



**Recognizing, Preventing, and Remediating
Racial Harassment and
Hostile Environments in Schools**
Part I

Education Rights Institute, University of Virginia School of Law



SCHOOL of LAW
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Abstract

Race, color, and national origin harassment regularly occurs in America's schools and inflicts harm on the students and communities that experience it. School districts that receive federal financial assistance must take steps to prevent and remedy such harassment or risk violating Title VI of the Civil Rights Act of 1964. Title VI prohibits discrimination based on race, color, or national origin in a program or activity that receives federal financial assistance, including in any public or private school that receives such assistance. This report explains key terms, such as the difference between harassment and a hostile environment, how to remedy and prevent harassment and a hostile environment, and why working to build environments free of harassment and discrimination matters. This report also includes illustrative examples of harassment drawn from the enforcement work of the Office for Civil Rights at the U.S. Department of Education and social science research regarding the harms of race, color, and national origin harassment and hostile learning environments, as well as how to remedy them.

Warning: This report contains mentions of suicide, racial and ethnic slurs, and related sensitive content.

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Introduction

Discrimination occurs when a person or group of people are unjustly or unfairly treated, often based on a characteristic outside of their control.¹ Unwelcome conduct based on a person's actual or perceived race or national origin is a type of discrimination termed **racial or national origin harassment**.² Title VI of the Civil Rights Act of 1964 (Title VI) protects anyone participating in a federally funded program or activity from discrimination due to their actual or perceived race, color, or national origin.³ This protection covers students in public and private schools that receive federal funds.⁴

For example, in 2024, a group of parents filed a lawsuit in Michigan that built upon a 2012 U.S. Department of Education (ED) investigation into racial and national origin harassment within Pinckney Community Schools (PCS) in Pinckney, Michigan. The lawsuit highlights both the severity of race, color, and national origin harassment that can occur in schools as well as how it can persist over time, creating a **hostile environment**. The Office for Civil Rights (OCR) within ED began investigating PCS, after receiving a complaint in December 2012 alleging that the school district discriminated on the basis of national origin (Arab American) and race (Black).⁵ By 2015, OCR concluded that PCS violated Title VI by failing to appropriately address the ongoing hostile environment in at least one of its schools.⁶ OCR found that between 2011 and 2013, the school district had been made aware of at least five incidents of alleged harassment each academic year such as students being called the N-word and “a f-cking colored kid,” online racial bullying, and a student drawing a swastika on material being sent to a shelter for unhoused people.⁷ Though OCR found that PCS investigated the incidents and disciplined involved students, they also concluded that “the disciplinary actions taken were not sufficient to adequately redress the overall hostile environment.”⁸ Among its findings, OCR noted that even though PCS had several anti-bullying programs, they did not address discrimination and harassment based on race or national origin.⁹

In order to continue receiving funding from the federal government and comply with federal law, PCS entered into a Resolution Agreement with OCR to remedy the hostile environment and prevent further harassment.¹⁰ This agreement required PCS to take such actions as conducting annual trainings for district personnel and all high school students regarding Title VI requirements, what Title VI violations may look like, and who to contact if violations occur.¹¹ The agreement further required the district to revise its anti-harassment policies to include information such as a description of the action steps the district will take to stop, remedy, and prevent the recurrence of discrimination, retaliation, or harassment based on race, color, or national origin.¹²

Yet, in July 2024, the parents of five PCS students filed a lawsuit alleging the district continued to violate Title VI and other civil rights laws at least through 2023 by causing, encouraging, tolerating, and/or failing to correct the racially hostile environment.¹³ The lawsuit's factual allegations state that though the district's written policies outline severe consequences for harassment based on race, ethnicity, and nationality; in reality, no students were punished for discriminatory acts despite frequent complaints to district personnel alleging racial harassment.¹⁴ Specifically, “[t]eachers are present when slurs are used against African American students, administrators are informed of racial behaviors, including physical assaults, and parents routinely escalate racist incidents to principals and the superintendent. Yet, Defendant has failed to take meaningful action.”¹⁵ The racial harassment alleged includes students being repeatedly called names like the “N-word,” “cotton picker,” “monkey,” “hoodlum,” “a dumb Black kid,” and witnessing a request to place a “red dot” on a student of Indian ethnicity.¹⁶ According to the lawsuit, a student admitted to his father that he called another student the N-word, prompting his father to ask the school why they had not notified

