then threw a book. At that point, the teacher became involved. The Student told OCR that she told the teacher what happened, but the teacher brushed it off, stating that Student 3 was not talking about the Student, even though the teacher had not spoken with Student 3 about what had happened. The teacher told OCR that she did not observe the incident, but heard the book land and saw Student 3's glasses on the ground. She recalled that she asked what happened and someone said that the Student had knocked Student 3's glasses off, and the Student said that Student 3 was being rude, or that he did or said something that offended her. The teacher gave both students disciplinary referrals for disruptive classroom behavior, noting on the referral forms that the Student thought that Student 3 made an inappropriate comment and reacted to that comment.

The Principal met with the students to discuss the incident based on the referral forms, and Student 3 provided a written statement. According to the Principal, Student 3 also verbally reported to her that other students, including an African American male XXXXXX grader (Student 4), were around when the incident occurred, and Student 4 was the person who said, "This is you," referring to the Student. The Principal told OCR that she did not speak with Student 4 about the incident because she did not have a referral for Student 4. The Principal also told OCR that the Student replied, "no", when asked if Student 3 had said something inappropriate and when she asked if the picture was hers, the Student "shut down". The Principal also told OCR that her understanding was that the picture was of an African woman, and that the Student thought that Student 3 has said, "This is you," referring to the Student. The Principal told OCR that she did not speak with other students, including Student 4, or the teacher about the incident, and that both the Student and Student 3 received detention for throwing items at one another, consistent with the District guidelines.

The Student told OCR that when she talked to the Principal about the picture incident, she asked

the Principal why she was getting a referral when Student 3 was being “racist”. The Student also told OCR that Student 4 did not say anything about her or the picture, and he did not pass around the picture.

When the Student got home, she told her mother that she was being called the n-word daily. The Student also told her mother about the picture incident and showed her the referral form. The Student’s mother then asked the Principal for a meeting.

Student 3 and the Student remained in XXXXX period together following the incident, until Student 3 left the School a few weeks later.

SeptemberXXI, 2017 Events

The morning after the picture incident, the Student’s mother met with the Principal, the XXXXX period teacher and the Student. The Student’s mother told OCR that she told the Principal that the Student was being called the n-word every day (referring to the comments made by Student 1, described above).³ The Principal told OCR that the Student’s mother told her that a student “kept calling” the Student the n-word, but did not specify how many times that occurred. School records, including conference profiles and emails, show that the Student’s mother reported that a student “had been calling”, “had been referring to”, and “was calling” the Student the n-word and that the Student “is being ... called” the n-word.

The Student’s mother told OCR that during the meeting, the Principal said that the Student had not previously reported being called the n-word, although she confirmed that she previously had a conversation with the Student about racism. According to the Student’s mother, the teacher acknowledged at the meeting that she knew about n-word use in her class, and stated that she had spoken to that student about it. The teacher told OCR that during the meeting, she explained what she had seen in the classroom between the Student and Student 3, but had said that she was not aware of anyone calling the Student the n-word. She recalled discussing Student 4’s use of the n-word in class, and stating that she had addressed the use of the language with him. The teacher told OCR that Student 4 had used the n-word, in a colloquial or conversational manner, not addressing any particular student, and when he did, she told him it was not appropriate, though she did not recall how often this had occurred.

According to the Principal, after the meeting, she spoke with the Assistant Principal and the Counselor about Student 1 calling the Student the n-word, and was told that they had done restorative counseling with all students involved in the incidents about a week before. The Principal told OCR that she met with Student 1, who said that he thought it was okay to go up to both girls as a friendly gesture, and that he wanted to make things right if he did something wrong. The Principal told OCR that she referred Student 1 and the Student to the Assistant Principal and Counselor for a restorative session. The Assistant Principal and the Counselor facilitated this session, during which Student 1 apologized. By all accounts, the Student was present, but she did not meaningfully participate in the session. The Assistant Principal also met with the Student separately where, according to the Assistant Principal, she did not respond to a question about whether there was anything else she wanted to share.

