



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION XV
MICHIGAN
OHIO

Melissa Martinez Bondy, Esq.
Bricker and Eckler, LLP
100 South Third Street
Columbus, Ohio 43215

Re: OCR Docket #15-15-1212

Dear Ms. Bondy:

This letter is to inform you of the disposition of the above-referenced complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against the Lebanon City School District (the District) on April 14, 2015. The complaint alleged that the District discriminated against students attending the District's high school and junior high school based on race (biracial¹ and African American). Specifically, the complaint alleged that, during the 2014-2015 school year, staff and students at the high school and junior high school subjected biracial and African American students to a racially hostile environment, including different treatment under the dress code, segregation in class seat assignments, derogatory comments, racial slurs, and physical threats; and that the District was aware of the hostile environment but failed to take appropriate action to address it.

OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, and its implementing regulation at 34 C.F.R. Part 100 (Title VI). Title VI prohibits discrimination on the basis of race, color, or national origin by recipients of Federal financial assistance from the Department. As a recipient of Federal financial assistance from the Department, the District is subject to Title VI; therefore, OCR had jurisdiction to investigate this complaint.

Although these allegations were filed on behalf of all African American and biracial students attending the District, the complaint was filed by families with biracial students who attended the District. These families engaged in a private mediation with the District and came to an agreement to resolve their individual claims; as a result, the Complainants, through their

¹ Although the complaints were filed on behalf of biracial (African American and white) students, the term used in demographic reporting is "multiracial"; throughout this letter, "biracial" and "multiracial" are used interchangeably.

attorney, requested to withdraw their complaint. OCR's Case Processing Manual (CPM), at Section 110(l), states that OCR may close a complaint when the complainant withdraws the complaint after OCR has opened it for investigation; however, the CPM further states that OCR will determine whether the investigation raises systemic issues that warrant continuing the investigation, notwithstanding the complainant's withdrawal and that, moreover, where OCR has obtained sufficient evidence to support a finding under CPM subsection 303(a) (insufficient evidence) or CPM subsection 303(b) (violation) with regard to any allegation(s), OCR will not close the allegation(s), but will proceed in accordance with the appropriate provisions set forth in CPM Section 303.

At the time of withdrawal, OCR determined that the investigation of a racially hostile environment raised systemic issues, and that OCR had obtained sufficient evidence to support a violation finding under Section 303(b) regarding student-to-student racial harassment. Specifically, OCR determined that the evidence is sufficient to support a finding that, during the 2014-2015 school year, students at the high school and junior high school subjected biracial and African American students to a racially hostile environment and that the District knew or should have known of the hostile environment but failed to take appropriate action to address it in violation of Title VI. Based on the Complainants' withdrawal and mediated agreement with the District, OCR determined that there is no need for individual remedies for those students. Accordingly, OCR is closing the allegations as they specifically relate to the Complainants' students as withdrawn, even though some of the information regarding the individual students is related to the systemic issues and will be discussed below.

Based on the systemic complaint allegation, OCR investigated the following legal issue: whether the District, on the basis of race, interfered with or limited the ability of students to participate in or benefit from the services, activities, or privileges provided by the District by effectively causing, encouraging, accepting, tolerating, or failing to correct a hostile environment based on race of which it had actual or constructive notice, in violation of the Title VI implementing regulation at 34 C.F.R. § 100.3. During the course of the investigation, OCR reviewed documentation provided by the Complainants and the District. OCR also conducted interviews with the Complainants and their witnesses, and with District staff witnesses. OCR found that the District failed to address a racially hostile environment at the junior high school and high school of which it had notice, in violation of the Title VI regulation. The bases for OCR's violation finding are discussed below.

Summary of OCR's Investigation

- **Background**

The District is located in Lebanon, Ohio, approximately 30 miles south of Dayton, Ohio, and 30 miles northeast of Cincinnati, Ohio. The District has six buildings, including one junior high school for students in 7th and 8th grades and one high school for students in 9th -12th grades. Based on OCR's 2013 Civil Rights Data Collection, during the 2013-2014 school year the District had 5,517 students with African American students representing 1.7% of the total student enrollment and multiracial students 3.9% (215). Information provided by the District to the Ohio Department of Education for its annual state report card showed that, during the

2013-2014 school year, the District had 5,217 students, 90 of whom (1.7%) were African American, 196 of whom (3.8%) were multiracial, and 4,602 of whom (88%) were white. The junior high school had 936 students, 17 of whom (2%) were African American, 24 of whom (3%) were multiracial, and 853 of whom (90%) were white. The high school had 1,490 students, 23 of whom (2%) were African American, 61 of whom (4%) were multiracial, and 1,336 of whom (90%) were white. District data provided to OCR for the 2014-2015 school year showed that the demographics remained consistent for the junior high and high schools; the junior high school had 1,002 students, 21 of whom (2%) were African American, 31 of whom (3%) were multiracial, and 881 of whom (88%) were white; the high school had 1,950 students, 29 of whom (1%) were African American, 64 of whom (3%) were multiracial, and 1,754 of whom (90%) were white.

