



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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SAN FRANCISCO, CA 94105

REGION IX
CALIFORNIA

November 14, 2014

Pat Kelley
Superintendent
Murrieta Valley Unified School District
41870 McAlby Court
Murrieta, CA 92562

(In reply, please refer to case no. 09-14-1350.)

Dear Superintendent Kelley:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the Murrieta Valley Unified School District. The complainant alleged the District discriminated against her daughter (Student) based on race (African-American). OCR specifically investigated whether the District failed to respond appropriately to the complainant's allegation that the Student was harassed based on race.

OCR investigated the complaint under the authority of Title VI of the Civil Rights Act of 1964 and its implementing regulation. 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.

OCR gathered evidence through interviews with the complainant, District staff and administrators, and the parents of one of the Student's classmates. OCR also reviewed documents and records submitted by the complainant and the District. Based on the evidence, OCR determined that the District did not comply with Title VI with respect to the specific allegation investigated in this complaint. The applicable legal standards, relevant facts gathered during our investigation, and reasons for our determination are summarized below.

School districts are responsible under Title VI and its regulation for providing students with a nondiscriminatory educational environment. Harassment of a student based on race, color, or national origin can result in the denial or limitation of the student's ability to participate in or receive education benefits, services, or opportunities. Under Title VI and the regulations, once a school district has notice of possible harassment between students on the bases of race, color, or national origin, it is responsible for determining what occurred and responding appropriately. The district is not responsible for the actions of a harassing student, but rather for its own discrimination in failing to respond adequately. A school district may violate Title VI and the regulations if: (1) the harassing conduct is sufficiently serious to deny or limit the student's ability to participate in or benefit from the educational program; (2) the district knew,

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or reasonably should have known, about the harassment; and (3) the district fails to take appropriate responsive action. These steps are the district's duty whether or not the student who was harassed makes a complaint or otherwise asks the school to take action.

OCR evaluates the appropriateness of the responsive action by assessing whether it was prompt, thorough, and effective. What constitutes a reasonable response to harassment will differ depending upon the circumstances. However, in all cases the district must promptly conduct an impartial inquiry designed to reliably determine what occurred. The response must be tailored to stop the harassment, eliminate the hostile environment, and remedy the effects of the harassment on the student who was harassed. The school must also take steps to prevent the harassment from recurring, including disciplining the harasser where appropriate.

Other actions may be necessary to repair the 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 school does not tolerate harassment and will be responsive to any student reports of harassment. The school also should take steps to prevent any retaliation against the student who made the complaint or those who provided information.

In determining whether a hostile environment based on race, color, or national origin has been created, OCR evaluates whether or not the conduct was sufficiently serious to deny or limit the student's ability to participate in or benefit from the school's program. OCR examines all the circumstances, including: the type of harassment (e.g., whether it was verbal or physical); the frequency and severity of the conduct; the age, race, and relationship of the parties; the setting and context in which the harassment occurred; whether other incidents have occurred at the school; and other relevant factors.

The following facts are relevant to OCR's analysis:

- The complainant alleged the Student was subjected to a hostile environment as a result of a racial statement by a classmate, Student 2, and the negative response of Student 2 and her parents after the Student reported the statement to the School. She further alleged the School's response, when she complained about these matters, was inadequate.
- At the time of the events giving rise to this complaint, the Student was a XXXXXX grader at a District elementary school (School). She is African-American.
- The Student had a close friendship Student 2, who is white. As described by their classroom teacher (Teacher), the two students were best friends from almost the moment they met the first day of school. Over time, the Teacher said, they were like sisters; they also quarreled

regularly, but recovered from their arguments quickly. The students carpoled to school together and socialized outside of school.

- Around April XX, 2014, the Student reported to the complainant that, during a rehearsal for a school play the previous week, Student 2 told the Student she must “stand at the back” for a photo because she is black. The Student said another student (Student 3) witnessed the statement and told Student 2 she had hurt the Student’s feelings and should not say such things, and that the Student also told Student 2 she had hurt her feelings.
- On April XX, 2014, a XXXXXX, the complainant sent a text message to Student 2’s parents reading, “I want to thank you and your family for helping me with [the Student] getting to and from school. Also, allowing her to know and love your family.” She then described generally the alleged exchange between the students and concluded, “I do not want to subject [the Student] to being treated differently because of the color of her skin...the wound caused by her friend saying that to her is still very present...I hope you can understand why I feel this way. I wish all the best for you and your family.”
- Student 2’s mother responded the next day that her daughter denied making the statement and was upset to be falsely accused; that their family had not exposed her to such ideas; and that they were open to further discussion and the girls remaining friends. The complainant responded that Student 3 could confirm the statement. The complainant told OCR this was her last direct communication with the Student 2’s parents.
- After receiving the second text message, the Student 2’s parents went to the School and spoke with her outside the school office. Student 2 and her parents then walked onto campus, where they spoke with the Student and Student 3, who were at recess. Student 2’s mother told OCR they came to the School because the complainant’s second text said the girls could not be friends and they were worried the Student would say something hurtful to their daughter about this¹ or make further “false allegations.” They planned to ask the Teacher to give the students a “friend vacation”, which she had done in the past. She said they had no intention of speaking with the Student or Student 3 but that the girls approached them.
- Student 2’s mother told OCR that, during this conversation, Student 3 said Student 2 had told the Student to “go to the back of the line,” but Student 2 denied this. Student 2’s mother said she stopped the girls’ discussion to ask whether they wanted to be friends and focus the conversation on kind treatment going forward. She said she also suggested to the students

