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UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION XV

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MAY 11, 2012

Christian Williams, Esq.
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5005 Rockside Road, Suite 260
Cleveland, Ohio 44131-6808

Re: OCR Docket #15-11-1134

Dear Mr. Williams:

This letter is to inform you of the disposition of the above-referenced complaint filed against the Richmond Heights Local School District (the District) with the U.S. Department of Education (Department), Office for Civil Rights (OCR), alleging race discrimination and retaliation. This complaint is the consolidation of two complaints filed separately with OCR on February 14, 2011, and March 21, 2011.

The consolidated complaint alleges that:

1. during the 2010-2011 school year, the District's high-school [] coach (the Coach), who is white, subjected members of the team (the Students), who all are African American, to a racially hostile environment and that the District failed to address it;
2. the Coach allegedly stated that he would not pursue athletic scholarships for African American students because scholarships are for white students and financial aid is for African American students; and
3. the District subjected the Complainant and her son (Student A) to retaliation after they complained about the Coach's alleged race discrimination and racial harassment by: investigating the Complainant's and Student A's residency in the District; reporting concerns about Student A's eligibility to participate in high school athletics to the Ohio High School Athletic Association (OHSAA); and filing a false police report against Student A accusing him of theft.

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, 34 C.F.R. Part 100. Title VI prohibits discrimination on the bases of race, color, and national origin by recipients of Federal financial assistance from the Department. Title VI also prohibits retaliation against individuals who seek to enforce rights protected by these statutes. As a recipient of Federal financial assistance from the Department, the District is subject to Title VI. OCR therefore had jurisdiction over this complaint.

Based on the complaint allegations, OCR investigated the following issues:

1. whether the District subjected students to a racially hostile environment, i.e., racial harassment that was sufficiently severe, pervasive, or persistent so as to interfere with or limit the students' ability to participate in or benefit from the services, activities, or privileges provided by the District in violation of Title VI and its implementing regulation at 34 C.F.R. § 100.3(a);
2. whether the District, on the basis of race, excluded students from participation in, denied them the benefit of, or otherwise subjected them to discrimination under any program or whether the District denied students any service, financial aid, or other benefit under the program or whether the District provided services, financial aid, or other benefit to the students which is different, or is provided in a different manner, from that provided to others under the program in violation of 34 C.F.R. §§ 100.3(a) and 100.3(b)(1)(i) and (ii); and
3. whether the District intimidated, threatened, coerced, or discriminated against an individual for the purpose of interfering with any right or privilege secured by Title VI, or because that individual made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under Title VI in violation of 34 C.F.R. § 100.7(e).

OCR's investigation of this matter consisted of obtaining and reviewing extensive documentation from the District and from the Complainant and interviewing relevant District witnesses, including the Superintendent, the athletic director, the Coach, the assistant coaches, the principals, the [] coach, the guidance counselor, and the Board president and Board members. Based on a careful analysis of this information, OCR has determined that there is sufficient evidence to support that the District violated Title VI, as alleged, with respect to all of the allegations, with the exception that OCR found insufficient evidence to support a finding that the District retaliated against Student A by reporting concerns about Student A's eligibility to OHSAA or by filing a false police report about Student A. We set forth below the bases for OCR's findings.

Issue 1: Racially Hostile Environment

- **Applicable Legal Standards**

The Title VI implementing regulation, at 34 C.F.R. § 100.3(a), provides that no person shall, on the ground of race, color, or national origin, be excluded from, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity that receives Federal financial assistance from the U.S. Department of Education. The regulation at 34 C.F.R. § 100.3(b)(1)(ii) prohibits recipients from, on the ground of race, providing any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program. Racial harassment is a form of discrimination prohibited by Title VI. The principles that apply to racial harassment investigations conducted by OCR are set forth, as follows, in OCR's Racial Incidents and Harassment against Students at Educational Institutions Investigative Guidance (March 10, 1994).

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 (e.g., physical, verbal, graphic, or written) 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, it must be determined if the racial harassment is severe, pervasive, 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.

First, 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.

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. For example, racially based conduct by a teacher, even an "off-duty" teacher, may have a greater impact on a student than the same conduct by a school maintenance work or another student.

Once a recipient has notice of a racially hostile environment, the recipient has a legal duty to take reasonable steps to eliminate it. In cases where the recipient did not have actual notice, the recipient may have had constructive notice. 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. Constructive notice will also be established by the following circumstances: if the alleged harasser is an agent or employee of a recipient, acting within the scope of his or her official duties; if the recipient does not have a policy that prohibits the conduct of racial harassment; or if the recipient does not have accessible procedures by which victims of harassment can make their complaints known.

In evaluating a recipient's response to a racially hostile environment, OCR will examine disciplinary policies, grievance policies, and any applicable anti-harassment policies. OCR also will determine whether the responsive action was consistent with any established institutional policies or with responsive action taken with respect to similar incidents. Examples of possible elements of appropriate responsive action include imposition of disciplinary measures, development and dissemination of a policy prohibiting racial harassment, provision of grievance or complaint procedures,

implementation of racial awareness training, and provision of counseling for the victims of racial harassment.