- **Complainants' Allegations**

OCR interviewed the Complainants and witnesses identified by the Complainants, including multiracial students who had attended the District's junior high school and high school during the 2014-2015 school year and their parents. The Complainants' witnesses described rampant use by white students of the N-word and other racially derogatory terms and comments at the schools, including in the hallways and cafeteria, as well as racially derogatory comments and questions directed at African American and multiracial students by some white staff members. One parent stated that a junior high school administrator had acknowledged to her that there were racial problems at the junior high school and that students had been threatened. The students also described racially motivated threats against students in school through social media. One student described a carving in the high school boys' bathroom that had stated, "No [N-word]s," which the District did not promptly or effectively address. One student alleged that in one class at the junior high school the teacher assigned African American and Hispanic students to seats in the back along with an African American educational aide, while assigning white students to the front of the room. Several junior high school students also alleged that a white staff member at the junior high school targeted multiracial students for dress code violations, while ignoring dress code violations of white students. The Complainants stated that school administrators did not address the frequent racial incidents at the schools although they were aware of what was happening. They asserted that a number of multiracial students had left the District because of the racially hostile environment.

- **Information regarding the overall racial climate at the District**

OCR reviewed District information related to the 2012-2013, 2013-2014, and 2014-2015 school years, in both electronic and hard copy format. During these three school years, while the District had an electronic student information system capable of recording which discipline events involved race, the District did not use that feature in its system. Therefore, the District was unable to provide OCR with electronic information stating the number of racial incidents that occurred during those three school years. The District provided OCR with its electronic records of all discipline incidents for the junior high school and the high school for the 2012-2013, 2013-2014 and 2014-2015 school years, whether or not the incidents were related to

race. The electronic records of discipline, in themselves, had no information which would allow OCR to determine if the incident involved the use of race; for example, they did not include a narrative description of the incident.

In order to ascertain the number of racial incidents at the District during those three school years, OCR reviewed approximately 1,200 pages of paper copies of documents involving racial incidents. The District produced the paper copies in response to an OCR request for documents concerning all formal and informal complaints and/or reports of harassment on the basis of race filed or reported by students, parents/guardians, District employees, or anyone else during the three school years. The paper copies related to all District schools, not just the junior high school and high school. The paper copies included handwritten notes and logs, e-mails, and letters regarding discipline. Using the paper copies, OCR created a list of the reports of harassment. OCR noted the incidents involving discipline and the incidents involving use of the N-word. OCR also matched the incidents in the paper records involving discipline with the electronic discipline records by comparing the date of the incident in the paper documents with the date of the incident as recorded in the electronic records, and then ensuring a match by comparing the name of the student and duration and type of discipline imposed.

OCR was not always able to match discipline recorded in the paper records with discipline recorded in the electronic records. This is in part because, while the paper copies reflected all types of discipline, the District's electronic data did not record all types of discipline. The junior high school's electronic records only included out-of-school suspensions (OSS) for the 2012-2013 and 2013-2014 school years. For the 2014-2015 school year, the junior high school's electronic data recorded the following consequences for all discipline events (i.e., not just those involving race): verbal warning, detention, emergency removal, Saturday school, and OSS. Regarding the high school, the District's electronic data recorded the following consequences for the three school years reviewed by OCR: in-school suspension (ISS), OSS, and expulsion. The paper copies reviewed by OCR included discipline such as bus suspensions, Saturday school, verbal warning, and assignment to the alternative learning center, in addition to ISS and OSS. District witnesses stated that, prior to the 2015-2016 school year, the majority of discipline records, including office referrals and administrator notes, were handwritten and maintained by each individual District administrator who handled the matter.

Taking the above into consideration, regarding the 2012-2013 school year, the documents provided to OCR showed that the District had paper records related to 32 racial incidents, 14 of which involved use of the N-word. While in 27 of the incidents the District imposed discipline, no discipline was imposed in 5 of the 32 incidents. Students received OSS in 14 of the 32 incidents. The District's paper records show that 13 of the 27 incidents involving discipline involved use of the N-word. OCR found 15 matching incidents in the District's electronic discipline records; there were 8 instances at the high school involving discipline, and the consequences ranged from 1-day OSS to 3-days OSS and at the junior high school the 7 instances involving discipline ranged from 1-day ISS to 5-day OSS.

For the 2013-2014 school year, the District had paper records related to 23 racial incidents, 9 of which involved use of the N-word. In 16 of the 23 incidents, the District imposed discipline; no discipline was imposed in 7 of the incidents. Students received an OSS in 8 of the 23 incidents.

The District’s paper records show that 6 of the 16 incidents involving discipline involved use of the N-word. OCR found 8 matching incidents in the District’s electronic discipline records; there were 2 instances at the high school involving discipline, both for the same student, and the consequences were a 3-day OSS for the first offense and a 6-day OSS for the second offense. At the junior high school the 6 instances involving discipline ranged from 2-day OSS to 5-day OSS.