¹ Neither the complainant’s first or second text actually stated that the girls could not be friends.

that, in the future, they tell each other, rather than their parents, when a statement is hurtful, and give the other person the chance to apologize.

- After this exchange, Student 2's parents and the Teacher met. The Teacher told OCR that the parents said they had come to see Student 2 -- because she had been upset about the allegation -- as well as the other two girls. According to the Teacher, they said they had told the Student she was beautiful, and that her skin color was something they loved about her; the Teacher understood that they had told the Student this outside the classroom that day. The Teacher told OCR she perceived that Student 2's parents were sorry their daughter had hurt the Student's feelings, and that they had come to school to try to solve the problem. OCR notes that Student 2's mother did not describe such statements or sentiments to OCR. The Teacher said the parents were not upset and did not question the Student's honesty.
- After learning of these events the same day, the Principal met with Student 2 who, according to the Principal's notes, told her she had called the Student "black" but "not in a mean way" and that her mother had told her saying it in "a mean way" was very serious. The Principal said she counseled Student 2 about the impact of hurtful words.
- According to the Principal, she then contacted Student 2's mother and told her not to approach or interact with students during school hours. She also spoke with the Teacher, who said the children played together happily after the interaction with the parents. The Principal also confirmed the two students did not sit near each other in class, or participate in small groups together. The Principal told OCR she did not speak with the Student that day, because it was a minimum day and she did not have time.
- The complainant told OCR the Student was upset when she picked her up from school that day because, as relayed by the Student, Student 2's parents had called her and the complainant liars, and said the Student was not welcome to communicate with their family. The complainant called the Principal and eventually spoke with her that evening.
- During the call, the complainant described Student 2's alleged racial statement, Student 2's parents' response to her text, and the interaction between the parents and the Student earlier in the day, as described by the Student. The complainant said the Student felt as though she had done something wrong, because Student 2's parents were angry with her. According to the Principal's notes, she told the complainant: she was sorry the Student was hurt, she had advised the parents not to interact with the Student, and she would refer the matter to the District's Director of Safe Schools (Director).
- The next day, the Principal interviewed the Student and Student 3. According to her notes, the Student told her Student 2 said either "you need to be in the back because you are black" or "the white people in the front and the black people in the back." The Principal

wrote that the Student described the incident with Student 2 “in a matter of fact way and did not appear to be emotionally upset.”

- According to the Principal’s notes, Student 3 told her that while the photo was being taken, Student 2 “called the Student black.” She said, “I thought it hurt [the Student’s] feelings and so I told [the Student] to tell [Student 2] she didn’t like it. [The Student] said that hurts my feelings a lot, and then [Student 2] walked away and went home.”
- The Principal told OCR that, after consulting with the Student’s teachers and Student 2’s parents, she believed Student 2 had not been exposed to any ideas that might lead her to comment about African-Americans standing in the back. The Teacher, however, told OCR she had taught the class lessons on the civil rights movement and, in particular, Rosa Parks refusing to sit in the back of the bus as part of Black History Month and wondered whether the alleged statement stemmed from those lessons.
- Student 2’s mother told OCR that when she asked her daughter about what she might have said while taking pictures during drama, Student 2 said she might have told the Student, “you can’t be in front” or “move over here” but that the comment was unrelated to race.
- The Principal and the Teacher both expressed to OCR their belief that, if Student 2 made a racial comment, she did not understand its significance or how hurtful it might be.
- According to the Principal’s notes, the Student said during their meeting that Student 2’s parents had accused her of saying “mean things” to Student 2, and had asked whether she still wanted to be friends with Student 2. Similarly, Student 2’s mother told OCR that, over the year, the Student had said “mean things” to Student 2; when OCR asked her whether she mentioned this outside the classroom, she responded that she had asked the students if they wanted to remain friends, and then counseled them to be kind to each other.
- The Principal did not ask Student 2 or Student 3 about the interaction with Student 2’s parents outside the classroom.
- The next day, April XX, the complainant emailed the Principal and Superintendent about the Student’s interaction with Student 2’s parents. She wrote that the parents told the Student they were mad at her, called her a liar, and told her she could not be Student 2’s friend. She said the Student was “saddened, fearful and bewildered...and did not know why she was being treated with such anger.” She wrote, “I do not feel I can safely leave my daughter at school with a possibility of [Student 2’s] family retaliating against [her] for speaking up about how she felt about the comment made about her race or my decision to stop participating in a carpool...[The Student] has expressed...she feels anxious, misunderstood, fearful and ostracized due to this experience.”