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 ensure that participants are not restricted in their participation or benefits as a result of a racially hostile environment created by students, employees or non-employees.

- **Summary of Investigation**

OCR determined that over the course of a year, from February 2010 to February 2011, the Complainant, as well as other parents and the Students, on at least six occasions complained to a variety of District officials about race discrimination, including racial harassment that consisted of frequent use of the N-word and other racially derogatory comments (such as referring to African American students as “ghetto” and animals) in front of the Students, by the Coach. These complaints included a written February 2010 complaint that went directly to the Superintendent. The Students also tried to talk directly to the Coach to make him understand the effect of his conduct on them. Having received no satisfactory response from the District to these prior complaints, a group of parents, on February 7, 2011, filed a written complaint about race discrimination, including racial harassment, with the District’s Superintendent and Board of Education. Some of these parents also went to the media with their concerns. The instant complaint with OCR was filed shortly thereafter.

The District’s Superintendent acknowledged that the responsibility for investigating complaints of racial harassment typically is hers. The District did not dispute that no formal investigation of racial harassment was conducted until after the February 7, 2011 complaint was filed, although it asserts it had informally responded to some of the earlier complaints. On February 8, 2011, the Superintendent met with several of the parents who filed the complaint. She told OCR that it was not until this meeting that she realized how serious the allegations were, in part, because she learned that the Students were refusing to play []. The Superintendent delegated the responsibility to the high school principal and the head of security to conduct the investigation of the complaint. The majority of the District’s investigation, which was completed in essentially two days, consisted of obtaining written incident reports from the following individuals: nine of the Students in the [] program; two assistant coaches in the [] program; the elementary school principal who had been Acting Superintendent when some of the complaints were made; the high school principal; and a bus driver for the [] team. In those reports, Students confirmed the types of comments that the Coach made and that they found his conduct to be offensive and degrading. The District never interviewed the Coach, and

witness statements from some District officials, who OCR later found to be crucial witnesses with important information, were very short (only a few lines).

The Superintendent told OCR that she thought the investigation was sufficient and that she had arranged for all the parties to meet on February 9 in an attempt to resolve the matter. Present at the February 9 meeting were parents/guardians of the Students; the high school principal; the head of security; the Superintendent; the Coach; a Board member; the Coach's attorney; the District's attorney; one of the [] coaches who was there as part of the security team; and, for a portion of the meeting, the Students.

At the meeting, the parents, who were not represented by legal counsel, reiterated their concerns raised in the complaint and as described above. The Complainant's recollection was that the Coach acknowledged that he had made some of the alleged statements, including use of the N-word, and that he had used poor judgment, but that he explained it was his coaching strategy. The District witnesses were inconsistent in their recollection of whether or not the Coach admitted to making the alleged statements. All of the District witnesses agreed, however, that the Coach did not deny the allegations, the Coach did not apologize, and the meeting did not resolve the complaint. One District witness told OCR that during the parent meeting the Coach admitted to saying the N-word and that the Coach tried to minimize what he had said or how he had said it. Another District witness told OCR that it was a very long meeting and so he could not recall whether the Coach admitted to making the alleged statements or to using the N-word. He also said the Coach did not answer all of the questions presented to him and that the meeting was more of an opportunity for parents and students to vent. According to the Complainant, when the Students joined the meeting, they shared with the participants, including the Coach who was present, how the Coach's comments had made them feel and how, in their view, no one at the District took them seriously until their parents went to the media. When they were finished, the Superintendent asked the Students if they could rebuild the relationship with the Coach. The Students replied they did not want to rebuild the relationship or play [] for the Coach. The District kept no notes of the meeting.

The Complainant told OCR that, following the February 9 meeting, the parents were not notified by the District about the steps the District took to investigate or respond to their allegations, although they learned from media reports that the Coach would stop coaching the [] team for the remainder of the season. The Complainant noted that the Coach continued to teach at the high school and was permitted to coach [] in the spring of 2011.

Because they were dissatisfied with the District's response to their February 7 complaint, the parents regularly attended Board meetings to ask the District for more responsive action. They told the Board that they did not feel comfortable with the Coach teaching any of the Students. Further, they reported that the Students were being harassed by other students and that teachers were treating them differently because the Students had complained about the Coach. For instance, some of the Students' parents reported to a Board member, who relayed the information to the Superintendent, that the Students had

received e-mail threats that appeared to come from a District computer. In addition, one parent complained to the Board that suspending the Coach from coaching [] while allowing him to serve as the [] coach effectively precluded the Students from participating in [] should they wish to do so. According to the Complainant and several other parents, each time they addressed the Board about their concerns, they were told that the matter was solely in the hands of the Superintendent, who was responsible for the daily operations of the District, and that the Board was unable to take any action to respond to the parents' complaints.