OCR’s review showed that the District had paper records related to 72 racial incidents during the 2014-2015 school year; 40 of the 72 incidents involved use of the N-word. In 37 of the 72 incidents, the District imposed discipline; no discipline was imposed in 35 of the incidents. Students received an OSS in 20 of the 72 incidents, and 2 of the 20 OSS included a 10-day OSS with recommendation for expulsion, although those incidents involved more than racial discrimination (sexual harassment and possession of tobacco). The District’s paper records show that 18 of the 37 incidents involving discipline involved use of the N-word. OCR found 17 matching incidents in the District’s electronic discipline records; there were 9 instances at the high school involving discipline, and the consequences ranged from 1-day OSS to a 10-day OSS, with a recommendation for expulsion. At the junior high school, the electronic records show that the 8 instances of discipline imposed ranged from a 1-day in-school detention to a 5-day OSS.

The following chart summarizes the information from the District’s electronic and paper records:

Number of racial incidents recorded in paper records:			Discipline imposed (per paper records):					Discipline recorded in electronic discipline records:		
School year	# of racial incidents	# with use of the N-word	JH	HS	K-6	Total	# with use of the N-word	JH	HS	Total
2012-13	32	14	12	14	1	27	13	7	8	15
2013-14	23	9	13	3	0	16	6	6	2	8
2014-15	72	40	15	15	7	37	18	8	9	17

The electronic records show that racial incidents were most often recorded as disobedient/disruptive behavior or harassment/intimidation; in a few instances, the incidents were recorded as fighting/violence.

Although OCR noted use of the N-word in its review of the paper records, OCR also notes that some of the paper records did not record the specific words used, and instead merely referred to “racial incidents” or “racial slurs.” In addition, some racial incidents recorded in the paper records for the 2014-2015 school year involved students posting "KKK" or swastikas in school buildings, shouting out “white power” on a school bus or at school, calling students “slaves” or “cotton pickers,” and students saying that they “hate black people.” Similarly, during the

2013-2014 school year, the paper records show that students were posting "KKK" or swastikas in school buildings. During the 2012-2013 school year, the paper records show that students were disciplined for chanting "lynch" and the N-word on the school bus. Although not the subject of this complaint, OCR noted that the paper records show that hate speech was also directed at Mexican, Muslim, Jewish, and homosexual persons. There were also incidents of discrimination based on sex recorded in the paper records.

For the 2014-2015 school year, OCR noted at which District schools the 72 racial incidents occurred, as reflected in the District's paper records. OCR found 11 incidents involving students in grades 1-6, 41 involving junior high school students, and 19 involving high school students; OCR was unable to determine the school in 1 of the 72 incidents. This is reflected in the chart below.

2014-2015 incidents per school level, as recorded in the District's paper records	
1st - 6th grades	11
Junior high school	41
High school	19
Unknown	1
Total:	72

OCR also reviewed the paper records for the number of students involved in racial incidents where discipline was imposed, both as perpetrators and victims. When reviewing the number of harassers and victims recorded in the paper records, OCR recorded the names of the students involved in each incident and reviewed them for duplication; students may have been involved in more than one incident, and some of the incidents involved more than one student, although not all of the paper records named specific student victims. OCR's review of the paper records involving discipline showed that 26 different students were disciplined for racial incidents during the 2012-2013 school year; there were no named victims in the paper records. During the 2013-2014 school year, 19 different students were disciplined for racial incidents; there were 5 named victims in the paper records. During the 2014-2015 school year, 31 different students were disciplined for racial incidents; there were 15 named victims in the paper records where discipline was imposed. Also for the 2014-2015 school year, the paper records show that 52 different students were named as harassers and 33 different students were named as victims; these numbers include all incidents, whether or not discipline was imposed. OCR did not record this information for the two prior school years. Of the 31 different offenders who received discipline during the 2014-2015 school year, 7 offenders were involved in more than one incident and one of the incidents had 2 offenders listed. Of the 15 named victims, all but one, who was the victim in 3 incidents, were only named victims in one incident. OCR's review of the documents indicated that there were 52 individual students named in the paper records as students accused of harassment and 33 individual students who were named as victims in the paper records. This information is summarized in the chart below:

Number recorded in paper records:			Number of incidents with discipline imposed (per paper records):	
School year	# of named victims	# of harassers	# of named victims	# of harassers
2012-13			None	26
2013-14			5	19
2014-15	33	52	15	31

In addition to the 15 named victims for the 2014-2015 school year, 8 of the offenses involving discipline also involved one, unnamed victim. Nine of the offenses occurred on the school bus, and the information in the paper records indicates that racial comments were said in a loud voice, and so heard by more than one student. Similarly, 3 offenses occurred in class, and 1 incident occurred in the cafeteria, and the information in the paper records indicates that racial comments were said in a loud voice, and so heard by more than one student. Two of the incidents involved an unknown number of students. In addition, there was a “rap battle” video posted online, on Vine. The rap battle was between a white District student and an African American District student. During the rap battle, the white student called the African American student a “black ass [N-word]”; this video, when reported to the District, had been viewed over 5,000 times. The chart below summarizes this information.