- In response, the Principal called Student 2's parents to tell them that pursuant to the complainant's wishes they should not have contact with the Student. The Principal told OCR the parents were bothered by the instruction. According to Student 2's mother, the Principal told her the complainant was indignant that she had spoken with the Student at school, and that, per the complainant's wishes, she was not allowed to speak with the Student.² Student 2's mother said she told the Principal that she would not seek the Student out, but also would not ignore her if she approached them, as that would be unkind.
- The Principal emailed the Director afterward and described the call. She wrote, in part, "what I gather from all of this is that [the Student's] story of the statement has changed many times so I did share with [Student 2's parent] that another student stated that [Student 2] called [the Student] black." Evidence gathered in the District's investigation provided to OCR did not suggest the Student's version of what occurred ever changed. The Principal said she was not sure why she told the Director the Student's story had changed, other than the fact that none of the students told exactly the same story.
- The next night, the complainant emailed the Principal that Student 2 had told the Student at school that day, "my mom said to tell you that you cannot be friends with our family." The complainant wrote that the Student was "very distraught and said she just wanted to go home...it is becoming a challenge to keep her motivated to go to school...[She] has been the victim of racism... confronted by two adults in an intimidating way, and now being bullied through" Student 2. She requested the School take immediate action to deescalate the situation.
- The following day, the Principal spoke with Student 2, who acknowledged she told the Student they couldn't be friends anymore; however, the Principal's notes suggest she attributed this to the complainant's wishes rather than her own mother's. According to the Principal's notes, Student 2 said the Student was crying when she approached her because of "something else that had happened" and had responded, "don't you see I am already crying."
- The Principal then interviewed Student 3 and a fourth student. The fourth student also said that Student 2 told the Student they couldn't be friends anymore. She said the Student "just sat down" and "was pouting but not crying." Student 3, on the other hand, said the Student told Student 2 she didn't want to be her friend, rather than the reverse, and that the Student was not crying. The Principal said she did not interview the Student about what happened because she felt the complainant had already given her description. The Principal

² Student 2's mother said the Principal told her this during their first phone call. However, according to the Principal's timeline, she had not yet spoken with the complainant the first time she spoke with Student 2's mother. The source of this discrepancy is not clear.

subsequently emailed the Director that she had interviewed students about the incident and that their stories were inconsistent.

- Student 2's mother told OCR she never told her daughter that she could not be friends with the Student, but did suggest that perhaps, because of all the problems, she would not want to, and should find someone else to play with. She said she believed the complainant did not want them playing together. However, there is no evidence that the complainant ever said she did not want the students to play together.
- On April XX, a school counselor (Counselor) met with the Student. She said the Student told her that Student 2 told her she had to stand in the back because she was black, that it hurt her feelings, and that she wanted to talk with Student 2 about it to "make sure it never happened again." The Counselor told OCR she did not counsel the Student about the events or her feelings about them; rather, the sole purpose of the meeting was to discuss with the Student the possibility of the Counselor facilitating conflict resolution between the Student and Student 2.
- The Student told the Counselor she wanted to do conflict resolution. However, it never happened because, according to the Counselor, Student 2's parents did not consent. An email from the Director to the Principal confirmed this. Student 2's mother told OCR that she did not consent because she thought the Counselor would try to make Student 2 admit to something she hadn't done, and she felt it was the Student – not her daughter -- who had a problem that needed to be addressed.
- The Principal told OCR the parents of neither student consented. The complainant, however, told OCR she was not even aware the Student and Counselor met.
- On April XX, the Principal observed the Student because, she told OCR, she wanted to make sure the Student was comfortable at school and fine emotionally. In her first observation, she wrote, the Student greeted her and smiled. In the second observation, she saw the Student participating in class, raising her hand, and laughing. She inquired with the Teacher, who said she had "not noticed any change in [the Student's] demeanor [that] week."
- The same day, the complainant went to the School to speak with the Principal; she said she did this because she was receiving no communication from the School and was concerned the other parents would continue to interact with her daughter, particularly because they frequently volunteered in the classroom. According to the complainant, the Principal responded that she had instructed the other parents not to interact with the Student, the District had initiated an investigation, and she did not know what else to do. The complainant requested that Student 2 be transferred to another classroom. The Principal offered to instead transfer the Student to a different classroom, but the complainant felt this

would unfairly punish the Student. The Principal also offered to issue a “no-contact” order, but the complainant felt this would create additional stress for the Student, who still considered Student 2 her friend.

