



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

September 8, 2020

SENT VIA ELECTRONIC MAIL

Ilsa Garza-Gonzalez  
Superintendent  
c/o Carmen Hatcher, Executive Assistant  
Fallbrook Union High School District  
Fallbrook, CA 92028  
XXXXXXXXXX

(In reply, please refer to case no. 09-20-1203.)

Dear Superintendent Garza-Gonzalez:

The U.S. Department of Education, Office for Civil Rights (OCR), has resolved the above-referenced complaint against Fallbrook Union High School District (District). OCR investigated whether African-American students<sup>1</sup> at a District high school (School) were subjected to harassment by other students based on race during a campus incident/fight on January XX, 2020, and the District failed to respond appropriately and effectively to notice of the harassment.

OCR is responsible for enforcing 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 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.

During its investigation, OCR gathered evidence by reviewing documents provided by the District and the Complainant. OCR also interviewed the Complainant, Student 1, Student 2, and District employees with relevant information, including the Principal, Assistant Principal 1, and Assistant Principal 2.

Prior to completing the investigation, the District expressed an interest in resolving the allegation. OCR determined that it was appropriate to resolve the case because OCR's investigation identified concerns that could be addressed through a Resolution Agreement. The applicable legal standards, facts obtained to date, and resolution of this matter are summarized below.

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<sup>1</sup> OCR previously informed the District of the identity of the Student 1, Student 2, and the Complainant. Their names have been withheld from this letter to protect their privacy.

### Legal Standard

The regulations implementing Title VI, at 34 C.F.R. § 100.3(a) and (b), prohibit discrimination based on race, color or national origin by recipients of Federal financial assistance. A school 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 school 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 school district (i.e., created a hostile environment); (2) the school district had actual or constructive notice of a racially hostile environment; and (3) the school 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 school 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 school 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 school 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 school district to take action.

### Facts Obtained to Date

In the 2019-2020 school year, both the District and the School were, in pertinent part, 1% African American and 67% Latino. The Principal stated there were approximately XXXX students at the School; XX-XX of them were African-American.

The Complainant filed this complaint on behalf of Student 1 and Student 2 who are African-American and attended the School during the 2019-2020 school year.

The Complainant, Student 1 and Student 2 stated there was a gang at the School made up of Latino students. The Complainant stated to OCR that the gang referred to itself as "XXXXXXXXXXXXXXXXXXXX." Student 1 and Student 2 stated that this was the only gang at the School. Student 1 and 2 stated that the gang had a saying which was, "XXXXXXXXXXXXXXXXXXXX." Student 1 and Student 2 stated that African-American students received threats on at least two social media sites by gang members which stated "XXXXX XXX XXXXXXXXXXXX. We gonna get you." The Complainant stated to OCR that Student 1 and Student 2 notified School employees.

The Complainant stated to OCR that during November and December 2019, racial slurs containing the phrase “XXXXXXXX XXXXXXXX”, were written on the walls of the boy’s bathroom on four separate occasions. The Complainant stated that the graffiti was left up for several days before it was removed. The Complainant stated that Student 1 and Student 2 reported the graffiti to School Administrators.

Student 1 and Student 2 stated they saw graffiti in a School bathroom which contained the N-word. Student 2 stated the racial graffiti was large, covering a door with black spray paint, and was visible for approximately 1 day before it was removed. Student 2 stated that he thought the graffiti was a big deal but did not tell anyone at the School because he did not think they would do anything about it. Student 2 stated he heard at least seven students talking about the graffiti. Student 1 and Student 2 stated that the School did not respond to the bathroom graffiti except to remove it.

There were two Assistant Principals at the School (Assistant Principal 1 and Assistant Principal 2). Assistant Principal 2 stated that on January XX, 2020, the N-word was written in the boys bathroom at the School. Assistant Principal 2 was notified of the racial graffiti by the Campus Supervisor via text message, which included a photo. The School provided OCR with photos of the words “XXXXXX XXXXXXXXXX” visibly written with yellow marker on a bathroom hand dryer, and “XXXXXX XXXXXXXXXX” written in large letters on white tile on the bathroom wall. Assistant Principal 2 told the Campus Supervisor to remove the graffiti. Assistant Principal 2 notified the Principal of the racial graffiti via phone. Assistant Principal 2 reviewed video of five students entering the bathroom. The School searched the backpacks of the five students in the video, but found no evidence suggesting they wrote the graffiti, such as a marker or other graffiti in their notebooks. No further action was taken.

