



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

May 31, 2018

Timothy Ritter  
Superintendent  
Temecula Valley Unified School District  
31350 Rancho Vista Road  
Temecula, California 92592

(In reply, please refer to case no. 09-18-1109.)

Dear Superintendent Ritter,

On December 5, 2017, the U.S. Department of Education, Office for Civil Rights (OCR), received a complaint against Temecula Valley Unified School District (District) which alleged discrimination based on race. The complainant<sup>1</sup> alleged that the Student was subjected to racially derogatory or intimidating language and physical attacks on the basis of race by other students, and that the District failed to respond appropriately and effectively to the harassment despite the complainant's and Student's reports of the incidents to the District.

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.

Under Section 302 of OCR's Complaint Processing Manual, a complaint may be resolved at any time when, before the conclusion of an investigation, a recipient expresses an interest in resolving the complaint. Prior to the completion of OCR's investigation, the District informed OCR that it was amenable to resolving the complaint in this manner. OCR and the District entered into the attached Resolution Agreement (agreement) to resolve the complaint. Accordingly, OCR did not complete its investigation of the complaint or reach conclusions regarding the District's compliance with Title VI. The applicable legal standards, the facts OCR gathered during its preliminary investigation, and the disposition of the allegations are summarized below.

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<sup>1</sup> OCR notified the District of the complainant's and Student's names at the beginning of the investigation. We are withholding their names from this letter for privacy reasons.

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

## Legal Standards

A district violates Title VI and the regulation if the evidence shows that: (1) the harassing conduct (physical, verbal, graphic, or written) on the basis of race, color, or national origin is sufficiently serious – 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.

Under the Title VI and the regulation, 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 district’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.

## Facts

The Student attends school in the District (School). He is African-American. The District is located in Southern California, approximately sixty miles north of San Diego. According to enrollment data collected by the California Department of Education for the 2016-2017 school year, 3.3% of the students enrolled in the District were African-American.<sup>2</sup>

The complainant alleged to OCR that the Student’s peers directed racial slurs toward him and other African-American students and subjected him to racially derogatory and racially intimidating language. The complainant also described an incident of concern that occurred at the School in September 2017 (Incident), in which the Student’s peers chanted “white power” at the Student during a game.

The District reported to OCR that the Student completed an incident report shortly after the Incident, in which he named the students involved and detailed the racially intimidating language directed at him. The School principal (Principal) spoke with the students alleged to have been involved in the Incident, each of whom admitted to saying “white power” during the game. The students stated that the phrase described some of the equipment used in the game and was not a reference to race or any particular student.

The District’s data response included a series of e-mails that the complainant sent to District staff, including several in October and November 2017, in which she detailed the slurs directed toward the Student, including “code” words for the “n” word and repeated questions by the Student’s peers as to whether the Student was from the “hood”; notified the District that the Student felt unsafe and anxious on a daily basis as a consequence of the incidents; and expressed disappointment regarding the nature of the District’s response. In particular, she alleged that District staff, when provided the name by the

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<sup>2</sup> <https://dq.cde.ca.gov/dataquest/dqcensus/enrethlevels.aspx?aggllevel=District&year=2016-17&cds=3375192>

Student of one of the students involved in the Incident (Student 2), told the Student that Student 2 would never do something like that. She also identified five different students responsible for unbuckling and damaging the Student's backpack, and alleged that the District's ineffective response to notice of the harassment had endangered the Student's safety.

The District reported that the Principal met with the complainant in response to the concerns raised in her correspondence. The Principal subsequently interviewed the students identified by the complainant as being involved, who denied using the "n-word" or any variation of the word, and also stated that they did not realize that the word "hood" was racially charged. The District also reported that, after interviewing the Student and one of the peers alleged to have unbuckled and damaged the Student's backpack, it believed that no racial comments had been exchanged. The District did not report any follow-up, education, training, guidance or corrective actions provided to any of the students alleged to have harassed the Student. Nor did the District describe any counseling or other individual services provided to the Student in response to the complainant's allegations of harassment by his peers.

In its meetings with the complainant, the District referenced school-wide campaigns, assemblies and efforts toward eliminating bullying and raising cultural awareness. OCR reviewed the information and presentation materials provided by the District about these efforts. Apart from the notation "racist comments" under a series of descriptions of verbal bullying in the materials for one of the assemblies, there was no further reference to bullying or harassment based on race, color or national origin, nor context or content that sought to build students' cultural awareness or provide information about discrimination.