The District advised OCR that its head of security looked into the complaint about the threatening e-mails, which actually consisted of public blog entries. The District provided OCR with copies of the blog entries, which generally were supportive of the Coach and accused the Students of being racist. One of the blog entries was about Student B, one of the Students, and stated he should be shot; this entry was purportedly written by a white student (Student C). The family of Student B, as well as the other Students, indicated they considered this blog entry to be a threat of violence. OCR reviewed a copy of a police report, which was made by the head of security on February 9, 2011, that indicates that he had investigated and found that Student C, who appeared to have made the threatening blog entry, may not have been the actual sender. E-mails submitted by the District to OCR also show that on February 22 the head of security reported to the Board that he had looked into the matter of the one "random" blog entry and that he did not want to "make any unnecessary issues out of rumors, hearsay, etc." The head of security told OCR he thought that the Students were "making a big deal out of nothing."

The Students and their parents asserted that they were told by District staff that the blog entries were made using a school computer from the account of Student C; however, the high school principal told Student A and Student B's parents different and inconsistent reasons for the conclusion that Student C did not actually post the blog. The Students asserted that no further attempt was made to identify the true sender of the threatening message, nor was any other action taken to address the incident. One of the Students told OCR, "They (meaning the District) take all these steps to protect the white kids, but not us."

In addition to the blog incident, the Students identified other examples of alleged continuing harassment and/or retaliation they were subjected to after the February 7 complaint until the end of the 2010-2011 school year: the District, for several weeks, permitted the Coach to supervise open gym and denied the Students access to and the opportunity to serve as aides for open gym activities; they were approached by white students in the hallway who would raise a fist in the air at them and chant a slogan of support for the Coach, which same slogan was written on the chalkboard in one of their classrooms; a teacher did not give one of the Students credit for turned in assignments and tests; their teachers treated them differently, such as by disciplining them more harshly after the complaint was made public, often for minor infractions; and the Coach required one of the Students in his [] class to sit in an assigned seat next to his desk while other students in the class were permitted to sit where they liked. Although OCR

was able to confirm increases in discipline for some of the Students by reviewing District discipline records, it was not clear that all of the discipline was not warranted. OCR did note that the same teacher who allegedly did not give a Student credit for assignments and tests wrote a discipline referral for one of the Students after that Student told the teacher he thought he was being disciplined for being on the [] team. The written referral demanded harsh punishment and stated that the teacher would not tolerate a student accusing him of having retaliatory motives and defaming his reputation. The Students also said that they heard the replacement coach arguing with another coach about starting a “race riot” and that the replacement coach was visibly upset around the Students and told the Students that the Coach lost his job because of them.

At a [], Board meeting, the District recommended that the District hire a different head coach to coach the [] team for the 2011-2012 school year, which action was approved by the Board and implemented.

During OCR’s investigation, one District employee interviewed told OCR that they had witnessed the Coach say the N-word to the Students on at least two occasions and was also offended but did not report it to the District. During an interview with OCR, the Students reiterated that the Coach made the allegedly racially derogatory statements to or in front of them. None of the District witnesses interviewed by OCR were able to provide information about specific actions taken by the District to protect the Students from further racial harassment. The head of security told OCR that it is his regular practice to periodically check in with all students to assess the climate of the school; however, the District had no evidence that it followed up in any way with the Students.

As part of its investigation, OCR requested a copy of the District’s policies and procedures that address discrimination, harassment, and retaliation. The District provided OCR with the following document: “Board Policy 2260, Nondiscrimination and Access to Equal Educational Opportunity; Administrative Guidelines 2260B, Grievance Procedures for Nondiscrimination; Administrative Guideline 2260D, Notice of Nondiscrimination; Form 2260 F8, Notice of Nondiscrimination; Policy 5517, Anti-Harassment; Administrative Regulation 5517, Reporting Harassment; and Form 5517 F1, Report of Harassment”. The District’s administrators who were in charge of the complaint investigation at issue in this case (the Superintendent, the high school principal, and the head of security) did not follow the procedures or investigative process outlined by the District’s harassment or anti-discrimination policies or grievance procedures. Moreover, the individual designated as the District’s “Civil Rights Coordinator” in the policies, no longer works for the District and has not worked for the District for several years. District staff who admitted to hearing the Students’ complaints about the Coach’s racially offensive language did not report it to anyone as required by the District’s policies. Most of the witnesses from the District told OCR that, when confronted by the Students with the information about the Coach’s demeaning or degrading treatment, they told the Students to tell their parents.

- **Analysis and Conclusion**

In the instant case, OCR finds that the evidence supports that the Students were subjected to severe, pervasive, and persistent race-based comments by the Coach, including frequent use of the N-word and other racially derogatory comments. The Coach, a District teacher, was an adult in a position of authority over the Students in various aspects of the District's programs and activities, including athletics and the classroom. OCR also finds that the District had constructive notice of the racially hostile environment because the alleged harasser, the Coach, was an employee of the District and was acting within the scope of his official duties when the allegedly harassing conduct occurred. In addition, the District had actual knowledge of the racially hostile environment for at least an entire year prior to the complaint that was filed on February 7, 2011, through complaints made to District staff and administrators and based on direct staff observations.