³ This occurred either when the Student’s mother asked the Principal for the meeting or at the meeting.

The Student told OCR that she did want to talk to the School about the incidents because she did not feel comfortable with the school administrators, and when they asked her how she felt about the incidents, and what she wanted them to do, she said that she did not want to be there. She also told OCR that the incidents made her feel mad or sad, and the School's response made her feel as if the School was not taking the problem seriously.

The Assistant Principal told OCR that she also met with Student 1, and counseled him, telling Student 1 that he could not use the term, regardless of his intent, and that it could be written up as a referral if it happened again. She also told OCR that Student 1 said that was how he talked with his friends. She did not ask Student 1 how often he had used the n-word toward the Student. The Assistant Principal told OCR that she determined that the incident with the Student occurred before Student 1 received counseling on the issue on September XX, 2017, and that she therefore did not refer Student 1 for further discipline.

The Assistant Principal told OCR that she communicated with the Student's mother about Student 1's use of the n-word after the restorative session, but did not recall anything about that communication. School records contain no information about any contact with the Student's mother after the session, and according to the Student's mother, the School did not provide her any feedback, though she knows one student was asked to apologize.

Meanwhile, also on September XX, the Student's mother contacted the district office. An individual in the district office sent an email to other district office personnel, the Principal, the Assistant Principal, the Counselor, and the XXXXX period teacher stating that the Student's mother had reported: the Student was being called the n-word; the Student did not feel comfortable in class and dreaded being there; and the Student's mother had met with the Principal and a teacher but felt that her concerns were being minimized and not taken seriously. The email also states that the Student's mother was encouraged to contact their office if she wanted further action. The Complainant filed this complaint with OCR on the same day.

That evening, the Principal replied to the email from the district office, summarizing her meeting that morning with the Student's mother and the teacher. The Principal's email stated that the Principal had told the Student's mother that she would look into the matter and the School would follow the District's discipline guidelines, and that the Student's mother disagreed with the guidelines and stated she would report it to the district office.

The Assistant Principal told OCR that in the two to three weeks following the restorative session with the Student and Student 1, she checked in with the Student, but she could not say how many times or when, and she did not recall what the Student said in response, though at that point, when she greeted the Student or asked how the Student was doing, the Student's communication was limited to shoulder shrugs or a look with no response.

Racial Name-Calling

On or about September XX, 2017, Student 5, a white male student, called the Student racial names during an argument in their XXXXX period XXXX class. According to the Student's written statement to the Assistant Principal, Student 5 made fun of the Student's race, and told

her she was “hecka dark” and looked like a “Hershey’s bar.” The Student’s statement said that the XXXX teacher heard the comments, but did nothing, and that Student 5 continued to make comments to the Student until it was time to go home, telling her that she was a chocolate bar, her mother did not take care of her, she was fat, and she was the same color as a car parked near the gate. She stated that Student 5 also threw a cone on top of the Student’s head. According to Student 5’s written statement to the Assistant Principal, the Student had also engaged in racial name-calling towards him and that later, he was playing with a cone and the wind pushed it causing it to hit the Student.

The Student reported the incident several weeks later, on October XX, 2017. The Assistant Principal investigated the incident by speaking with Student 5 and obtaining a written statement from him and speaking with the XXXX teacher, and then speaking with the Student again. The XXXX teacher reported to both the Assistant Principal and OCR that she had not seen anything. According to the Assistant Principal, the Student did not answer her questions. But according to the Student, she told the Assistant Principal about this incident and others, and the Assistant Principal responded stating that she did not believe that the other students would do something like that.

The Assistant Principal said that she was unable to conclude who started the verbal exchange between the students, but she did conclude that both students had used “vulgarity”, and that based on the guidelines and the fact that Student 5 had no prior history, Student 5’s behavior merited counseling, a warning and a lunchtime detention. The Assistant Principal told OCR that the Student did not receive a referral or discipline for her involvement in the incident. She chose to not hold a restorative session based on prior conferencing sessions with the Student and her lack of participation.