Student 1 stated he also saw graffiti containing the N-word in a technology classroom. Student 1 stated the graffiti was written in pencil. He did not notify school employees about the graffiti.

Student 1 stated that from December 2019 to March 2020 (when in-person school ended and switched to online distance learning), on a daily basis, African-American students were targeted, threatened and intimidated by Latino students. For example, when some Latino students would see an African-American student, including Student 1 and Student 2, they would whistle to alert other Latino students an African-American student was near. The whistling occurred daily and involved approximately 20 Latino students. The Complainant stated to OCR that she witnessed the whistling while on campus.

Student 1 stated that in December 2019, there was a fight where Latino students were trying to intimidate African-American students by threatening to beat them up. Security guards tried to prevent the African-American students from being circled by Latino students. Student 1 stated that although the African-American students were not the problem, the African-American students were put in the Library for approximately two hours. Student 2 stated that only the African-American students were isolated in this manner. Student 1 missed a XXXXXXXX test which he was not permitted to make up. Student 2 missed an XXXXXXXX test that he was not permitted to make-up. Parents and guardians, including the Complainant, were not notified of the lockdown.

Student 1 stated that the day after the December 2019 fight, the African-American students at the School were put in the cafeteria with a police officer. This was the first time Student 1 had seen this officer. Student 1 stated the officer behaved inappropriately toward the African-American students. Specifically, the officer had a tazer stick which she pointed in the African-American students' faces. She told them to be quiet and sit down. The officer made the African-American students huddle together. Student 1 stated that the Principal came into the cafeteria and acted like he did not know what was happening. The Principal stated to OCR that he did not have knowledge that African-American students were forced into the cafeteria and threatened by an officer with a tazer stick.

The Complainant, Student 1 and Student 2 stated to OCR that in December 2019 African-American students at the School were forced to sit together every day in the cafeteria with a security guard standing next to them. Student 2 stated that a security guard told them to "stay together" so they would not get jumped by Latino students. The Complainant, Student 1 and Student 2 stated to OCR that in December 2019 African-American students at the School were escorted to class by security guards in response to threats by Latino gang members.

On January XX, 2020, an altercation occurred at the School (the Incident). The District stated to OCR that on January XX, 2020, the School held a pep rally after second period, during an extended nutrition break. The pep rally was held in the School's gymnasium. Approximately 50% of students at the School attended the pep rally while the other students remained outdoors during the extended nutrition break. School administrators and staff split supervision responsibilities between the pep rally and the campus. Specifically, Assistant Principal 1 supervised the gym while Assistant Principal 2 supervised the rest of the campus.

The District stated to OCR that the pep rally ended at approximately 10:20-10:23 A.M., and students were released from the gymnasium. Immediately thereafter, a large group of students, approximately 25-30, engaged in an altercation at approximately 10:23 A.M. The students involved were primarily Latino and African-American students, divided along racial lines. The District stated to OCR that three Latino students were fighting alongside the African-American students.

The Complainant provided OCR with several videos of the Incident taken on students' cell phones. The videos showed students fighting (one Latino group and one African-American group) and Assistant Principal 2 and the Sherriff intervening to break-up the fight. One of the videos recorded a student saying "XXXX XXXX, XXXXXXXXX," and "XXXX XXXXXXXXX, homie." It is unclear from the video which student made these racial slurs. A racial slur can also be heard on the video shown in media reporting about the Incident. Both Student 1 and Student 2 stated they heard the N-word on more than one occasion during the fight.