Thus, OCR sought to determine whether, once on notice of the racially hostile environment, the District adequately responded and took reasonable steps to redress the racially hostile environment and eliminate it. OCR concludes that the evidence supports that, despite repeated opportunities, the District failed to do so. Specifically, OCR finds that the District essentially ignored the series of complaints being made against the Coach.

OCR finds that the District had the opportunity to respond to the allegations of racial harassment as early as February 2010 when it received a complaint and its failure to do so allowed the racially hostile environment to continue for at least another year. Only after the parents filed a collective complaint in February 2011 and the local media began to make inquiries did the District take any responsive action, although OCR finds that the action taken at that time was not sufficient to adequately redress the racially hostile environment.

Even when the District investigated the February 7 complaint, it failed to follow its policies and procedures. Moreover, OCR learned that neither of the District employees who were tasked with investigating the February 7 complaint and the related complaints that followed had received any training on how to investigate Title VI racial harassment complaints. Additionally, the District did not take any disciplinary action or counsel any of the District staff or administrators who failed to report and/or investigate the racial harassment complaints in accordance with the District's established policies.

Although the District interviewed the Students and obtained some witness statements after the February 7 complaint, rather than conduct a thorough and impartial investigation, the District opted to instead convene the parties on February 9 to try and informally resolve the matter. As part of that informal process, the District also required the Students to confront their alleged harasser, the Coach, in a meeting where both the Coach and the District had legal counsel present. When that resolution attempt failed, rather than conduct further investigation, the District waited a month before taking limited remedial action with respect to the Coach. Although the District suspended the

Coach from coaching the [] team for the remainder of the 2010-2011 season, it allowed him to continue to teach at least one of the Students in [] class and coach the [] team in the spring 2011 season. Additionally, the District, for several weeks after the February 7 complaint, permitted the Coach to supervise open gym and did not allow the Students to attend. Moreover, the District never made a determination as to whether a racially hostile environment existed, which limited its ability to take appropriate remedial action. The District also took no remedial action with respect to the Students, such as offering counseling or periodically checking in with them to see how they were doing, or with respect to the District's educational environment as a whole, such as disseminating an anti-harassment/anti-retaliation policy to staff and students, conducting staff and student training, or following up in any manner with the Students, their teachers, or the larger student body. Two of the remedial actions that were supposed to have occurred (i.e., an apology to the Students from the Coach and sensitivity training for the Coach), did not take place before the conclusion of OCR's investigation.

Based on the foregoing, OCR finds sufficient evidence to find that the District failed to adequately respond to complaints of racial harassment in violation of Title VI.

Issue 2: Denial of a Benefit Based on Race

- **Applicable Legal Standards**

As stated above, the Title VI regulation, at 34 C.F.R § 100.3(a), states 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 under any program receiving federal financial assistance. The regulation, at 34 C.F.R. § 100.3(b)(1)(i) and (ii), further states that a recipient may not, on the grounds of race or national origin, deny an individual any service or benefit of its programs or provide any services or benefits to an individual which are different from or provided in a different manner from the services provided to others on the basis of race.

Evidence of discriminatory intent may be direct or circumstantial. Absent direct evidence of discriminatory motive, in determining whether a recipient subjected student(s) to different treatment on the basis of race, color or national origin in violation of Title VI, OCR looks to whether there were any apparent differences in the treatment of similarly-situated students on the basis of race. If so, OCR assesses the recipient's explanation for any differences in the treatment of similarly-situated students to determine if the reasons are legitimate or are merely a pretext for unlawful discrimination. Additionally, OCR examines whether the recipient treated the student(s) in a manner that is consistent with its established policies and procedures and whether there is any other evidence of discrimination based on race.

- **Summary of Investigation**

The Complainant alleged that the Coach would not help the Students obtain athletic scholarships for college because of their race. In support of this allegation, the Complainant stated that Student A told her that the Coach had made statements to the Students that he did not intend to help them seek college scholarships because scholarships are for white students and financial aid is for black students, which the Students found to be racially offensive.

When OCR interviewed the Students, they confirmed that the Coach on more than one occasion made statements to them questioning why he should help them get athletic scholarships and saying that half of them lived in single parent homes (which they viewed as an offensive racial stereotype that African American children are raised by their mothers because their fathers are absent, as well as an assumption that was not true), and would get financial aid while it is the white students from private schools that get college scholarships. They also noted that the Coach had made similar comments that were included in a [] newspaper article (which preceded the February 7, 2011 complaint). They stated that the Coach did not give them any guidance on how to attract college recruiters.

Several parents of the Students told OCR that they were offended by the Coach's statements to the Students and in the newspaper article because he did not have personal knowledge of their family structures and that he made incorrect assumptions about them based on racial stereotypes. A relative of one of the Students also said that he questioned why the Coach had not updated the Students' statistics in the newspaper, which is information college recruiters look at, and that the Coach acknowledged that had not been done but could be. The parents also stated that they believed the Coach had a history of downplaying his players' college aspirations and provided examples of his past behavior with other African American students in support of their belief.