Student 5 and the Student remained in class together after the incident, and according to the XXXX teacher, the students avoided each other until the Student’s schedule changed in January 2018.

Subsequent Events

On October X, 2017, during a telephone conversation with the Assistant Principal about a discipline matter, the Student’s mother brought up that the Student had been called the n-word and that she felt nothing was being done to address it. According to the Student’s mother, she also told the Assistant Principal that she would like a schoolwide assembly on bullying and use of racial language and counseling for the Student, but the Assistant Principal did not recall that being said. However, both the Student’s mother and the Assistant Principal reported that the Assistant Principal attempted to explain what was being done to address her concerns, which included restorative circles, consideration by the PBIS committee, and counseling for the Student with the Counselor. The school site later clarified that the circles were not specific to the Student or racial harassment, though incidents of racial harassment could come up. The Student’s mother also told OCR that when she told the Assistant Principal what had happened to the Student, she felt that the Assistant Principal did not want to listen and did not understand the impact on the Student, instead bringing up that the Student had been defiant at her other school.

On October XX, 2017, the Principal and the Counselor met with the Student and inquired into

whether further harassment occurred. According to school documents, the Student was reluctant to respond but confirmed that Student 1 was no longer calling her the n-word. When asked if someone else was calling her racial names, the Student asked if her mother could be there while they met with her. According to the documents, the Principal and Counselor attempted to call home, left a message for the Student's mother, and told the Student that they would follow up with her when her mother called back. The Counselor told OCR that they made no further attempts to meet with the Student to discuss this matter. The Student told OCR that she does not feel comfortable with the Principal, Assistant Principal, and Counselor, and that she likes to talk with them when her mother is there.

School records also show that on October XX, 2017, the Student received a disciplinary referral for disruption and defiance in connection with use of her cellphone, including for refusing to surrender it, and using it to call her mother from the restroom in the front office while she was meeting with the Assistant Principal and the Counselor. According to one school record, during a telephone call about this referral, the Student's mother expressed concern that nothing was being done to help the Student, the Student did not trust anyone at the School, and the issue of racial comments was ongoing. The record also indicates that the Assistant Principal told the Student's mother about her colleagues' meeting with the Student the day before and reiterated that the current issue was the Student's defiance and disrespect toward staff. Another school record states that the Student's mother was upset and voiced concern that the Student was still upset at school because students were still calling her names.

The Assistant Principal met with the Student later that day to ask if anyone was still bothering her. School records indicate that the Student initially refused to respond, but ultimately reported the incident with Student 5 described above.

School records show that from October XX, 2017 to January X, 2018, the Student had six conferences with the Principal, Assistant Principal, and/or Counselor and received five disciplinary referrals, including several for disruption/defiance. They also show that the disciplinary incidents took place during lunch, passing periods, XXXXX period, and XXXX class which, except for lunch, were all locations where the Student also reported experiencing harassment.

The Student's mother told OCR that on January X or XX, 2018, she reported to the Principal that a girl at the School had made racial comments to the Student about her appearance, including about her hair and wearing jewelry, and that the Principal dismissed her concerns. According to the Principal and school documents, at around that time, the Student's mother reported to the Principal that a girl was bullying the Student, and the Principal referred the matter to the Counselor, who met with the Student but was unable to obtain further information. The Assistant Principal told OCR that on January XX, 2018, the Principal, the Counselor, and she decided to change the class schedules for several students because of ongoing disputes among groups of XXXXXX grade girls, including the Student and Student 6. According to the Assistant Principal, she noticed fewer issues between those groups of students after the schedule changes.

The Student's mother reported to OCR that as of mid-January, the Student had missed about 10

days of school due to sickness, often calling to be picked up from School. The Student's mother also reported that the student's grades were declining. In addition, she reported that the Student, who used to be bubbly and outgoing, no longer wanted to do anything, did not leave her room, and only spoke with her siblings and one friend at school. The Student confirmed this account and told OCR that the incidents made her mad, and sometimes sad, they made it difficult for her to concentrate in class and impacted her sleep, and she felt that there was nothing anyone could do to make her feel better or to make things better.