2014-2015 Victims as reflected in the District’s paper records involving discipline	Count of victims or incidents
Named victim	15 victims
One, unnamed	8 victims
Students on bus	9 incidents involving multiple students
Students in class	3 incidents involving multiple students
Unknown	2 incidents with unknown number of students
Students in cafeteria	1 incident involving multiple students
Rap battle video on Vine	over 5,000 views

Overall, OCR’s review of the District’s discipline records showed that the District had a significantly high number of racial incidents as early as the 2012-2013 school year, that this trend continued during the 2013-2014 school year, and that, by the 2014-2015 school year, the number of racial incidents had more than doubled from the 2012-2013 school year. In addition, for the three school years reviewed, almost half (2012-2013 and 2013-2014), or more than half (2014-2015), of the total number of racial incidents involved use of the N-word.

OCR interviewed staff from the junior high school and the high school about the racial climate at these schools. Staff uniformly agreed that student-on-student racial harassment is addressed in the District’s Student Handbook, which is annually reviewed by administrators from the junior high school and the high school. Staff also explained that discipline for racial harassment ranges

from a call home to parents to suspension with a recommendation of expulsion, depending on the age of the accused, the frequency of the behavior, the severity of the incident, and the context of the incident. Staff was generally aware that the District has a grievance procedure in its Board policies. Staff also informed OCR that throughout the school year the District holds student assemblies to address general harassment and bullying during the school day. These assemblies do not specifically address racial harassment.

When asked about the number of racial incidents during the 2014-2015 school year, some staff members stated that they were aware that there had been an increase in racial incidents since the prior school year, but they could not explain the increase. Other staff members expressed surprise at the increase. All staff interviewed by OCR indicated that, regardless of the number of racial incidents, they did not feel the District had a racially hostile environment. However, one of the e-mails OCR reviewed was dated December 1, 2014, from a teacher to a high school assistant principal in which the teacher stated her belief that there was “a quiet under-current of racism here at the high school that every once in a long while surfaces as a fight or swastikas scribbled in a book or in the locker bay.”

Regarding consequences imposed for racial incidents, staff uniformly stated that racial incidents are handled consistently. However, OCR’s review of the District’s documentation showed that discipline varied depending on the administrator that handled the matter, where the incident occurred, the context of the incident and the students involved. As an example, there was an incident at the high school involving a white student and an African American student that initially began as a discussion about the differences between whites and African Americans but escalated to the white student using racial slurs. An assistant principal investigated the matter and issued a one-day ISS to the white student. The white student’s parent sent the principal an e-mail complaining about the discipline and arguing that the African American student had also behaved inappropriately. After receiving the e-mail, the principal canceled the white student’s ISS and issued a verbal warning to both the white student and the African American student. When asked why he overruled the assistant principal’s determination, the principal stated that he felt the parent’s e-mail brought to light new information. However, the assistant principal informed OCR that he had considered all the information provided in the parent’s e-mail in making his determination that the student should receive ISS.

In addition, staff reported to OCR that a student involved in a racial incident on the bus was subject to the same discipline as a student involved in an incident that occurred at school. However, OCR’s review of the District’s documentation showed that many incidents that occurred on the bus resulted in bus suspension—a student not allowed to ride the bus but not suspended from school—as opposed to OSS. Very few administrators could explain the reason for this difference; one administrator stated that a bus suspension is almost the same as OSS because many students are unable to get to school if they are barred from taking the bus.

- **Information Obtained about Specific Incidents Alleged by the Complainants**

Although OCR is closing any individual allegations as withdrawn, some of the information regarding specific incidents alleged by the Complainants and their witnesses is relevant to and illustrative of the overall racial climate at the District. As noted above, OCR interviewed

multiracial students who attended the junior high school and high school during the 2014-2015 school year and their parents. OCR requested information from the District about specific incidents alleged by these witnesses.

- High School

The documentation from the District showed that on February 13, 2015, one of the Complainants met with XXX of the high school's assistant principals. Based on the assistant principal's notes, the parent reported that a teacher at the junior high school told one of her children that there was an incident during the 2013-2014 school year when someone placed a "whites only" sign over a drinking fountain. The parent shared her outrage and concern and asked the assistant principal if the District had a plan in place to deal with racism. Later that day, the parent sent an e-mail to the District superintendent outlining racial incidents at the high school. The first incident was when a student called the parent's other child a "slave" in the cafeteria. The second incident was when the same student called her son the N-word to his face in the hallway. The third incident was when, soon after the hallway incident, two students in the cafeteria referred to her son as "the [N-word]." The parent also reported that, after this incident, her son bumped into a student in the hallway and the student said, "Watch where you are going, [N-word]." The parent also reported that, a few weeks prior to her e-mail, someone carved "No [N-words]" into the wall of the boys' bathroom at the high school, and the high school did not properly address the matter because the school only painted over the carving, which left the carving visible. The parent reported that her son had shown her a picture, and the carving was still visible despite the paint. The parent reported that she feared for her son's safety at the high school.