The District stated to OCR that School Administrators and other staff, including the School Principal, physically intervened to separate the students who were fighting. Assistant Principal 1 directed students to separate and to go to their next period classroom. Administrators requested that police be called immediately. District administrators proceeded to lockdown the campus. The District stated to OCR that during a school lockdown, all students must go to their next period or

nearest classroom, teachers lock the classroom doors, and no one is authorized to leave the classroom or campus.

The District stated to OCR that School Administrators had one group of students go to the cafeteria while other students went to classrooms, the “bowl” or the quad. Most of the African-American students went to the cafeteria, including Student 1 and Student 2. Some Latino students were in the cafeteria with the African-American students. Assistant Principal 2 sought to deescalate the students and keep them calm. African-American students were questioned in the cafeteria. The District stated to OCR that during Assistant Principal 2’s interview of Student 1 and Student 2, they admitted to taking part in the Incident.

While School Administrators were talking to the students in the cafeteria, some students ran out of the cafeteria. Assistant Principal 2 witnessed Student 1 and Student 2 among the students who ran. San Diego County Sheriff’s officers arrived at approximately that time, and the students returned to the cafeteria.

The District stated to OCR that Assistant Principal 2 began searching for the other students who were involved in the fight. These students were primarily Latino students. Assistant Principal 2 pulled them out of their classroom. Some of the students who ran to other locations on campus were returned to the main campus by the Sheriff’s officers.

Student 1 stated that in response to the fight, the School was put on lockdown for an hour or two and he was in the XXXXXXXX classroom with approximately 10 other students. Student 2 stated that only African-American students were locked down in the XXXXXXXX classroom even though three other students who were not African-American (one Puerto Rican and two other Latino students) were with them during the Incident trying to break it up. The lights were turned off and he was told to get under the table. Student 1 stated that the School handled the Incident poorly, and suspended students just to suspend them – even students who were not involved in the fight but were merely talking about it. Student 1 stated that while Assistant Principal 2 was aware African-American students were being threatened, the Principal claimed not knowing, though there was no way he could not know. The Principal stated to OCR that he thought race relations on campus were good prior to the Incident, but in retrospect, he thought differently. The Principal stated that, to his knowledge, a race climate survey had not been conducted at the School.

In response to the Incident, the District stated to OCR that it followed its disciplinary procedures pursuant to Administrative Regulation 5144.1. Specifically, the Principal or designee interviewed students and provided the students an opportunity to submit a written statement. The Principal or designee held informal conferences with all of the students, informed them of the reason for the disciplinary action, and provided them an opportunity to present their version, along with any evidence in support of their defense. In summary, approximately 27 students were disciplined (counseled and suspended for three to five days) for engaging in mutual or physical altercation or campus disruption under Education Code 48900, or 48915. Of the 27 students suspended, 7 were African-American (1 mixed with White), 16 were Latino (1 mixed with White), 2 identified as African-American and Latino and 1 was not identified. The suspensions began on January XX or XX, 2020. The suspended students returned to School on January XX, February X or X, 2020, depending on the length of their suspension.

Assistant Principal 2 stated to OCR that despite reviewing video footage of the fight and seeking statements from students, the School could not determine who used the racial slur. No disciplinary or other actions were taken to address the School climate resulting from use of the N-word during the Incident.

The Principal stated that he had not witnessed, nor did he have an account of, Student 1 or Student 2 participating in the fight; instead, he stated that they were disciplined for being part of a group. Student 1 and Student 2 were each suspended for four days under Education Code 48900.4 – engaged in harassment, threats or intimidation directed against school district personnel or pupils, that is sufficiently severe or pervasive to have the actual and reasonable expected effect of materially disrupting classwork, creating substantial disorder, and invading the rights either of school personnel or pupils by creating an intimidating or hostile educational environment. Their suspensions began January XX, 2020, returning to School January XX, 2020.