him regarding the incident.¹⁷ The school's principal reasoned that "she did not want to bring negative attention to the situation or for the children to be labeled racist."¹⁸ This comfort with the status quo and privileging of perpetrators of harm can lead to hostile environments for students upon whom the harm is being inflicted.

The severity and longevity of the harassment and hostile environment in this district serves as just one example of the harassment that occurs in our schools nationwide today. Race, color, and national origin harassment are regularly featured in news headlines and have been for some time.¹⁹ Our nation still has much work to do to ensure that our schools are safe for all students and in compliance with Title VI. Policymakers at the state, district, and school level along with teachers and other education leaders must take action to create and maintain school environments that prevent, address, and remedy race, color, and national origin harassment and hostile environments. At the federal level, ED declares that "[a]n educational institution has a duty to provide a nondiscriminatory environment that is conducive to learning."²⁰ OCR enforces this obligation by partnering with the U.S. Department of Justice (DOJ) to monitor and enforce Title VI compliance.

In recent years, OCR has received a concerning rise in the number of complaints alleging race, color, or national origin harassment and/or a hostile environment, as well as allegations of other forms of discrimination in schools.²¹ OCR notes that harassment is "too pervasive in our nation's schools."²² To understand the rise in these complaints and how such discrimination might be prevented, one must first understand what constitutes racial harassment and how harassment can create a hostile environment.

To understand how to fulfill their obligation to prevent and remedy race, color, or national origin harassment and a hostile environment, education leaders, from teachers to school district leaders and state staff must understand the relevant research and legal terms. We provide a glossary at the end of this report that defines the words in bold. Any reference to harassment or racial harassment in this report series refers to race, color, or national origin harassment prohibited by Title VI.

This report is one in a two-part series dedicated to harassment and hostile environment discrimination as regulated by Title VI of the Civil Rights Act of 1964. This paper asks:

- What constitutes race, color, or national origin harassment?
- How can harassment create a hostile environment in schools?
- How do race, color, or national origin harassment and a hostile environment impact student outcomes?
- How does the U.S. Department of Education expect schools to respond when discriminatory acts such as these occur?

The next paper provides evidence-based best practices and exemplars that schools can use as models to remedy and prevent race, color, or national origin harassment or a hostile environment in K-12 schools.

Warning: This report contains mentions of suicide, racial and ethnic slurs, and related sensitive content.

Understanding Harassment and a Hostile Environment Under Title VI

Illegal harassment may look like what is commonly referred to as bullying.²³ Race, color, or national origin harassment “denies students the right to an education free of discrimination”²⁴ and may negatively impact student outcomes, in addition to other harms.²⁵ Despite these well-documented harms to students and the learning environment, many school leaders fail to identify and appropriately address incidents of racial harassment, and may allow it to escalate to the point that it forms a hostile environment. A hostile environment occurs within a school when harassment becomes so severe that a person can no longer participate in or fully benefit from the school’s operations.²⁶ Both racial harassment and hostile environments can violate Title VI.²⁷

OCR investigates discrimination concerns about and allegations against entities under its jurisdiction.²⁸ If it finds a Title VI violation, OCR may offer targeted guidance to the school district through a resolution agreement regarding what steps must be taken to remedy any acute or systemic discrimination.²⁹ If, however, OCR determines that a resolution agreement does not provide an appropriate remedy or if a school or district refuses to enter into or comply with such an agreement, ED will enforce Title VI compliance through other means.³⁰ ED may enforce compliance by filing paperwork to suspend or terminate federal funding to the entity in violation of Title VI or by referring the case to DOJ to file a lawsuit.³¹ Individuals may also bring intentional discrimination claims in federal court against the offending entity.³² For more about the origins of Title VI and the federal government’s enforcement process, please refer to the Education Rights Institute’s Title VI primer: *Preventing and Remediating Race, Color, and National Origin Discrimination in Schools: A PRIMER ON TITLE VI OF THE CIVIL RIGHTS ACT OF 1964*.³³