- The Teacher said the Principal instructed her, based on the complainant’s wishes, to separate the two students, and to keep the Student from interacting with Student 2’s parent when they volunteered. She said the girls still loved and gravitated toward each other, but seemed unsure whether they were supposed to be interacting in the classroom. She said the situation was awkward and sad for everyone involved, and that the “vibe” of the whole class changed. She said on the playground, however, the girls still usually played and laughed together.
- The Principal emailed the complainant after their meeting, thanking her for coming in and stating that she would thoroughly investigate the complainant’s concerns and forward her findings to the Director. The complainant responded to clarify her concerns. She listed her first concern as “racist incident on school grounds during school hours unacknowledged.” She wrote, “it may well be that what appeared to [the Student] and...[the Student’s] friends and family, to be a racist incident may not have an explicit racist intention. However, [t Student 2]...must be made aware of the hurt she has caused and not be allowed to feel empowered at someone else’s expense.”
- The complainant wrote that her other concerns were the School’s failure to inform her upon learning of the incident³; not protecting the Student from Student 2’s parents; the Student feeling “uncomfortable at school” and experiencing “new anxiety about going to school”; Student 2’s family’s actions being “obsessively negative and threatening” including interacting with the Student, sending messages to her through Student 2, and discussing the issue with other parents and employees at the school which created a “more hostile environment”; and the School’s failure to timely respond to the situation, including the Principal’s failure to affirmatively contact her.

³ Due to a miscommunication, the complainant believed that Student 2’s parents informed the Principal of the allegation of a racial comment upon first arriving on campus, that the Principal had instructed the parents not to speak with the Student, and that the parents had ignored the Principal’s directive and approached the Student. The evidence showed that the Principal did not learn there was a problem until after Student 2’s parents had already left the campus, and that no one instructed the parents not to speak directly with the Student until after the first interaction already occurred. Evidence showed that little more than an hour passed between the Principal learning of the incident and the complainant calling her. The Principal said she was not able to speak with the complainant when she first called, but returned her call that evening.

- The complainant emailed the Principal again on April XX that Student 2's parent had interacted with the Student at an awards ceremony that day. The complainant told OCR the Student approached Student 2's mother and asked if she was mad at her, and whether they could still be friends, and the mother responded "yes" to the friendship question. The Director asked Student 2's mother about this interaction, but did not otherwise investigate it. He said this was because the significance of the event was that the Student and the other parent had interacted, not the substance of the conversation, about which the complainant did not seem concerned.
- The Director and the complainant met on April XX. The complainant told OCR she perceived the Director had already concluded her complaint was unfounded before he met with her, and was not interested in her viewpoint. She said that, during this meeting, the Director counseled her against "mad dogging" the other parents when she interacted with them. The complainant said this statement confused her, as she felt her original text to the other family was kind, she had not spoken with them since, and the Director had no basis to think she would behave inappropriately.
- The Director's notes from the meeting indicate the complainant refused to discuss her allegations, saying they were set forth in earlier correspondence, and he had to "slowly draw information from her." He told OCR that he counseled the complainant to behave civilly toward the other parents, and that he gave the same counsel to Student 2's parents when he met with them the next day. The Director said he did not think he used the term "mad dogging" with the complainant, but acknowledged it is a term he sometimes uses when working with gang members outside the school context.
- Student 2's mother told OCR the Director did not counsel her and her husband during their meeting about being civil toward the complainant. However, she said, in response to her concern that the complainant might be hostile toward them, he told her he had already had a conversation with the complainant "about how she's not even allowed to look at [them] the wrong way."
- The Director's written summary of his interview with Student 2's parents states they confirmed that Student 2 "did not remember the event at first" but then said she might have said something about being "black" but not "in a mean way." Despite this, and other information indicating Student 2 acknowledged during her initial conversation with her parents making some comment about race, a chronology prepared by the District after this meeting as part of its internal process states that when Student 2's parents discussed the complainant's text with her, she did "not recall saying anything."
- The notes also show that Student 2's parents told the Director that the Student and Student 3 approached them when they came to School, and that their interaction with the Student

was “calm, friendly, and cordial.” The Principal’s email to the Director the date of the interaction, however, reads, “Apparently, [Student 2’s] mom approached [the Student] about this while she was at school today...I told mom she should not have approached [the Student].” Similarly, a narrative from the Principal states that during her call with Student 2’s mother, she “learned that [Student 2’s mother] had approached [the Student].” These documents do not reflect that Student 2’s mother denied approaching the Student or said the Student approached her.