Regarding the parent's reported incidents at the high school, a high school assistant principal told OCR that early in the school year the parent met with him at the high school regarding the incident where a white student called the parent's son a "slave." The assistant principal told OCR that the parent indicated that she was hesitant to allow her son to attend the high school because there were so many racial incidents. The assistant principal told the parent he wanted to investigate this incident. The parent agreed but told the assistant principal she did not want her son to know that she had spoken with him. The parent left and the assistant principal called her son to the office. When asked about the incident, her son acknowledged that the incident had occurred and identified the student who called him a "slave" by his first name only. The assistant principal said there were several students with the same name, and so he showed her son pictures of all the students. He was unable to identify any of them as the student who called him a "slave." He returned to class and the assistant principal called the parent to tell her about his investigation and that there was nothing more he could do unless her son was able to identify the other student.

The assistant principal told OCR that the parent reported a second incident to him involving two students who called her son the N-word in the high school cafeteria. The assistant principal called the parent's son to the office to investigate. Her son agreed this incident occurred but was ambiguous about the event and who made the statement. The assistant principal then interviewed students who sat at the lunch table near where this incident occurred. One of these students concurred that two other students called him the N-word. The two students who used the N-word received a one-day OSS as discipline.

The principal confirmed to OCR there was an incident at the high school on January 27, 2015, when a different student reported to the office that there was vandalism in the boys' bathroom, and the District discovered the statement "No [N-word]s." The assistant principal immediately closed the restroom by placing yellow "caution" tape and a garbage can at the entrance. The District reported that the carving was deep in a hard plastic partition, not in drywall or plaster. The head custodian informed the principal that the carving was too deep to grind out with a sander, and thus the District ordered a replacement partition. The District asserted that it left the trash can and yellow caution tape in place for several days until the replacement partition was installed.

The assistant principal told OCR that in early February 2015 the parent described above came to the high school and informed him that she would not send her son to school because it was unsafe. The parent showed the assistant principal three lines of text message from a female student to her son with a picture of a knife. The XXX assistant principals investigated. As part of their investigation, they reviewed text messages between the parent's child, the female student, and a male student. The text messages included a statement from the parent's son to the female student that he wanted to get into a fight and get suspended from the District so his mother would send him back to his former school district. The female student then texted the male student and asked him if he would fight the parent's child; the male student said no. The female student then asked the parent's son if he would be willing to fight the male student and he said yes. Then the female student asked the male student for a picture of a knife, which he provided, and she sent the photo to the student claiming the male student had a knife. The student then showed the photo to the parent. This assistant principal told OCR that the parent's child never told him that he wanted to go to another school.

The XXX assistant principal provided the same account. The XXX assistant principals questioned the female student and determined that the female student was having separate text conversations - one with the male student and the second with the parent's child. The assistant principal felt the female student was "stirring the pot." The police were contacted. The District and the police went through the female student's texts. They found that the male student sent pictures of several knives that he had in his possession at his home. The male student never sent a text or a picture of a knife to the parent's son. The next day the male student was in school, the administrators searched him – he did not have a knife on him. The male student reported that he did not know the parent's child and he had no intention of fighting him. After this incident, the parent's son never returned to the high school because the parent believed it was unsafe for him, as a biracial student.

- Junior High School

With respect to alleged segregation in seating assignments, the Complainants only described this occurring in one class at the junior high school. OCR interviewed the XXX and the XXX who the Complainants alleged was seated by the teacher in the back of the room. XXX stated that the teacher allowed students to pick their own seats, although some students with disabilities might be seated in the front of the class if necessary as an accommodation and the teacher might also move a student with a behavior problem to the front. The XXX stated that she had asked the teacher to have her students work with her at the back of the room, and that those students were not African American. With respect to the alleged different treatment regarding dress code

violations at the junior high school, the Complainants only identified one staff member as treating students differently. OCR interviewed this staff member, who asserted that XXX sent students who came to school in inappropriate attire to the office, regardless of their race. XXX stated XXX might have been stricter with enforcing the dress code for the school's cheerleaders, but without regard to their race. District staff and administrators interviewed by OCR either had no knowledge of any dress code enforcement issues regarding this staff member or recalled XXX being strict about dress code enforcement for all students. Because the evidence obtained by OCR did not support that different treatment with respect to the dress code or segregated classroom seating assignments were occurring related to the Complainants' specific examples, OCR did not further investigate these assertions.

With respect to alleged racially derogatory comments by staff, one Complainant reported that her daughter informed her that some of the junior high school teachers made racially insensitive remarks in their classes. One comment was related to a teacher asking the student if she wanted some grape soda. The parent believed this to be a derogatory comment. The other comments were related to another teacher and his alleged agreement with negative racial stereotypes discussed in his class. The parent stated that she tried to call a junior high school administrator several times but never received a return call.

OCR interviewed the XXXX who were alleged to have made racially insensitive in their classes. Related to the grape soda comment, the XXX denied making the comment and explained that XXX was being silly during XXX class and singing a popular song about a duck who asks for grapes. XXX asked each of her students who entered her class if they wanted any grapes and did not single any particular students out based on their race. The XXXX explained that XXX teaches a social justice unit as part of XXX class curriculum. XXX said that there are some discussions about social injustice and race and they may talk about stereotypes but XXX did not recall any discussion of negative racial stereotypes related to minorities nor would XXX agree with such a comment even if it was made. XXX added that the purpose of this unit is to help students think about how they treat each other.