Harassment under Title VI

Within educational settings, students, faculty, staff, and visitors to schools can engage in harassment.³⁴ Harassment can take many verbal, nonverbal, or physical forms including, “slurs, taunts, stereotypes, or name-calling, as well as racially-motivated physical threats, attacks, or other hateful conduct.”³⁵ Ethnic or ancestral slurs, along with harassment toward students based on “how they look, dress, or speak in ways linked to ethnicity or ancestry (e.g., skin color, religious attire, language spoken); or stereotyped based on perceived shared ancestral or ethnic characteristics,” such as students of Sikh, Hindu, Jewish, and Muslim descent, also violate Title VI.³⁶ A person’s race, color, or national origin need not be the only basis for harassment, but such harassment remains prohibited so long as it is at least partially motivated by these factors.³⁷ Harassment that violates Title VI does not have to target a specific person, need not be repetitive, nor be intentional to cause harm.³⁸ Unlawful harassment can even be based on the race, color, or ethnicity of a friend or associate.³⁹ In cases such as this, someone might, for example, be harassed for befriending a student of a different race.

Below are examples of OCR and DOJ racial harassment investigations.

Table 1. Examples of Racial Harassment

Racial Harassment Case Profile A	
<p>Type of Investigation: Complaint</p> <p>School District: Beecher Community Unit School District 200U</p> <p>State: IL</p> <p>Title VI Area of Concern: Racial Harassment</p> <p>Date Resolved: 6/5/2023</p> <p>Type of Resolution: Resolution Agreement</p>	<p style="text-align: center;">Case Facts</p> <ul style="list-style-type: none"> • OCR investigated whether the District failed to respond appropriately to complaints that a student (Student A) was harassed based on race (Black) by other students and a teacher during class during the 2021-2022 school year. • Two White students presented two PowerPoint presentations with a Confederate flag as the last slide of each presentation. Student A said this made her feel upset and uncomfortable. Student A's parent complained to a dean and during a 504 meeting. The dean and 504 team said they did not remember the complaint. • Student B made a social media post during the school day that contained the N-word. Student A said that this social media post was very upsetting, and it made her feel even more uncomfortable. Student A said that the whole school had access to the social media post. She said that at least five other Black students mentioned the post to her and were upset by it as well. Student A's parent reported the social media post to the dean the same day. The school suspended Student B. The school did not offer counseling for the impacted students. • When Student B returned to School from his suspension, the classroom teacher alluded to the social media matter, stating to the class, "It is the times we are living in, you cannot talk about this stuff during school hours." Student A's parent said that the classroom teacher did not denounce Student B's actions and instead just said not to do it during school hours. The parent said that she complained about the classroom teacher's comments to the dean by phone and via email. The dean said he counseled the classroom teacher that she should not make these types of comments in the classroom. He also said that he informed the parent that the comment was not about Student A. The dean said he did not confirm the classroom teacher's account with the principal because he had no reason to doubt the classroom teacher's explanation of her comment. • Student A informed OCR that in 2021 the classroom teacher played a song that included the N-word and Student B said, "they can say it in a song, but when I say it, it is a problem." She said the classroom teacher did not say anything in response. Student A's parent said they did not complain to the school about this incident. • Racial harassment at the school continued into the 2022-2023 school year, including White students using the N-word on the bus. Student A's parent also reported this incident. • OCR expressed concerns about how the District handled the racial harassment complaints. <p style="text-align: center;">Case Resolution</p> <ul style="list-style-type: none"> • The District requested to enter into a voluntary resolution agreement prior to the conclusion of the investigation. The agreement requires the District to, among other things: <ul style="list-style-type: none"> ◦ hold discrimination and harassment training for District employees, ◦ run mandatory annual training for all students on the District's policies and procedures prohibiting racial discrimination and harassment, ◦ conduct full investigations and responsive action into all racial harassment complaints during the 2021-22 and 2022-23 school years, and ◦ develop and administer a school climate survey.