- The notes show that Student 2’s parents also told the Director the statement Student 2 was alleged to have made went against their family’s principles, they took the allegation very seriously, and they were hurt by the complainant’s refusal of their friendship.
- In an email to the Principal describing the meeting, the Director wrote, “Great meeting with the...family today. They gave a very solid and LOGICAL timeline....I believe [the Student] may be an instigator and is getting things stirred up and ramps [the complainant] up. I think [the Student] is thriving on the attention she is getting. I would like to talk to [the Counselor] about this....My findings to date are [Student 2’s] family pose[s] no danger. We cannot determine if there was a race issue for certain.” The Director told OCR that his stress on a “logical timeline” was due to the complainant’s mistaken belief that the Principal had directed Student 2’s parents not to interact with the Student before they did so, as explained in foot note two. Further, he said, he understood the complainant was often away from the Student for work, and this email reflected his suspicion that the Student was therefore “negative attention seeking.”
- The Director told OCR he was not able to speak with the Counselor about his suspicion. The Counselor told OCR, however, that she did not believe the Student was lying or trying to instigate trouble. Rather, she said, she found the Student very credible, as she described the incident with Student 2 calmly and consistently with past descriptions. The Teacher told OCR both the Student and Student 2 are truthful. The Director told OCR that he did not raise the concern about the Student to cast doubt on her story, but rather because he was concerned that she needed additional services from the School; however, he acknowledged that he never followed up on this concern after sending the email. He also acknowledged that he did not have a factual basis for his statements.
- The District’s policy on Nondiscrimination/Harassment (BP 5145.3) provides that the District will respond to complaints of discrimination, including harassment, pursuant to the procedure in its Sexual Harassment Procedure (AR 5145.7). The Sexual Harassment Procedure requires the District conduct an investigation and issue a written report within ten days of the complaint. On May XX, after several inquiries from the complainant, the Director emailed her the District’s written report (Written Report), dated May X, 2014.

- The introduction to the Written Report reads, “the district must prove the allegations. In addition the district must take into consideration the age of students, the severity of the statement, how pervasive the behavior is, the impact on the victim and the overall school culture. Proving the allegations has challenges since the students involved are in XXXXXX grade and recall of the event was varied. This was complicated” due to the passage of time between the event and the report to the School.
- Regarding Student 2’s alleged racial statement, the Written Report states that while the District determined that the word “black” was “directed at [the Student], it could not conclude that the specific statement alleged was made.” The report relays Student 2’s and Student 3’s account of the incident to the Principal, but not the accounts of the Student or complainant.
- Although not stated in the Written Report, the Director told OCR he believed that whatever statement Student 2 made, it did not rise to the level of harassment taking into account the severity of the incident, the absence of a pattern of past conduct, the ages of the students, and Student 2’s lack of malice.
- The Written Report states that the School reminded the students to “be civil and sensitive to each other” and staff members were instructed to observe the students’ interactions during lunch and recess. The Written Report noted that “there does not appear to be conflict or tension among the girls.”
- The Written Report also states that the Teacher continued to discuss “Character Counts, name calling, gender and race.” The Teacher told OCR that throughout the school year, she reinforced kindness, respect and responsibility more than usual, because of issues with friendship and exclusion among students in the classroom, including the Student and Student 2. She stated that her lessons throughout the year addressed being kind regardless of race and gender, and she continued this after the alleged racial incident between the girls; however, she said, she did not specifically highlight race after the incident because she did not want the girls to feel she was talking about them.
- The Written Report also states that the alleged subsequent negative comments by Student 2 to the Student (i.e., the comment that they could no longer be friends) “could not be proved. The witnesses contradicted each other.”
- Regarding Student 2’s parents’ contact with the Student, the Written Report states that in each direct interaction between the parents and the Student, the Student approached the parents of her own volition. The Written Report also states that the first conversation was “cordial based upon student witness statements.” It does not memorialize what the Student or complainant said about the conversation, and the Director and Principal told OCR that

neither of them interviewed the other students about it. The Principal told OCR she relied on the Teacher's impression. The Teacher told OCR she did not hear the conversation between Student 2's parents and the students.

- The Written Report states that the School "has implemented a protocol that will not give access to any parent during recess unless the teacher has scheduled a meeting or is receptive to meeting them in the classroom." In addition, it states, Student 2's parents "will be observed at all times that they are on campus" and the School will inform the complainant when they come into the classroom to volunteer." The Teacher confirmed to OCR that she alerted front office staff on the few occasions during the remainder of the school year that Student 2's parents volunteered in class, and that office staff notified the complainant. The complainant did not come to class on any of these days.
- The Written Report does not address whether Student 2's parents were discussing the incident with other parents and school staff in a manner that reflected negatively on the Student or complainant, as alleged by the complainant. The Principal told OCR she did not specifically investigate this allegation, but she was not aware of any such discussions. The Teacher also stated she was unaware of any such discussions, and Student 2's mother said she did not engage in such discussions.
- The Written Report also states that the Student is "fully engaged at school academically and socially....She continues to interact with a group of XXXXXX graders including the accused student. She continues to contribute in the classroom. The principal checks in with her and she does not exhibit anxiety or feeling of being uncomfortable."
- There is no mention in the Written Report of the complainant's reports to the School of the Student's anxiety or negative feelings, or how this factored into the District's determinations, if at all. No one from the School or District spoke with the Student specifically to assess her emotional state or the impact of these events on her.
- The Written Report also reads, "some areas of intervention cannot be discussed due to FERPA restrictions." Similarly, an earlier email from the Principal to the complainant reads, "while we cannot discuss details due to FERPA restrictions I can let you know we have taken this matter very seriously and have implemented several steps and interventions." The Principal and Director told OCR that the only step they did not specifically share with the complainant was the Principal's counsel to Student 2 about hurtful words. Yet the report states that the "school site...reminded students to be civil and sensitive to each other."
- The complainant said that, as a result of the alleged reaction of Student 2 and her parents to the Student telling her about Student 2's comment, the Student felt distressed and became resistant to attending school. She was also upset with the complainant for telling Student 2's