OCR obtained written statements from two former parents of African American student athletes in the District, who believed that the Coach did nothing to assist their sons with respect to college scholarships and had failed to advise them of colleges interested in recruiting their sons. They felt that this lack of assistance was racially motivated. The statements included allegations that colleges had contacted the Coach about their sons but that the Coach never told them or took any actions to assist with the recruitment process. For example, one parent letter stated that the Coach never told them that multiple colleges had contacted the Coach about their son, which they found out about when the colleges contacted them directly, or met with them to discuss the recruitment process. Their son did receive a scholarship from a Division II school with the help of an assistant coach. When questioned about this, the Coach stated that he could not recall this specific situation but generally asserted that he believes he would have helped a student get a scholarship.

One relative of a Student recounted that during a meeting he had with the Coach to talk about his concern that the Coach was discouraging the Students' college aspirations and about his unwillingness to help the Students with scholarships, the Coach told him that it was unrealistic for the Students to think they could play [] at Ohio State University or Michigan State University and he wanted them to know that their goals were too high.

The District's guidance counselor, who is the individual responsible for scholarships and financial aid in the District, confirmed that it is common practice for college recruiters to contact high school coaches in search of eligible student athletes. The guidance counselor also stated that it is up to the coaches to develop and maintain relationships with college recruiters and college coaches because athletic scholarships come directly through the coaches to the student. Sometimes colleges call about a specific student and sometimes they call to find out if the coach knows any prospective student athletes. He said that the input given by the coach is very important because recruiters rely on high school coaches for opinions about prospective students and their potential to be successful in the classroom as well as on the []. The guidance counselor shared the Coach's belief that the Students would be likely to receive financial aid.

- **Analysis and Conclusion**

Although not all coaches may be required to provide assistance to students in attracting college recruiters and obtaining college scholarships, both the Coach and the guidance counselor acknowledged that it was the generally accepted practice in the District and elsewhere for coaches to be the main point of contact for college recruiters for athletes. In the instant case, OCR concludes that the evidence, taken as a whole – including the Coach's comments to students that financial aid is for black students and athletic scholarships are for white students when coupled with the racial animus illustrated by the Coach's frequent use of the N-word and other racially derogatory comments, as described above – demonstrates that the Coach's lack of assistance to the Students in attracting college recruiters and obtaining college scholarships, was based on race in noncompliance with Title VI. Moreover, in addition to his comments to the students about financial aid and his inappropriate racial statements, there was additional supporting evidence that his actions were inappropriately based on race. For example, parents of former African American student athletes shared with OCR that the Coach had a past practice of failing to follow up with college recruiters who were inquiring about African American players or to share this important information with the families. Additionally, despite their undefeated record, the Coach did not deny that he had not provided the local newspapers with the Students' updated individual statistics, information relied upon by college recruiters to identify candidates for scholarships. Finally, the Coach provided no evidence to show that he helped the Students attract college recruiters or obtain athletic scholarships.

Issue 3: Intimidatory or Retaliatory Acts

- **Applicable Legal Standards**

The Title VI implementing regulation, at 34 C.F.R. § 100.7(e), prohibits recipients and other persons from intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured under Title VI or because the person has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under Title VI.

In analyzing retaliation claims, OCR first examines whether: 1) the individual has engaged in a protected activity; 2) the recipient knew about the individual's protected activity; 3) the recipient took an action adverse to the individual contemporaneous with or subsequent to the protected activity; and 4) there is evidence of a causal connection between the protected activity and the adverse action. If these elements of a *prima facie* case of retaliation are established, OCR examines whether the recipient has a legitimate, non-retaliatory justification for its actions that is not a pretext for retaliation. To be an adverse action, the recipient's action must significantly disadvantage the individual as to his or her status as a student or employee, or his or her ability to gain the benefits of the program. In the alternative, even if the challenged action did not meet this standard because it did not objectively or substantially restrict an individual's employment or educational opportunities, the action could be considered to be retaliatory if the challenged action reasonably acted as a deterrent to further protected activity or if the individual was, because of the challenged action, precluded from pursuing his or her discrimination claims.

- **Summary of Investigation**

The Complainant specifically alleged that, because of her protected activity under Title VI, the District retaliated against her and Student A by investigating their residency in the District; reporting concerns about Student A's eligibility to participate in high school athletics to the OHSAA; and filing a false police report against Student A accusing him of theft. With respect to the allegation regarding the residency investigation, OCR found sufficient evidence of retaliation in violation of Title VI; with respect to the latter two allegations, OCR found insufficient evidence of retaliation, as explained below.

- *Residency Status*

The Complainant informed OCR that soon after she and the other parents filed the February 7 complaint against the Coach, she learned that a truancy officer who works for the District had followed her for several days taking notes of her and her children's arrivals and departures. The Complainant stated that she believed the Board had initiated this surveillance of her family and that the Board had also inquired into her personal affairs, including the date that she was married, the owner of the house in which she resides, properties that she had previously owned, and her previous residences. She stated that she has been a resident of the District since [] and has lived at her current

address since []. She further stated that, in [], she updated the District on her most recent address as requested by the registrar. She stated that in the [] years that she had been a resident of the District, the District had never before made any inquiries regarding her residency.