With respect to alleged racial harassment by students, based on a XXXXX notes, the Complainant's daughter reported that she was sick of students mistreating African American students at the junior high school. She added that two students who sat behind her during study hall often used the N-word to describe the XXX. She reported that she had overheard them on several occasions saying that they did not have to listen to the XXX because XXX was "just an old [N-word]."

OCR interviewed the XXX who supervised this student's study hall. The XXX recalled that the student reported something to XXX, who called the XXX and asked if the student could come and talk to her. The student met with the XXX and explained that she was having issues with a male student in study hall because he called her the N-word. In response, the XXX held a meeting with her and the male student. She asked the male student if he called the student the N-word. At first the male student denied using the N-word, but ultimately acknowledged that he did call her the N-word. The XXX called XXX mother and explained what had happened. The XXX added that she felt the male student said things to the student because he had a crush on her

and she did not return his affection. There was no further discipline taken against the male student.

The District also provided notes from the XXX, regarding an Instagram post with a photograph of a male African American student and two female white students that was disparaging toward African American students and used the N-word. The District provided a log indicating that a parent called the junior high school's office on March 24, 2015, and informed staff that there were students who used the N-word. The parent reported that her child and another biracial student were told that they "should go back to [one of the student's former school district]" because they did not belong at the District. The parent also reported that an unknown male student told the two biracial students that they were not needed at the District because they were "[N-word]s." The junior high school assistant principal told OCR that she recalled a meeting with the parent and her daughter on March 24, 2015, during which they discussed a number of concerns the parent had about racial incidents. One concern involved the student's study hall; the student said that another student told her to go back to her former school district and that she did not belong in the District. The assistant principal stated that the XXX had talked to the other student and called the other student's parents, which she felt resolved the matter. The student also reported that students said racial slurs behind her back, including the N-word. The assistant principal reported that she could not investigate this allegation because the student was unable to provide her with the names of students who made these comments, nor could she specify any dates on which these comments were made.

When the parent told the assistant principal about the above-referenced Instagram post, which had been uploaded by someone with the username @Leb_Stupid, and the "rap battle" video, the assistant principal asked the junior high school's principal to join the meeting. The Instagram post was of a male African American student with two white female students and said, ". . . shut up you dumb ass [N-word]." The parent also showed the assistant principal and principal the rap battle video on Vine; at that time, the video had been forwarded 74 times and viewed over 5,000 times. The principal informed the parent that they would conduct an investigation. The assistant principal was in charge of the investigation.

The assistant principal interviewed some of the students who were named in the Instagram scroll. A male African American student told the assistant principal that he would randomly hear racial slurs in the hallway, e.g., "I hate [the N-word]s." The assistant principal also interviewed the African American student pictured in the Instagram post. She asked him if he knew he was in the post and if he knew the identity of @Leb_Stupid. The student said that he was aware of the post, but that he did not know the identity of @Leb_Stupid. The assistant principal asked the student if he felt that the post targeted him. He said he did not know, but that a white student attending the junior high school made racial comments to him all the time. The student said that it did not bother him because students made racial comments to him all the time; for example, they would say, "you're such a [N-word]." The student told the assistant principal that white students at the District had been making racial statements and slurs to him for so long that he was used to it; he added that this had been happening to him since second grade. The assistant principal asked the student when was the last time that someone had used the N-word; the student replied that it had been maybe four weeks prior. The Instagram post also had a reference to "moon cricket"; the student told the assistant principal that this referred to how slaves would

work in the fields until there was moonlight, and so it was a reference to African Americans as slaves.

This student was also the African American student in the rap battle video who was rapping with a junior high school white student. The assistant principal asked about the video. The student said that students say things to each other that can be heated in rap battles. The student said that some of what is said is funny but not school appropriate. The student then told the assistant principal what the white student said to him in the rap battle: “smoking crack; pull the trigger; shut the f*** up you dumb ass [the N-word].” The African American student said he did not personally take offense to it. The assistant principal asked the African American student if the white student from the rap battle could be @Leb_Stupid, but the student said no.

The assistant principal also interviewed a XXX male African American student about the Instagram post. The student said he saw the post after he got home around 6:00 p.m. He commented on the Instagram post, “why are you doing stupid stuff, get off.” The assistant principal also asked the student about the rap battle video and if he felt targeted. He said that the last time someone called him the N-word was the prior year. He added that other students may say things behind African American students’ backs, but not to their faces.

The assistant principal stated that she did not consider the information provided by these student witnesses as evidence of a racially hostile environment at the District. The assistant principal stated that she turned over all the information she obtained during her investigation to the principal, including witness statements. The assistant principal told OCR that she did not know if the principal followed up with the parent who had reported the post.