parents about the statement, because of what happened afterward. The complainant felt that the School's response focused on the impact of the incident on Student 2, rather than the Student. She felt the school's response communicated to the Student that she should not have told about the incident, and that no one reinforced that speaking up was the right thing to do.

- Because of the events underlying this complaint, the complainant had the Student transferred to a new school within the District for the current school year.

Under Title VI, schools and school districts must respond promptly and equitably to notice of racial harassment among students. The law requires that, upon notice of a potential hostile racial environment, the school district must conduct a thorough and timely investigation designed to discover whether racial harassment has occurred, and take immediate action to effectively correct any problems it discovers. An adequate investigation allows the District to reach reliable factual conclusions and, where allegations are substantiated, to assess the impact on the person subject to the harassment and the educational environment and determine what steps are necessary to repair the environment.

Here, the complainant alleged the Student was subjected to a hostile environment as a result of, first, a racial statement by Student 2 and, second, the negative response of Student 2 and her parents to the Student reporting the statement to the complainant. OCR's investigation showed that the District took the incidents raised in this case seriously. Upon notice of the alleged statement, the Principal immediately launched an investigation that included interviewing the Student, Student 2 and Student 3, a witness. She quickly involved the Director, and each of them also spoke with the complainant, Student 2's parents, and the Teacher. Upon notice of alleged conduct by the Student and her parents that the complainant believed exacerbated the negative impact of Student 2's statement, the Principal and Director took additional investigative steps, including speaking with some of the students involved, the Teacher, the complainant, and Student 2's parents. They each also reviewed the text message exchange between the parents. The District completed these investigative steps promptly, within a few school days.

As stated above, in addition to being prompt and thorough, a school district's process must be equitable. This means the investigative and resolution process must provide the complainant with a fair opportunity to present, and have the District consider, her or his side of the story, relevant witnesses, and other evidence. OCR's investigation showed that, at several important points in the District's process, it failed to treat the complainant and Student equitably.

As noted in the District's Written Report, before determining whether conduct rises to the level of a hostile environment based on race, a district must determine what conduct actually occurred. Regarding the alleged racial statement, Student 2 acknowledged making a comment

related to race.⁴ Of the three witnesses to the statement, two remembered consistently that Student 2 made a comment about race in the context of a photo taken during a play rehearsal, and that Student 3 and the Student told Student 2 the comment was hurtful. The only question was the specific words that were said. On this point, the Student remembered very specifically what was said, and described it consistently – given her age – to multiple people over a period of days. The other two witnesses, although they said they did not remember exactly what was said, did not contradict the Student’s recollection or indicate it was false. Indeed, Student 3 relayed a similar, though not identical, statement about going to the back of the line to Student 2’s parent. Student 2 also acknowledged to her parent that she might have told the Student where to stand during a photo. Despite the Student clearly remembering what was said, the existence of evidence supporting her memory, and the absence of contradictory information, the District concluded there was insufficient evidence that Student 2 made the statement regarding “standing in the back.”

In reaching this conclusion, District representatives were influenced by other, less reliable information. For example, the Director, who does not know the Student, speculated the Student was fabricating stories for attention. However, School employees who know the Student, specifically her Teacher and the Counselor, described the Student as honest, and the Counselor in particular said she thought the Student was truthfully recounting what occurred. The Director acknowledged there was no basis for his speculation. Similarly, the Principal wrote at one point during the investigation that the Student’s story had “changed many times.” The Principal later acknowledged to OCR she lacked evidence to support this statement. Additionally, administrators questioned the truth of the Student’s story by saying they could not think of any reason that a statement about African-Americans “standing in the back” would even occur to Student 2. However, the Teacher’s description of her classroom lessons on the Civil Rights Movement and Rosa Parks contradicted this assumption. The District’s consistent interpretation of the evidence in favor of Student 2 is also reflected in the statement in the District’s chronology that Student 2 “did not recall saying anything” about race during her initial conversation with her parents, a statement clearly contradicted by the facts, including Student 2’s parents’ statement. Finally, while the evidence supports the District’s conclusion that Student 2 did not intend to hurt the Student, this fact does not establish that she did not make the statement; it is plausible that this XXXXXX-grader unwittingly made a comment about “standing in the back” related to the Student’s skin color, without understanding the potential impact of her words.