On January XX, 2020, the Complainant, Complainant's husband, Student 1 and Student 2 met with the Principal to discuss the discipline they received related to the Incident. The Complainant stated to OCR that Student 1 and Student 2 stated to the Principal that they were not involved in the Incident. The Complainant stated to OCR that the Principal told Student 1 and Student 2 that he believed they were involved with a gang. Student 1 and Student 2 told the Principal that they were not involved with any gang, and that it was impossible not to communicate with students in gangs because they were on their sports teams and in their classes. Student 1 and Student 2 believed that although they were not part of any gang, the Principal associated them with a gang based on racial stereotypes - that because they were African-American they were in a gang. Student 2 stated that the School administration blamed them for provoking the fight. Student 1 and Student 2 stated to OCR that as a result of how the School Administrators handled the Incident, they do not like school and believe they will continue to be stereotyped.

The Principal stated to OCR that he did not accuse Student 1 and Student 2 of gang affiliation, but rather, was trying to understand the Incident. Assistant Principal 2 stated to OCR that he attempted to corroborate Student 1 and Student 2's statement that they were trying to protect their friends and only trying to break-up the fight by interviewing the Principal and reviewing video of the Incident, but was unable verify whether they were involved in the fight. Assistant Principal 2 stated to OCR that Student 1 and Student 2 were suspended because they were in the area where the fight took place and because they ran past him; he stated to OCR that there was no video or other evidence of their involvement.

Administrators concluded, based on a totality of the facts and information available, that both groups of students sought to engage in a mutual fight and students were disciplined accordingly. The Principal stated that he could not determine who started the fight.

The District stated to OCR that following the Incident, it received a verbal complaint from a parent who stated that her son had been harassed. However, when asked for further information, such as the name of students involved and specific instances of harassment, no additional information was provided.

The District stated to OCR that, in response to the Incident, the District has been in communication with a community-based organization addressing hate violence, and has started the process to become a designated No Place for Hate school for Fall 2020. Additionally, the District retained the services of a Conflict Resolution and Prevention Specialist to provide group and individual counseling to students, anger management, and gang prevention support to students at the School.

The Complainant stated to OCR that these efforts did not effectively address race issues on campus. On August XX, 2020, on the first day of school, a student displayed the N-word repeatedly on Student 1's online XXXX class portal. The Teacher and Assistant Principal 2 called the Complainant to apologize. The Complainant stated to OCR that she asked Assistant Principal 2 what responsive action would be taken but was not given any details.

Student 1 and Student 2 told OCR that they felt targeted and threatened by other students. They also told OCR they felt stereotyped by School Administrators based on their race, and that they had lost faith the School Administrators because of their response, or lack thereof, to the racial graffiti, isolating African-American students in the cafeteria and the library, the Incident, and the use of the N-word by other students at School. The Complainant stated to OCR that Student 1 shut down, feared for his safety, changed his demeanor anytime the School was mentioned and initially refused to return to School for the Fall 2020 semester. He considered giving up his XXXXXXXXX position on a sports team and gave up his honors courses to avoid engaging with students involved in the racial incidents described herein. Student 1 also contemplated dropping out of his XXXX class. The Complainant stated to OCR that Student 2 has similarly shut down with regard to the School and did not want to return in the Fall 2020. Student 2 considered quitting sports because he did not want to travel with students involved in the racial incidents described herein. Student 2 was further impacted by witnessing Student 1 struggle with the effects of the racial incidents and tension at the School.

### Analysis

In analyzing a hostile environment under Title VI, OCR evaluates whether harassment created a racially hostile environment, whether a district had notice of a racially hostile environment, and whether the district responded appropriately to such notice. OCR first considers the totality of the circumstances to determine whether a racially 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 district's program. In this case, OCR's investigation of incidents during the 2019-2020 school year revealed numerous incidents of racist graffiti on school grounds, pervasive use of racial epithets, a gang with a racial-tag line, racist threats targeting African-American students, and intimidating conduct such as whistling when African-American students approached. This pattern culminated in a fight on January XX, 2020, that broke down along racial lines and in which the N-word was shouted multiple times.