Based on District documentation, OCR confirmed that the District did investigate the Complainant's residency. According to the Board President, negative publicity in the news media surrounding the allegations of racial harassment against the Coach had angered some community residents, several of whom contacted him to dispute the Complainant's residency. The Board President stated that he checked the Complainant's property records on the county auditor website but did not find that she owned any property in the District. He told OCR that he then informed the District treasurer about the complaints he received because he did not know what to do next and his attempt to reach the Superintendent was unsuccessful. He further told OCR that the District treasurer initiated the investigation by referring the matter to the District's truancy officer. However, District documentation shows that he asked the truancy officer to conduct surveillance of the Complainant's residence to verify her residency in the District.

District e-mails indicate that the Superintendent was not initially notified about the residency investigation until on or around March 4, 2011. When she learned of the investigation, the Superintendent sent an e-mail to the Board expressing concern that the residency investigation could be seen as retaliatory and stating that any requests for a residency investigation should have gone through her. In her e-mail, she also stated that she had called the truancy officer and he told her that Board members had requested the investigation. The Board President's e-mail reply to the Superintendent stated that the Board referred the residency complaints made against the Complainant directly to the truancy officer because there was no Board policy addressing the issue, which statement was inconsistent with statements he made in other e-mails and to OCR that he had referred the matter to the treasurer to handle. Regardless, the evidence is clear that the Board President, upon receiving complaints from people who were upset about the allegations about the Coach, was involved in initiating the investigation without the Superintendent's knowledge. When the Superintendent sent a second e-mail on March 7 restating her concerns, the Board President replied that several residents, parents, and students were complaining about the Complainant's residency status in the District, noting these individuals also were upset because of her involvement in the complaints about the Coach.

On March 8, 2011, the truancy officer submitted a written report of his investigative findings to the Superintendent. The report stated that the truancy officer had received a complaint from the Board, which had received several complaints from neighbors and residents that the Complainant and her children did not reside in the District. The report stated that the truancy officer had conducted surveillance at the Complainant's residence of record in the District and had also visited several properties the Complainant may have owned or lived in and had found no evidence of a current residence outside the District.

On March 9, 2011, the Superintendent e-mailed the Board President, restating her concern about having been “kept out of the loop” on the residency investigation and stating that she found it “shocking to know that there were board members directing [the truancy officer] to investigate a [] player whose mother has been the most vocal in the news media.” The Superintendent also advised the Board President that the truancy officer had completed the investigation and reported that there was no validity to the allegations that the Complainant did not reside in the District.

On the following day, March 10, 2011, the Board President advised the Superintendent by e-mail that he had contacted the truancy officer directly for an update on the Complainant’s residency investigation. He said the truancy officer told him that the investigation was inconclusive and he directed the Superintendent to obtain an affidavit from the Complainant attesting to her residency in the District. The Superintendent did not obtain an affidavit from the Complainant. Rather, on March 15, 2011, the Superintendent informed the entire Board by e-mail that the truancy officer had investigated the Complainant’s residency and could not substantiate allegations that the Complainant did not live in the District. She informed the Board that there was no procedure requiring the Complainant to again document her residency without sufficient evidence that she does not live in the District and that, upon direction from the Board, she would instruct the truancy officer to reopen his investigation. She also requested that the Board provide her with the information that had prompted the need for an investigation so that she could forward it to the truancy officer. The Board President replied to the Superintendent saying he was hesitant to provide the names of the residents who complained about the Complainant because he felt the Superintendent had a conflict of interest because he had observed her being friendly with the Complainant.

During OCR’s investigation, OCR staff interviewed the Board President and other District staff to determine the District’s process for verifying the residency status of parents and students who are already attending school in the District. The District’s witnesses confirmed that the Board, as well as District staff and administrators, have a duty to report information regarding a residency dispute of one of its students. They also stated that there is no written District policy on how to address issues of residency. District’s building principals have a direct role in conducting residency inquiries. District documentation revealed that it is the District’s typical practice that, when District staff learn that a student may no longer meet residency requirements, a letter from the school principal is mailed and/or sent home with the child notifying the parent that the District has reason to believe they no longer live in the District and asking them to provide updated documentation to support their current residence within the District, before the District initiates an investigation. Moreover, the Board President confirmed that the Board does not typically get involved in such day-to-day operations of the District.