With regard to subsequent alleged events, OCR first looked at the alleged negative interaction between Student 2’s parents and the Student outside the classroom on the day the incident was first reported to the School. There were five witnesses to this conversation: the Student, Student 3, Student 2, and the parents. The complainant, who described the interaction based on

⁴ OCR’s analysis of the facts is in no way intended to focus criticism on Student 2 -- a young child who did not intend to hurt her friend -- but rather to examine whether the District fairly assessed the facts of the situation.

the Student's report to her immediately after school, alleged the interaction was very negative and included the parents calling the Student a liar and informing her she was unwelcome in their family. The Student did not relay these specific comments to the Principal; rather, she said, Student 2's parents referred to "mean things" she had said about their daughter, and asked whether the Student wanted to remain friends with her. Such statements could, intentionally or not, communicate to the Student that she should not have reported Student 2's comment to her mother, and confusion about Student 2's family's feelings toward her. Student 2's parents described the interaction to the Teacher as affirming to the Student, and to the Director several days later as "calm, friendly, and cordial." In the Written Report, the District concluded that the conversation was, in fact "cordial." This was apparently based solely on Student 2's parents' description; although the Written Report states that the conclusion is based on "student witness statements" it is clear the only student the District interviewed about the interaction was the Student, and her description, like the complainant's, is not reflected in the report. District witnesses told OCR they also relied on the impressions of the Teacher; however she did not actually witness the conversation. Student 2's parent acknowledged to OCR that she asked the students whether they wanted to remain friends, and suggested they should talk to each other about hurtful statements before going to their parents. While she did not specifically acknowledge confronting the Student about "mean things" she had done in the past, she did use this phrase to describe to OCR past behavior of the Student.

The Written Report also concludes that the encounter outside the classroom resulted from the Student approaching Student 2's parents. Yet the Teacher said the parents told her they had come to the School in part to speak with the Student and Student 3, and contemporaneous documentation created by the Principal memorializes her impression that the parents approached the Student; this includes notes from her conversation with the parents the same day. Thus, the conclusion that the Student approached the parents rather than the reverse is also apparently based solely on the parents' statements to the Director in a later meeting. The Written Report also did not take into account that, while the Student did approach Student 2's parents at the later awards ceremony, her purpose was to ask them if they were mad at her and whether they could still be friends. This question suggests the Student believed the parents were, indeed, upset with her. For these reasons, OCR questions whether the District had sufficient information to reliably conclude that the interaction between the Student and Student 2's parents at the school was not harmful to the Student.

OCR also considered the District's investigation into the allegation that Student 2's mother had sent a message to the Student via Student 2 that the family could no longer be friends with her. The School learned of this alleged incident from the complainant, who described the above statement. In response, the District promptly interviewed students who witnessed the interaction, other than the Student. All of the witnesses consistently stated that Student 2 and Student 3 had approached the Student, and a comment about friendship was made that upset the Student. Three of the students -- including Student 2 -- said Student 2 told the Student they could no longer be friends. Only one student of the four remembered the story differently, as the

Student making the statement. Based on this information, the District concluded that the information was too conflicting to reach a conclusion about what was said. As with the alleged racial statement, the District seemed, without explanation, to accord less weight to testimony of the Student and complainant. OCR notes that Student 2's mother acknowledged to OCR that she had told Student 2 the complainant did not want the girls to play together, and that she herself suggested to Student 2 she might wish not to remain friends with the Student; had School officials asked Student 2's mother questions to elicit this information, this might have helped them accurately determine what Student 2 said and why.

The Written Report indicates the District investigated whether Student 2's parents were "obsessively negative and threatening" to the Student, and OCR concurs that the evidence did not suggest this was the case. However, conduct short of this standard could certainly contribute to a hostile environment for the Student, and it is unclear from the District's investigation whether such conduct occurred.

OCR also reviewed the District's determination that the Student was not feeling anxiety and discomfort about School as a result of these events. The District based its conclusions on the Principal's casual observations of the Student, and input from the Teacher about the Student's demeanor in class. These are indeed valid data points. However, the complainant, who is likely in the best position to understand her daughter's emotional state, and in whom the Student is most likely to confide her feelings, clearly communicated that the Student felt anxious, misunderstood, fearful and ostracized, and that she regretted bringing the racial comment to the attention of the complainant and, ultimately, the School. The District apparently did not accord significant weight to this information, which is also an important data point. Further, the District did not have a qualified individual assess the Student's emotional state, or specifically ask her about the impact of the events on her; the District could have asked the Counselor to do this when she met with the Student, rather than focusing solely on the possibility of conflict resolution.