On March X, 2018, during discussions about an unrelated school incident, the school and family again discussed the use of the n-word against the Student, and the Student's mother's concern that the Student was no longer coming to her with issues. The school offered counseling through an outside provider and identified a staff member with whom the Student had built a relationship as a possible confidant.

A school record, dated April XX, 2018, shows that several students reported to the School that for several days, they heard another student make racially inappropriate comments to the Student and another African American student, including the n-word. The Student's mother met with the Assistant Principal the next day to discuss race-related issues at the School. According to the Student's mother, on April XX, 2018, the Student was confronted by other students who criticized her for reporting their friend and stated that they had things they wanted to call her but wouldn't because she would get them in trouble.

OCR compared the Student's grades for the full 2016-2017 school year and for the current school year through April X, 2018. The records shows that while her grades were primarily As, Bs, and Cs during the 2016-17 school year, they had declined significantly by the second trimester of 2017-18, when she received C's, D's and F's.

Peer-to-Peer Race-Based Harassment Policies and Procedures

The District has several race discrimination policies and procedures, including Board Policy (BP) and Administrative Regulation (AR) 1312.2, Uniform Complaint Procedures (UCP). Under the UCP⁴ complaints must be filed in writing with the District's compliance officer. However, if a complaint is not filed in writing, and the district receives notice of any allegation that is subject to the UCP, the District must take affirmative steps to investigate and address the allegations in a manner appropriate to the particular circumstances. Within 10 days of receiving the complaint, the compliance officer must begin an investigation into the complaint, and that investigation must include providing the complainant an opportunity to present information contained in the complaint and relevant evidence, collecting and reviewing available documents, and individually interviewing witnesses with relevant information, including the alleged victim(s), any alleged offenders, and other relevant witnesses in a confidential manner. The compliance officer must inform the parties of the status of the investigation at appropriate intervals. At the conclusion of the investigation, the compliance officer must provide the parties a written report of how it resolved the complaint.

⁴ The versions of the UCP in effect during the incidents described in this complaint were dated March 14, 2017 and October 24, 2017. Both include the provisions described here.

School administrators described that this type of complaint is typically handled by the school site. The Principal added that when she learns of an incident of peer-to-peer race harassment, she typically convenes a restorative session, and the Counselor noted that the District Office is typically not involved in the investigation or resolution of a complaint unless the incident is serious enough to consider expulsion. The Principal told OCR that the school site tries to handle complaints like the one involving Student 1's use of the n-word, and she did not communicate with the District about the picture incident involving Student 3, and the Assistant Principal told OCR that she did not communicate with the District about the name-calling incident involving Student 5.

The Principal and Assistant Principal told OCR that the School communicates to students what they should do if they witness race-based harassment at assemblies held at the beginning of each school year and again in January, and the Counselor told OCR that the issue is touched upon in the bullying context through presentations to the whole school or in classrooms about three times a year. Relatedly, the Student told OCR that in or about December 2017, the Assistant Principal and Counselor put on a one-hour morning assembly for XXXXXX graders on race and bullying. According to the Student, the class was shown slides about people bullying other people, and kids acted out doing the bullying and going to tell a teacher. The Student felt that the assembly was well done.

Analysis

Hostile Environment

In determining whether alleged conduct creates a hostile environment, OCR considers whether it is sufficiently severe, pervasive, or persistent so as to interfere with or limit the ability of an individual to participate in or benefit from the services, activities or privileges provided by a recipient. The inquiry is conducted from the viewpoint of a reasonable person of the same age and race as the affected student, and the totality of the circumstances is examined.