OCR deems a school district to have notice of a racially hostile environment if it had either actual knowledge or constructive notice. A district has constructive notice if it could have found out about the hostile environment had it made a reasonably diligent inquiry in the exercise of reasonable care, and if it should have made such an inquiry. A district may also have constructive notice if it has notice of some, but not all, of the incidents involved in a particular complaint. The

District stated it had no notice of racial tension prior to the Incident, however, the evidence showed that both the Principal and Assistant Principal 2 saw photos of racial graffiti in the boys bathroom prior to the Incident. Both the Principal and Assistant Principal 2 stated that they heard the N-word used during the Incident, either in real time or by reviewing videos taken by other students. There was evidence suggesting that the School also should have known about other examples of racial tension at the School prior to the Incident, including other uses of the N-word and the whistling mentioned above. Student 1 and Student 2 stated to OCR that there was no way the School administration did not know about these incidents because knowledge about them was widespread throughout the School.

OCR evaluates the appropriateness of a school district's responsive action by examining reasonableness, timeliness, and effectiveness. The response must be tailored to fully redress the specific problems experienced at the school district, including steps to end the harassment and prevent its recurrence. 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.

In this case, the School responded to racial graffiti by having the Campus Supervisor who discovered it take a photo of it and send the photo via text to Assistant Principal 2. Assistant Principal 2 directed the employee to remove it, and reviewed video footage of students entering the boys bathroom to determine who had written it. Assistant Principal 2 then searched the backpacks of the students identified in the video footage, however no evidence – such as the blacker used to write the graffiti, or similar racial slurs written in notebooks - connected the students to the graffiti. Student 1 and Student 2 stated that they heard at least seven other students discussing the graffiti, however, no additional action was taken by the School to address the School climate. OCR had concerns that the School's response was not designed to determine whether the graffiti was symptomatic of other racial harassment occurring at the School and whether they created a racially hostile environment, to eliminate any such hostile environment, or to prevent racial graffiti or other racial harassment from occurring in the future. The School's response focused on identifying the perpetrators and removing the graffiti but failed to take steps to address broader School climate issues that are often present when there are multiple instances of racist graffiti.

Similarly, School Administrators stated to OCR that they were aware of threats against African-American students in December, 2019, and that a group of African-American students, including Student 1 and Student 2, were isolated in the Library. There was no response by the School to address the racial isolation of the African-American students in the Library. OCR found the failure to address the School climate relating to the threats made against African-American students, in addition to the racial graffiti discussed above, may have exacerbated racial hostility on campus, leading to the January Incident and the use of the N-word during the fight.

When School Administrators became aware of the Incident, they responded by physically intervening in the fight, calling the Sheriff's Department, soliciting written statements from



students, and issuing discipline. The School stated to OCR that they did not discipline students for use of the N-word because they could not determine who said it. Similarly, the School stated to OCR that they did not discipline students for writing the N-word on the bathroom wall because they could not determine who wrote it. The School worked with a Conflict Resolution Specialist to provide counseling, anger management, and gang prevention support, but it is unclear whether the School took any actions to specifically address racial conflict and hostility. OCR noted that even if race was specifically addressed, it was not addressed effectively as evidenced by the N-word being repeatedly displayed on the first day of class on Student 1's film class online portal.

The District suspended Student 1 and Student 2 for four days because Assistant Principal 2 saw them run past him after the Incident, but there was no video or other evidence that they were involved. OCR noted that approximately half of the African-American students in the School were disciplined related to the Incident.

On September 3, 2020, the District agreed to take action to resolve the concerns OCR identified in this case, including but not limited to: expunge Student 1 and Student 2's suspensions, designate a School employee as a contact to report any future safety or race related issues, communicate to students, parents/guardians, staff and administrators that the District does not tolerate racial harassment, training for students and staff, conduct self-evaluation regarding the racial climate at the School, and take responsive action, as necessary.

### Conclusion

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 compliance concerns OCR identified. 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.

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, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions about the resolution of this complaint, please contact Civil Rights Attorney Rhonda Ngom at [rhonda.ngom@ed.gov](mailto:rhonda.ngom@ed.gov).

Sincerely,

/s/

Rhonda Ngom  
Civil Rights Attorney

/s/

Joseph Wheeler  
Team Leader

Enclosure

cc: Ric Silva, District Counsel