District representatives' statements and interpretation of other evidence also seemed weighted against the complainant for no apparent reason. For example, the Principal stated to OCR that both parents had rejected conflict resolution, despite evidence that it been proposed only to Student 2's parents, and the Director suggested that Student 2's parents were more "logical" than the complainant, based on a misunderstanding by the complainant about the timing of a single event. The apparent presumption that the complainant was less reliable was also evidenced by the Director's warning to the complainant not to behave aggressively toward Student 2's parents, although there was no factual basis to believe this was a concern; on the contrary, the complainant's text expressed gratitude toward and compassion for Student 2's family, and did not suggest an angry response; in an email to the Principal, the complainant acknowledged that what she perceived as racist may not have been intended as such by Student 2, and the complainant had made no effort to interact with Student 2's parents. Further, there was no suggestion the complainant had raised meritless complaints in the past, and witnesses said they had no reason to question her reliability. These are factors the District might have

considered in gauging her credibility as she reported the incidents underlying this complaint. While District officials reasonably questioned the wisdom of communicating about such a sensitive issue via text message, and suggested that had the parents spoken to each other directly many of the resulting miscommunications and bad feelings could have been avoided, the evidence suggested the parents were equally responsible in this. Finally, and perhaps most significant was the District's failure to credit the complainant's and Student's statements and descriptions of events in the Written Report, while seeming to give credence to the statements of Student 2's parents.

To determine whether conduct rises to the level of a hostile environment, the District must determine whether it is sufficiently severe, persistent, or pervasive to limit a student's ability to benefit from the District's programs and activities. The Director told OCR that the District determined that even if the statement was made, it did not rise to the level of a hostile environment taking into account its relative severity and the facts that it was an isolated incident, the ages of the students, and the impact on the Student; these are appropriate considerations, along with others, such as the girls' friendship. However, the District looked at the alleged statement in isolation, and did not consider how the subsequent interactions between the Student and Student 2 and her parents may have, when taken together with the racial statement, resulted in a hostile environment. Moreover, as explained above, the inequitable manner in which the District gathered and treated evidence renders unreliable its conclusion about whether the alleged racial statement was made, Student 2's parents' subsequent behavior, and the impact of these alleged events on the Student.

When a district's investigation results in a determination that a racially hostile environment has occurred, the district must further determine what steps are necessary to stop the harassment, eliminate the hostile environment, and address its effects on the victim. Where a reliable investigation reveals that racial harassment has not occurred, the District may determine lawfully that no responsive steps are necessary. In this case, because the District did not adequately investigate and reach reliable conclusions, it had an inadequate basis for determining whether responsive action was necessary. Likewise, OCR is unable to fully assess what responsive steps the District should have taken.

To the extent that the District did take actions in response to the complainant's complaints, however, OCR considered whether those actions were consistent with the District's obligations under Title VI. The District put in place many responsive measures that, had harassment been found, would have been appropriate. These included instructing school staff to monitor the students to ensure concerning behavior was not repeated, directing Student 2's parents not to approach the Student on campus, attempting to facilitate voluntary conflict resolution, counseling Student 2 about the impact of hurtful words, and continuing to teach general classroom lessons on kindness and sensitivity. However, in light of the comment by Student 2 and the Student's reported reaction to it, more race-specific interactions were appropriate. Many witnesses communicated to OCR that they believed the Student and Student 2 received the

wrong messages from the way this incident was handled, whether by the parents or the School. Witnesses expressed concern that the Student learned there are negative consequences for reporting hurtful racial incidents, and that she should therefore remain silent. Witnesses also expressed concern Student 2 learned that any conversation about race is taboo. For these reasons, in light of their ages and relationship, OCR agrees with the District that transferring either student to a different classroom or requiring the students have “no contact” with each other might have resulted in more harm. However, guidance and lessons to these students about how to engage in respectful dialogue specifically about race, and on the importance of involving adults in incidents when they occur, were appropriate. It is unfortunate that the District was not able to facilitate conflict resolution between the students, as proposed by the Principal; while face-to-face mediation is often inappropriate in cases of harassment, the students’ friendship, the Student’s enthusiasm for the process, and the proposed involvement of a trained counselor suggest that it may have been helpful in this case. Additionally, had a reliable investigation revealed the Student was negatively emotionally impacted, it would have been appropriate to address this impact through, for example, counseling.

For the reasons discussed above, OCR determined the District did not comply with Title VI and its regulation with respect to the specific issue investigated. To resolve this complaint, the District entered into a Resolution Agreement with OCR, under which the District agreed to, among other steps, provide both investigative training and implicit bias training to District and school site level administrators with responsibility for investigating and responding to such allegations. OCR will monitor the District’s implementation of the agreement.

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. We are closing the complaint as the date of this letter, and notifying the complainant simultaneously. 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 they 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, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the complainants may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a

request, it will seek to protect, to the extent provided by the law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Suzanne Taylor, the attorney assigned to this case, at (415) 486-5561.

Sincerely,

/s/

Anamaria Loya
Team Leader

Enclosure

cc: Mary Walters, Director of Student Support