### Policies and Procedures

The District uses the Uniform Complaint Procedure (UCP) to resolve complaints of discrimination, including on the basis of race, color, or national origin. The Human Resources Department is designated to receive and investigate such complaints. The District also uses an online bullying prevention complaint form (Complaint Form), published on the School website, where students, parents/guardians, staff and members of the community may file complaints. There is no reference to protected class in the Complaint Form. The School's Student Handbook includes information about bullying, forms of bullying, and what to do if made aware of bullying. There is no reference to race, color, national origin or any other protected class as bases for bullying or harassment in the Student Handbook. Nor is there any mention of the option to file a UCP to report allegations of discriminatory harassment.

### Analysis

When reviewing a district's response to notice of harassment, OCR first considers whether 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; and (2) the district had actual or constructive notice about the harassment. Based on the evidence gathered to date, OCR is concerned that the Student may have been subjected to persistent harassment on the basis of race during the 2017-2018 school year, when his peers called him racial slurs on several occasions, directed a racially intimidating "white power" chant at him, repeatedly asked him if he was from the "hood," and damaged his backpack. The complainant notified the District that these incidents impacted the Student's access to his education because he reported feeling

unsafe and anxious at school every day. The District received notice of these incidents from the complainant and/or the Student on several occasions during the 2017-2018 school year, particularly in September, October and November 2017.

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. Although the District's investigation showed that the Student was subjected to racial slurs and racially intimidating language, the District told OCR that the students did not realize that their statements were racial in nature. OCR notes that it is reasonable to expect students of the Student's peers' age and experience to have been aware that directing a chant of "white power" at an African-American student and repeatedly asking whether an African-American student is from "the hood" are regarded as racially charged actions.

In evaluating a recipient's response to a racially hostile environment, OCR also examines applicable anti-harassment policies and grievance procedures and assesses whether the responsive action was consistent with any established procedures.<sup>3</sup> While the District has a grievance procedure for complaints of racial harassment, the UCP, OCR did not find any evidence in the District responses to the complainant's e-mails or in its data response that the District offered the complainant the option to file a UCP or utilized the UCP in conducting its investigation. OCR is also concerned that the School's Student Handbook and Complaint Form do not include any reference to protected classes such as race, color or national origin as bases for making a complaint of harassment or bullying, thereby potentially providing ineffective notice to parents and students of the applicable District procedures.

OCR is also concerned that the District may not have taken sufficient steps to ascertain whether the actions created a hostile environment for the Student. In this regard, the District may not have assessed (1) whether the code words for the "n-word" were being used on campus; (2) whether students other than those identified by the Student were involved in using such words or otherwise harassing students based on race; and (3) whether additional African-American students were impacted by the students' conduct or were being subjected to harassing conduct based on race, as alleged by the complainant. In addition, the District made no mention in its data response of any individual remedy provided to the Student to address his fear and anxiety or of any corrective actions or consequences issued to any of the students alleged to have harassed the Student to prevent recurrence. Further, OCR is concerned that the District's program materials, submitted as part of its data response, lacked relevant content designed to address or prevent harassment on the basis of race, including by building students' awareness of how the use of certain terms and statements can create a hostile environment.

### Resolution and Conclusion

Prior to OCR's completion of the investigation, the District entered into the attached agreement, signed May 30, 2018, to resolve the complaint. The agreement requires the District to (1) provide a program for students designed to increase their understanding of harassment based on race, color and national origin, as well as the complaint avenues available; (2) revise its Student Handbook and Complaint Form and provide guidance to staff; (3) provide staff training on discriminatory harassment on the basis of race and on the forms of racial bias, including implicit or unconscious bias; and (4) provide individual remedies for the Student. Since the District agreed to voluntarily resolve the complaint, OCR did not complete its investigation or reach conclusions regarding the District's compliance with

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<sup>3</sup> Racial Incidents and Harassment Against Students at Educational Institutions; Investigative Guidance - Federal Register / Vol. 59, No. 47 / Thursday, March 10, 1994 / Notice.

Title VI with respect to the issue investigated. OCR will monitor the District's implementation of the agreement until the District has satisfied its terms.

This concludes OCR's investigation of the complaint and 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. OCR is closing the investigation of this complaint as of the date of this letter, and notifying the complainant concurrently.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District may not harass, coerce, intimidate, 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 records on request. If OCR receives such a request, it will seek to protect, to the extent provided by law, personal information which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

OCR thanks the District, particularly the District's counsel, Amy Rogers, for its cooperation during the investigation. If you have any questions, please contact the case resolution team.

Sincerely,

/s/

Zachary Pelchat  
Team Leader

cc: Amy Rogers, Dannis Wolliver Kelley