Here, the Student alleges that Student 1 called her the n-word every day, at least once a day, for about a month in August and September of 2017. The Student also alleges that within about a week of being called the n-word by Student 1, another student (Student 3) passed a picture of an African woman with the Student's name written on it and said to her friend that the woman in the picture was the Student. Singling out the Student because she is African American and likening her to an image of an African woman could reasonably be interpreted as a way to mock the Student based on her race. In addition, the Student alleges that within four days of the picture incident, a third student (Student 5) called her a "Hershey bar" and "hecka dark," among other things. The school site later confirmed that Student 5 at least called the Student "Hershey bar."

The initial incidents alleged to OCR took place in September 2017, at the outset of the school year, and the evidence suggests that their impact on the Student was significant. The evidence shows that the Student, whose mother described her as once bubbly and outgoing, no longer wants to do anything, does not leave her room, and only speaks with her siblings and one friend at school. The evidence also shows that the incidents made the Student mad, and sometimes sad, and they made it difficult for her to concentrate in class and impacted her sleep. The evidence further shows that the Student's grades declined over the course of the school year, and in comparison to her grades for the prior school year, and that discipline of the Student increased

compared to the prior school year, and the incidents underlying the discipline seem to have occurred most frequently at places where harassment has occurred – during passing periods, XXXXX period, and XXXX class. In addition, the evidence shows that the Student missed at least 10 days of school because the Student did not want to be at school, and that she lost additional class time due to student conferences and discipline.

OCR also notes that since October 2017, the Student and her mother have alleged other incidents of race-based harassment, including an April 2018 incident that school records show was reported to the school site by several students, and that involved a girl calling the Student the n-word and making derogatory racial comments.

Based on the totality of the above evidence, viewed from the perspective of a XX-year-old African American girl, OCR concluded that the offending students' conduct in September 2017 was both sufficiently severe and sufficiently persistent to create a hostile environment for the Student.

OCR notes that there is enough evidence to raise a concern that the hostile environment continued into the spring of 2018. According to the Complainant and the Student, the Student was subjected to additional incidents of race-based conduct in April 2018. Moreover, the evidence showing that the Student's friend Student 2 also was called the n-word, that at least three students engaged in inappropriate race-based conduct, and that the April 2018 incident was reported to the school site by several other students raises the additional concern that there is conduct sufficiently pervasive to create a hostile environment for other African American students at the School.

Notice

If a school district has actual or constructive notice of a hostile environment, Title VI requires that it take appropriate responsive action. In determining whether a district had notice of a hostile environment based on race, OCR considers whether the incident involved explicitly racial conduct, or the circumstances indicate that the recipient should have recognized that the conduct was in fact or reasonably likely to have been racial.

OCR concluded that the school site and District had actual notice of the September 2017 incidents. Specifically, the school site had notice that the Student was called the n-word by Student 1 before September XX. While the evidence is conflicting regarding whether the Student initially informed the school site that the name calling occurred multiple times, by September XX, the evidence shows that both the school site and district office received notice from the Student's mother that it was a recurring issue. The evidence also shows that the Student's teacher and Principal had notice from the Student that Student 3 had engaged in what she believed was inappropriate and/or race-based conduct as of September XX, 2017. The school site and District knew or should have known that the conduct was of a racial nature, or that they had sufficient information to conclude that it may have been racially based, in light of evidence showing that the teacher reported an inappropriate comment when she referred the students, the Principal knew that the picture was of an African woman and that the Student thought that Student 3 said it was her, the Principal reported to the District that she thought the inappropriate comment had been the n-word, and according to the Student, she told the Principal

that Student 3 was being racist. In addition, the evidence shows that, at minimum, the Assistant Principal had notice from the Student and her mother of the racial names that Student 5 had called the Student as of October XX, 2017. Accordingly, OCR considered next whether the District took appropriate action in response to notice of that harassment.

District Response

As previously stated, OCR evaluates the appropriateness of the responsive action by assessing whether it was timely and effective. What constitutes a reasonable response to harassment will differ depending upon the circumstances. However, in all cases the district must timely conduct an impartial inquiry designed to reliably determine what occurred. Moreover, 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. Furthermore, the steps taken should be reasonable, timely, age-appropriate, tailored to the specific situation, and effective.