Letter from Marcela Sanchez-Aguilar, Supervising Atty. Gen. for Civil Rights, U.S. Dept. of Educ., to Jack Gaham, Superintendent, Beecher Community Unit Sch. Dist. 200U (June 5, 2023) (OCR Case No. 05-22-1177). <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/05221177-a.pdf>.

Racial Harassment Case Profile B

Case Facts

Type of Investigation:
Complaint

School District:
Kyrene School District

State:
AZ

Title VI Area of Concern:
Racial Harassment

Date Resolved:
8/23/2022

Type of Resolution:
Resolution Agreement

- OCR investigated whether the District failed to respond appropriately to complaints that a student was subjected to discrimination based on her Jewish ancestry. The Complainant alleged that the student reported antisemitic harassment to the principal, and that although the school disciplined the offenders and the principal sent a memo to staff about improving their response to antisemitism, the school put no safety plan in place to address the Complainant's concerns. As a result, the impacted student transitioned to home schooling.
- During a 2019 meeting the Complainant requested, the student informed the principal about antisemitic incidents dating back to 2018. She reported that nine students had been harassing her both in school and over social media, calling her names like, "stinky Jew," and "filthy Jew," saluting like Nazi soldiers in her presence, and making statements like, "I hear you are good at [a sexual act] because Jews are so good at gasping for air." The Complainant also provided evidence to the principal which included videos and social media messages.
- The principal investigated the allegations and disciplined harassing students for "Ethnic/Racial Hate Speech" in accordance with the District's policies, but OCR determined that he failed to address the school-wide problem with antisemitic harassment and the hostile environment it created. The principal provided antisemitic training to school staff, but not until seven months after the harassment had been reported which potentially allowed the hostile environment to persist.
- OCR also found that, despite multiple occurrences of harassing conduct, the principal failed to provide timely, specific, and clear communication to school staff regarding the harassment. Although the principal addressed staff in general terms by email and much later in a meeting, staff were not instructed to monitor the situation or identify ongoing harassment. Additionally, even after the school's investigation concluded, the principal waited to address the impacted student's schedule, which resulted in her and the harassing student attending class together at least once a day until the school changed her schedule, but not the harasser's.

Case Resolution

- The Resolution Agreement requires the District to, among other things:
 - reimburse the student victim's family for tutoring and counseling required due to the hostile environment the victim endured;
 - review and revise policies to ensure they comply with Title VI including clearly defined harassment complaint procedures;
 - train District staff;
 - train designated staff annually on how to investigate harassment complaints;
 - provide age appropriate anti-race, color, and national origin harassment training to students;
 - audit the 2022-2023 school year to review complaints and complete a self-evaluation related to potential instances of race, color, and national origin harassment;
 - administer and assess a climate survey; and
 - notify parents/guardians regarding revised policies and expectations.

Letter from Michael D. Todd, Supervisory Atty. Off. for Civil Rights, U.S. Dept of Educ., to Laura Toerjens, Superintendent, Kyrene Sch. Dist. (Aug. 23, 2022) (OCR Case No. 08-19-1367).
<https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/investigations/mocr08191367-a.pdf>.

Racial Harassment Case Profile C

Case Facts

- In October 2021, the United States Department of Justice, Civil Rights Division, Educational Opportunities Section, and the Office of the United States Attorney of the Eastern District of Kentucky (collectively, United States), initiated an investigation into complaints that the District failed to respond adequately to known and persistent student-on-student harassment based on race.
- The investigation found numerous incidents of race-based harassment in which Black and multi-racial students were called the N-word, among other racial epithets, and subjected to other derogatory racial comments by their peers. The District did not consistently or reasonably address the harassment, which included racial taunts and intimidation that was at times reinforced by use of Confederate flags and imagery.
- When the District did respond, it often failed to follow its own racial harassment policies and its actions were ineffective in addressing the broader hostile environment. This inaction deprived Black and multi-racial students of equal access to the District's educational opportunities and led them to conclude that the District either condoned the behavior or would not take any action to help them.
- The investigation also illuminated concerns regarding racially disproportionate discipline for Black students at some District schools and inadequate systems for recordkeeping and analysis of discipline data.