The elementary school principal confirmed that his school’s practice is to send the form letter to give parents the opportunity to verify their residency prior to an investigation by the truancy officer. If the parent provides the appropriate documentation, no investigation is initiated. If the truancy officer conducts an investigation, another letter is sent at the conclusion of his investigation, informing the parents of the outcome of the

investigation. OCR was unable to interview the high school principal on this issue because he was no longer employed at the District and refused to speak further with OCR. However, the documentation submitted by the District indicated that the process followed by the high school was similar to that of the elementary school. In addition, OCR obtained an e-mail from the District which was written by the high school principal to the Superintendent, on March 4, 2011. In that e-mail, the high school principal stated that he never initiated or authorized an investigation of Student A's residence. He also stated that Student A had been a District resident since [] and that he had no reason to believe that Student A was not a resident. In the instant case, the District did not give the Complainant a notification letter prior to initiating the investigation of her residency, contrary to its typical practice.

- *OHSAA Eligibility*

The Complainant also alleged that after she made the racial harassment complaint, the District called into question the eligibility of Student A to play [] for the District in retaliation for her complaints. OCR interviewed District staff who confirmed that after the racial harassment complaints about the Coach were published in the local media, several opponent school districts reported to OHSAA, via e-mail, that a student on the District's [] team might not be eligible to play [] for the District. The high school principal reported the rumors to the Superintendent and athletic director and said there had been no formal inquiry by anyone regarding any eligibility issues. The high school principal stated that at the time the rumors were reported to the OHSAA, the District's [] team was [].

OCR reviewed documentation submitted by the District showing that on March 2, 2011, the athletic director reported to the Superintendent that he had received information about the rumor from another district's athletic director. On March 7, 2011, the District received notice from the associate commissioner of OHSAA that OHSAA had received an official inquiry about the eligibility of Student A. OHSAA requested verification from the District of the date on which Student A began school in the District. Within several hours, the athletic director had responded to OHSAA with the requisite information. On April 28, 2011, the associate commissioner notified the District that the matter was closed. She provided written information substantiating that the inquiry regarding Student A's eligibility had come from another district in the area conference, but she did not identify the district.

- *Theft Accusation*

The Complainant stated that she had been contacted by a Richmond Heights city police detective, who informed her that Student A was wanted for questioning about an alleged theft at the District's elementary school. The detective told her that someone had stolen a credit card from a substitute teacher and used it to purchase shoes. She said that the detective told her that the evidence indicated that the shoes had been delivered to her home on March 12 and that Student A had signed for the package. She stated that Student A could not have signed for a package because he was with the [] team on

March 12 from 8:30 a.m. in the morning until after 4:00 p.m. in the afternoon. The Complainant stated that she would not allow Student A to be questioned, and the police officer responded that he would just pick Student A up at school. She stated that she felt someone in the District was watching her because she had a package delivered to her home on March 12 containing computer equipment, which she purchased with her credit card. The Complainant also stated that she was afraid to send Student A to school for fear that he would be arrested.

The District acknowledged that a substitute teacher who used to work for the District reported a fraudulent purchase had been made on her credit card to the police. OCR reviewed the police report and related documents filed by the substitute teacher with the Richmond Heights Police Department. She filed the police report on [], 2011, asserting that someone had stolen some cash and her credit card numbers on [], 2011, and had used the credit card number to make an unauthorized purchase on [], 2011. The substitute teacher reported that she was in the District's elementary school on [], 2011 from 8:15 a.m. until noon and that she left her purse in the reading room while she was teaching. She reported that she noticed approximately \$40.00 missing from her purse that day but her credit cards were not removed and she did not report the missing cash. Several days later, she was alerted by her credit card company that an unusual purchase had been made on []. She indicated that she did not notify police at that time because she did not want to make any trouble at the school. On [], she requested online delivery information from the United States Postal Service and received a scanned copy of a receipt showing that the purchased item was delivered to the Complainant's address on [], 2011, at 12:12 p.m., and was signed for by someone using Student A's name. The substitute teacher subsequently reported to the police that a second unauthorized purchase had been made using her credit card and that the transaction occurred on [], 2011, which was after she had cancelled the credit card. The second purchase was a purse that was delivered directly to the substitute teacher's home on [], 2011. OCR was unable to interview the substitute teacher because she no longer works for the District.

District officials acknowledged that, in addition to filing a report with the police, the District's elementary school principal, the Board President, and the head of security were notified of the alleged theft on school premises. The elementary school principal also stated that he confirmed that Student A was not in the elementary school building on []. He stated that the only way Student A could have entered the building was to be buzzed in through the front door and then he would have been required to sign in. The elementary school principal reviewed the sign-in sheets and confirmed that Student A did not enter the building that day. He said that they did not check the video cameras because the cameras do not have date stamps and because the part of the building where the substitute teacher worked did not have a camera. The principal also stated that

Student A would not have been permitted into the building because high school students are not allowed in the elementary school building. The Complainant and District witnesses all confirmed that after the Complainant refused to allow the police to interview her son, the police did not pursue the matter any further. District witnesses also confirmed that the District did not conduct any further investigation either.

- **Analysis and Conclusion**

Based on the foregoing, OCR concludes that the evidence supports that both the Complainant and Student A complained about racial harassment to the District, and that the District was aware of this protected activity. As such, OCR concluded that the first two elements of a *prima facie* case of retaliation were met. OCR next considered whether the District took an adverse action contemporaneous with or subsequent to the protected activity.