The evidence shows that the school site responded to notice of each September 2017 incident of harassment. OCR examined the appropriateness of the responses to each of the incidents.

In response to the first incident that was reported to the District, the September XX incident involving Student 1 calling the Student and/or Student 2 the n-word, the Principal shared her own experiences with racism with the Student, the Assistant Principal counseled Student 1 using PBIS and contacted Student 1's parent, and the Assistant Principal coordinated a restorative justice session between Student 1 and Student 2. If in fact the School received notice that Student 1 used the n-word one time towards Student 2, the School's response was a reasonable, timely, and age appropriate response. However, the Student alleged that she too was called the n-word, and that she told the Principal about being called the n-word. Other than the Principal sharing her own experiences with the Student, there is no evidence that the School took steps to determine how the incident impacted the Student and how it could be redressed.

With regard to the September XX incident involving the picture of the African woman, the evidence showed that the Principal interviewed the Student and Student 3 and implemented discipline based on each student's behavior that occurred in reaction to the picture being showed to the Student. When the school site investigated the incident involving Student 3, it accepted Student 3's account as true without interviewing other witnesses identified by Student 3 as having knowledge about the incident, including the other student to whom Student 3 attributed the conduct. This investigative approach ultimately left questions about what happened unanswered, and it placed an unreasonable burden on the Student. The Principal's decision not to interview students who had not been referred for discipline prevented her from determining whether the Student was subjected to conduct that contributed to a hostile environment. In addition, there was no conversation with the Student about how the incident with Student 3 had impacted her, and how she could go about reporting future incidents, regardless of its determination that there was no racial harassment or discrimination.

With regard to the allegations by the Student's mother on September XX about ongoing use of the n-word, the evidence is conflicting as to whether the Student or her mother stated that Student 1 had been using the n-word for a month or whether it was reported as a more isolated incident. The Student's mother asserts that she told the School that the Student was being called

the n-word every day. School administrators acknowledged that the Student's mother had reported that a student "kept calling", "had been calling", and "was calling" the Student the n-word. Nevertheless, the School treated the name calling as a single incident. In response, the School took the following actions. The Principal explained the PBIS and restorative justice process to the Student's Mother, the Principal met with Student 1 about the alleged behavior, both Student 1 and the Student were referred to a restorative justice circle, and the Student was provided counseling by the Counselor. As a result of these actions, Student 1's behavior did not recur.

OCR also notes that although the Student's mother also notified the district office on September XX of the previous conduct by Student 1 and the incident involving Student 3, the district office did not become involved in the investigation or resolution of these incidents. Rather, the District directed the Student's mother to contact it again if she wanted further action and then relayed the Student's mother's concerns to the school site. This is inconsistent with the District's UCP, which governs complaints of unlawful discrimination, including peer-to-peer harassment based on race. The UCP states that if a complaint is not filed in writing, and the district receives notice of any allegation that is subject to the UCP, the district must take affirmative steps to investigate and address the allegations in a manner appropriate to the particular circumstances. Here, the Student's mother had already met with the Principal, and she informed the district office about that meeting. Nonetheless, the district office told her to contact it again for further action before checking in with the school site to find out more, and/or did not take steps to ensure that its UCP procedures for investigating and resolving this type of complaint were followed. Also, the Student's mother communicated to the district office that the Principal was not responding to race-based discrimination that her daughter was experiencing. Instead of investigating the mother's complaint about the Principal's failure to address race discrimination, the district office left the matter to be resolved by the Principal, whom the Student's mother was complaining about. The District's response to the mother's complaint was not appropriate because the Student's mother had identified the school administrators as part of the problem that needed to be addressed and, therefore, the school administrators could not address her concern in a fair and impartial manner.