The principal informed OCR that when the assistant principal could not determine the identity of @Leb_Stupid there was nothing more the District could do about the Instagram post. The principal told OCR that he met with the African American student and the white student in the rap battle video; the principal said that both students were on the junior high school football team and were friends. The rap battle occurred at a high school football game. Both students reported that they were not offended by each other during the rap battle. The students said that rap battles are commonly held at football games, and that a female student recorded the rap battle at issue on her phone. The principal stated that discipline was imposed – the white student received an in-school detention, along with a letter to his parents, and he was given an assignment to research the effects of racism. The African American student received a letter as well but did not receive an in-school detention. The student who recorded the video also received a written warning and the principal had a face-to-face meeting with her parent.

According to the Complainants, their children did not complete the 2014-2015 school year because of the racially hostile environment at the District.

Applicable Legal Standards

The regulation implementing Title VI, at 34 C.F.R. § 100.3, provides that no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in a recipient school district's programs or activities. Racial harassment is a form of discrimination prohibited by Title VI.

A violation of Title VI may be found if a recipient has created or is responsible for a racially hostile environment, i.e., harassing conduct that 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. A recipient has subjected an individual to different treatment on the basis of race if it has effectively caused, encouraged, accepted, tolerated, or failed to correct a racially hostile environment of which it has actual or constructive notice. Under this analysis, an alleged harasser need not be an agent or employee of the recipient, because this theory of liability under Title VI is premised on a recipient's general duty to provide a nondiscriminatory educational environment.

To establish a violation of Title VI under the hostile environment theory, OCR must find that: (1) a racially hostile environment existed; (2) the recipient had actual or constructive notice of the racially hostile environment; and (3) the recipient failed to respond adequately to redress the racially hostile environment. Whether conduct constitutes a hostile environment must be determined from the totality of the circumstances.

To determine whether a racially hostile environment exists, OCR must determine if the racial harassment is severe, pervasive, and/or persistent. OCR will examine the context, nature, scope, frequency, duration, and location of racial incidents, as well as the identity, number, and relationships of the persons involved. The harassment must in most cases consist of more than casual or isolated racial incidents to establish a Title VI violation. Generally, the severity of the incidents needed to establish a racially hostile environment under Title VI varies inversely with their pervasiveness or persistence.

When OCR evaluates the severity of racial harassment, the unique setting and mission of an educational institution must be taken into account. An educational institution has a duty to provide a nondiscriminatory environment that is conducive to learning. In addition to the curriculum, students learn about many different aspects of human life and interaction from school. The type of environment that is tolerated or encouraged by or at a school can therefore send a particularly strong signal to, and serve as an influential lesson for, its students.

As with other forms of harassment, OCR must take into account the relevant, particularized characteristics and circumstances of the victim, especially the victim's race and age, when evaluating the severity of racial incidents at an educational institution. If OCR determines that the harassment was sufficiently severe that it would have adversely affected the enjoyment of some aspect of the recipient's educational program by a reasonable person of the same age and race as the victim, under similar circumstances, OCR will find that a hostile environment existed. The perspective of a person of the same race as the victim is necessary, because race is the immutable characteristic upon which the harassment is based. The reasonable person standard as

applied to a child must incorporate the age, intelligence, and experience of a person under like circumstances to take into account the developmental differences in maturity and perception due to age.

To determine severity, the nature of the incidents must also be considered. Evidence may reflect whether the conduct was verbal or physical and the extent of hostility characteristic of the incident. In some cases, a racially hostile environment requiring appropriate responsive action may result from a single incident that is sufficiently severe. Such incidents may include, for example, injury to persons or property or conduct threatening injury to persons or property.

The size of the recipient and the location of the incidents also will be important. Less severe or fewer incidents may more readily create racial hostility in a smaller environment, such as an elementary school, than in a larger environment, such as a college campus. The identity, number, and relationships of the individuals involved will also be considered on a case-by-case basis. The effect of conduct may be greater if perpetrated by a group of students rather than by an individual student.

In determining whether a hostile environment exists, OCR investigators will also be alert to the possible existence at the recipient institution of racial incidents other than those alleged in the complaint and will obtain evidence about them to determine whether they contributed to a racially hostile environment or corroborate the allegations.

A recipient can receive notice of a racially hostile environment in many different ways. For example, a student may have filed a grievance or complained to a teacher about fellow students racially harassing him or her. A student, parent, or other individual may have contacted other appropriate personnel, such as a principal. An agent or responsible employee of the institution may have witnessed the harassment. A recipient is charged with constructive notice of a hostile environment if, upon reasonably diligent inquiry in the exercise of reasonable care, it should have known of the discrimination. A recipient also may be charged with constructive notice if it has notice of some, but not all, of the incidents involved in a particular complaint. In some cases, the pervasiveness, persistence, or severity of the racial harassment may be enough to infer that the recipient had notice of the hostile environment. If the alleged harasser is an agent or employee of a recipient, acting within the scope of his or her official duties (i.e., such that the individual has actual or apparent authority over the students involved), then the individual will be considered to be acting in an agency capacity and the recipient will be deemed to have constructive notice of the harassment.