With respect to the report to OHSAA about Student A's eligibility to play [], the evidence obtained by OCR supports that the report was made by a competitor district and not the District. The evidence also shows that District employees took prompt and effective steps to provide OHSAA with the necessary documentation to permit Student A to continue playing []. Thus, OCR concludes that there was no adverse action taken by the District with respect to Student A's eligibility and that, therefore, there is insufficient evidence to support that the District retaliated against the Student with respect to this allegation in violation of Title VI.

With respect to the alleged false accusation of theft, OCR determined such an action arguably would be adverse. As the report of theft occurred close in time to the alleged protected activity (i.e., within a month), a causal connection between the two can reasonably be inferred. However, OCR finds that the evidence supports that the substitute teacher, who was employed by the District at the time, had a legitimate, nondiscriminatory reason for filing a police report. First, although the substitute teacher worked for the District at the time of the report, there is no evidence supporting that she had a reason to retaliate against Student A on behalf of the District. Furthermore, the evidence supports that a theft did occur, which is a legitimate, nondiscriminatory reason for filing a police report. Additionally, OCR confirmed that the reason the police, who acted independently of the District, pursued questioning Student A was because it appeared to be Student A's signature on the delivery receipt for the item purchased. The evidence also shows that District officials, who were apprised of the theft as well, took steps to verify that Student A was not in the building on the day of the theft and then took no further action against Student A with respect to this matter. OCR found no evidence to support that the reasons given for the report of the theft were a pretext to retaliation against the Complainant and Student B; accordingly, OCR finds that there is insufficient evidence to support a finding that the District engaged in retaliation in violation of Title VI, as alleged.

With respect to the District's investigation of the Complainant's residency, OCR finds that the initiation of a residency investigation is adverse, as a reasonable person would be deterred from further protected activity by being the target of a residency investigation. Thus, OCR examined whether the District had a legitimate, nondiscriminatory reason for its action. Although complaints from community members about an individual not being a resident typically would merit further investigation, OCR notes that, in the instant case, the Board President acknowledged that he understood that such complaints about the Complainant's residency were made because she had angered community residents by her involvement in the complaints against the Coach. No one had called the District prior to the racial harassment complaint to inform them of their belief that the Complainant no longer lived in the District. Additionally, the Board President failed to follow the District's standard practice and procedures for such investigations. Further, the evidence supports that the Complainant had previously twice provided proof of residency to the District and that Student A's principal had never found any reason to question their residency. Even after the truancy officer submitted a written report stating that he could not substantiate that the Complainant was a nonresident, the Board President continued to personally pursue the matter, despite acknowledgment that the Board typically does not get involved in such matters.

For the foregoing reasons, OCR finds that the District retaliated against the Complainant when it sought to deter her from continued protected by activity by initiating an unwarranted investigation into her residency status in violation of Title VI.

- Other Evidence of Retaliatory Motive

In addition to the above, although it was not specifically alleged in the complaint that the Students, collectively, were subjected to retaliation or intimidation because they complained about the Coach's conduct, OCR found during the course of its investigation, as noted above in the racial harassment section, that the Students were subjected to retaliatory harassment and intimidation by staff and other students after February 7, 2011, through the remainder of the 2010-2011 school year, in violation of Title VI. One example not set forth above is that, on the same day that they complained to the Acting Superintendent about the Coach, the Coach, who had been told about the complaints, called them troublemakers and a "cancer to the team" during practice and kicked them out of practice. The principal also chastised the Students for going over his head to his boss, the Acting Superintendent.

Overall Conclusion

On May 1, 2012, the District submitted the enclosed Resolution Agreement (Agreement) to OCR to resolve this complaint. Pursuant to the Agreement, the District will: inform the families of the Students of the results of the OCR investigation and the steps taken to address what was found; take appropriate action with respect to the Coach for his conduct with the Students; conduct informational sessions for players regarding athletics scholarships and financial aid; clarify the Complainant's residency file status; establish

written policies and procedures for residency checks of parents and students; conduct climate checks;
revise its harassment and discrimination policies and procedures; provide Title VI and racial sensitivity training for District staff and administrators and students; and form student and community working groups to address issues of race discrimination, harassment and retaliation.

This concludes OCR's investigation of this matter. OCR will monitor the implementation of the Agreement and the District's actions to ensure the District's compliance with Title VI. Should the District fail to fully implement the Agreement, OCR will take appropriate action to ensure the District's compliance with Title VI, including possibly initiating administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce this Agreement, OCR shall give the District written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

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

The OCR contact person for the monitoring of the Agreement is Ms. Sacara Martin, who can be reached at (216) 522-7640 or Sacara.Martin@ed.gov. We look forward to receiving the District's first monitoring report by May 14, 2012. If you have questions or concerns about this letter, you should contact Ms. Meena Morey Chandra, Team Leader, by telephone at (216) 522-2677 at Meena.Morey.Chandra@ed.gov.

Sincerely,

/s/

Catherine D. Criswell
Director

Enclosure