OCR also notes regarding the incidents of the use of the n-word, the school site chose to treat Student 1's conduct in both instances as a one-time use of a vulgarity, and not as harassment, based on its determination that the racial term was not used in a racial manner, and without intent to harm or discriminate. OCR also learned that when another student (Student 4) used the n-word at school, the school site's response was that use of the n-word is inappropriate, and the student was told that, but because the student had used the word in a colloquial or conversational manner, or as a pop culture reference, no further action was taken. Unlawful race-based harassment under federal law is not dependent on intent. Even if the parties engaging in the conduct do not intend to harass, the conduct could create a hostile environment for a student.

Regarding the Student's mother's allegations on October X, the School responded on October XX by meeting with the Student, who informed them about the XXXX incident, which occurred the prior month. The School investigated the allegation by meeting with Student 5 and the XXXX teacher and providing a counseling and warning to Student 5. While the School promptly looked into the allegation and intervened with Student 5 to prevent a recurrence of his

behavior, there was no determination as to whether the incident created a hostile environment for the Student, and no supports or services were provided to the Student to redress the effects of the harassment.

Few attempts were made to check-in with the Student, and when such check-ins did occur, they were often at the prompting of the Student's mother. For example, after the Student reported the incidents involving Student 3 and Student 1, there was no attempt to check with the Student to see how she was doing for about three weeks, even though the Student's mother had reiterated her concerns about n-word use after about two weeks, and during that period, another incident occurred.

There is evidence that the school site verbally informed the Student's mother about a few of the steps it took to address some of the incidents, but generally did not inform her of the steps it took to investigate and resolve each incident. One step in redressing a hostile environment could be to clearly and in writing, as is contemplated by the District's UCP, communicate to the Student and her parent about whether the District found that discriminatory harassment occurred, and if so, the steps being taken to stop the harassment, prevent its recurrence, and to redress its effects on the Student.

OCR found that the District also failed to consider whether the incidents that occurred in September of 2017, as a whole or collectively, created a hostile environment for the Student whose effects needed to be remedied, despite notice from the Student's mother regarding the impact of various incidents on the Student and signs of trauma exhibited by the Student at School. For instance, the Student's grades have declined over the course of the school year and in comparison to last year. The Student also had numerous disciplinary referrals and consequences, and the underlying incidents seem to have occurred at places where the Student had reported she experienced harassment. The District did not examine whether some of the Student's disciplinary incidents during the school year were attributable, to some extent, to the Student's experience of racially inappropriate conduct and the District's difficulties in formulating an effective response for her to notice of that conduct. Additionally, there is evidence that the Student also has missed a significant amount of class time, which is attributable, at least in part, to the Student's discomfort around the offending students, the fact that she does not feel safe at school, and the numerous suspension days she has incurred. The Student also has experienced anger and sadness as a result of the harassment, and she has withdrawn socially, lacking any desire to leave her room or engage with others.

For the foregoing reasons, OCR found that the District violated Title VI with regard to the issue investigated in this case.

Overall Conclusion

This concludes the investigation of this complaint.

To address the issues alleged in the complaint, the District, without admitting to any violation of law, entered into the enclosed resolution agreement which is aligned with the complaint allegations and the information obtained by OCR during its investigation. Under the Agreement, the District will: convene a meeting to identify appropriate supports and services for the Student

to redress the race-based harassment that she experienced during the 2017-2018 school year; designate a person at the Student's high school who will facilitate her transition to the high school and may serve as a liaison between her and the high school; develop and implement a plan for reviewing all of the Student's discipline from this school year and addressing any instances where racial harassment and the School's response to it may have been a contributing factor to the Student's conduct; provide written guidance and training for District employees on what constitutes racial harassment and how to investigate and resolve complaints alleging peer-to-peer race-based harassment; conduct student sessions on what is racial harassment and how to respond to and report it, as well as the District's Title VI policies and procedures; and regularly monitor complaints of racial discrimination.

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 complaint allegations. 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 individual 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 regarding this letter, please contact Monique Raco Fuentes at Monique.RacoFuentes@ed.gov or 415-486-XXXX.

Sincerely,

/s/

Ava DeAlmeida-Law
Acting Team Leader

cc: Daniel M. McElhinney, Dannis Woliver and Kelley, Counsel for the District via email

Encl.