Once a recipient has notice of a racially hostile environment, the recipient has a legal duty to take reasonable steps to eliminate it. If OCR finds that the recipient took responsive action, OCR will evaluate the appropriateness of the responsive action by examining reasonableness, timeliness, and effectiveness. The appropriate response to a racially hostile environment must be tailored to redress fully the specific problems experienced at the institution as a result of the harassment. In addition, the responsive action must be reasonably calculated to prevent recurrence and to ensure that participants are not restricted in their participation or benefits as a result of a racially hostile environment created by students or non-employees.

Analysis

In the instant case, OCR finds that, although the evidence obtained was insufficient to support the alleged isolated instances of different treatment in dress code enforcement, segregated seating assignments, or racially derogatory comments by staff at the junior high school raised by the Complainants, the evidence supports a finding that, during the 2014-2015 school year, students at the high school and junior high school subjected biracial and African American students to a racially hostile environment and that the District knew or should have known of the hostile environment but failed to take appropriate action to address it in violation of Title VI.

As noted in detail above, the number of incidents involving race between students at the District, including use of the N-word, was substantial, especially given the very small percentage of the District student population who are African American or biracial. In reviewing the District's student discipline records, OCR found that during the 2014-2015 school year there were over 70 racial incidents involving District students. The racially hostile environment included repeated use of the N-word and other racial slurs and derogatory statements at the junior high and high school and on social media. Racial slurs were directed specifically to individual students and directed more broadly, to all African American and biracial students, when written on the wall in the boys' restroom at the high school, shouted out at school or on the school bus, and posted on social media. The District's documents show that during the 2014-2015 school year 52 different students were named as harassers and 33 different students were named victims; 31 different students were disciplined for racial incidents and in those incidents there were 15 named victims. This information shows that harassment was not practiced by only a handful of students, but instead was more widespread, and that many students experienced some sort of harassment. This repeated behavior was sufficiently severe, pervasive, and/or persistent to create a hostile environment based on race.

The District had actual notice of a racially hostile environment at the high school and the junior high school as at least one parent complained directly to District staff and administrators. In addition, the District was on notice of the nature and number of racial incidents occurring at the junior high and high school based on the information in its own records.

Having determined that a racially hostile environment existed and that the District had notice of the racially hostile environment, OCR analyzed whether the District adequately responded and took reasonable steps to redress the racially hostile environment and eliminate it. As described above, in some instances discipline was imposed on students involved in racial incidents. However, OCR's review of the District's documentation showed that, even when discipline was imposed, discipline was inconsistent and varied depending on the administrator that handled the matter, where the incident occurred, the context of the incident, and the students involved. In addition, on at least one occasion the discipline only involved talking to a student and perhaps the student's parents, even when the student had used the N-word directly to an individual student. In addition, the District did nothing to address the Instagram post; even if the District could not identify the student who created the post, the District could have taken action to address the racially hostile environment created by such a post. Similarly, although the District spoke to the two students involved in the rap battle and the student who posted the video of the rap battle, the District took no further action to address the broader issue of racial harassment or

the climate at school resulting from the widely disseminated video. The District's imposition of discipline in some of the reported cases was wholly insufficient to stop, prevent the recurrence of, or prevent future acts of racial harassment, and so minority students continued to be exposed to a racially hostile environment at school.

While the District had student assemblies on the topic of bullying and harassment generally, the District did not take any steps to specifically redress racial harassment, including the use of racial slurs at school, at school events, or on social media. The District did not take any action with respect to the junior high school and high school's educational environment as a whole, such as revising its policies and procedures addressing racial harassment, disseminating the District's anti-bullying/anti-harassment policy to staff and students, or conducting staff and student training related to the prohibitions of harassment under Title VI. The District also did not ensure that African American and biracial students were not restricted in their participation or benefits as a result of the racially hostile environment. OCR concludes that the actions taken were not sufficient to adequately address the racially hostile environment.

Based on the foregoing, OCR finds sufficient evidence to conclude that the District failed to adequately address a racially hostile climate persisting at its junior high school and high school, in violation of Title VI and its implementing regulation at 34 C.F.R. § 100.3.

Voluntary Resolution and Conclusion

To resolve the compliance concern identified above, the District submitted the enclosed Resolution Agreement (the Agreement) on August 22, 2017. In light of the signed Agreement, OCR finds that this complaint is resolved, and OCR is closing its investigation as of the date of this letter. OCR will, however, monitor the District's implementation of the Agreement. Should the District fail to fully implement the Agreement, OCR will take appropriate action to ensure the District's compliance with Title VI.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file another complaint alleging such treatment.

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.

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.

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.

The Complainants may file a private suit in federal court, whether or not OCR finds a violation.

We appreciate the cooperation of the District during the investigation and resolution of this complaint. If you have any questions about this letter or OCR's resolution of this case, you may contact Donald S. Yarab, Supervisory Attorney/Team Leader, at (216) 522-7634. We look forward to receiving the District's first monitoring report on October 16, 2017. Please direct the report to the attention of Chandra Baldwin, who will be overseeing the District's implementation of the Agreement. Ms. Baldwin can be contacted at (216) 522-2669 or by e-mail at Chandra.Baldwin@ed.gov.

Sincerely,

/s/

Meena Morey Chandra
Regional Director

Enclosure