Type of Investigation:
Complaint

School District:
Madison County School District

State:
KY

Title VI Area of Concern:
Racial Harassment

Date Resolved:
6/12/2023

Type of Resolution:
Settlement Agreement

Case Resolution

- To resolve these issues, the District entered into a settlement agreement requiring the District to, among other things:
 - review and revise its anti-discrimination, racial harassment, and discipline policies and procedures;
 - create three new central office positions to oversee effective handling of complaints of race discrimination;
 - hold staff training;
 - update its data tracking policies, including tracking discrimination complaints and the District's response;
 - conduct focus groups and surveys; and
 - analyze discipline data.

Settlement Agreement Between The United States of America and Madison County Sch. Dist. (June 12, 2023). <https://www.justice.gov/opa/press-release/file/1587111/dl>.

Educational institutions are required to immediately investigate or otherwise address race, color, or national origin harassment that they know or reasonably should know occurred.⁴⁰ Ending race, color, and national origin harassment requires consistent leadership, training, and oversight from district and school personnel. District and school leaders must make clear to everyone that such harassment will not be tolerated and articulate the consequences—both legal and on student well-being—for failing to comply.

Educational institutions are required to immediately investigate or otherwise address race, color, or national origin harassment that they know or reasonably should know occurred.

When OCR or DOJ investigate allegations of racial harassment, they not only assess whether racial harassment occurred, but also the severity of the alleged harassment and the response by the educational institution where the alleged harassment occurred.⁴¹ Using the **reasonable person standard**,⁴² or how a person of the same age and background would objectively act, OCR will take into consideration the race, age, intelligence, and experience of the alleged harassment victim to determine if a reasonable person of the same age, race, and educational experience under similar circumstances would be adversely affected by the harassment alleged.⁴³ It is possible that an incident of alleged harassment might not be considered harmful to an older student, while the exact same act is found to be extremely harmful to a younger student.⁴⁴ This differentiation is due to the fact that younger students are less mature and more impressionable.⁴⁵

Federal civil rights laws intended to protect students from discrimination do not run counter to the First Amendment to the U.S. Constitution which protects the freedom of speech and assembly.⁴⁶ Educational institutions may be able to meet their Title VI obligations by publicly denouncing stereotypes and derogatory comments, and by creating space so that all viewpoints may be expressed.⁴⁷ However, schools must ensure that no speech crosses the line of becoming a “direct

Rather than being reactive to potential racial harassment discrimination, schools should proactively work to create welcoming, inclusive environments that allow for respectful discourse and disagreements while honoring all cultures and racial and national origin backgrounds.

threat[] or actionable speech or conduct.”⁴⁸ Rather than being reactive to potential racial harassment discrimination, schools should proactively work to create welcoming, inclusive environments that allow for respectful discourse and disagreements while honoring all cultures and racial and national origin backgrounds.⁴⁹

Schools should be spaces where students learn how to communicate across differences.⁵⁰ In November 2023, in the wake of increased complaints alleging national origin harassment in schools, U.S. Education Secretary Miguel Cardona noted, “We want to promote free speech and, to be frank with you, college campuses are where

students should be able to express different opinions. But when it comes to antisemitism or Islamophobia, that has no place on our college campuses or in our schools[.]”⁵¹ District and school leaders must take action to end national origin and racial harassment in our schools.

Racial harassment that is “severe, persistent, or pervasive” to the point that it denies or limits a student’s ability to participate in or benefit from a school’s programs or activities may rise to the

level of creating a hostile environment.⁵² As explained in the next section, OCR looks at the totality of the circumstances to determine if a hostile environment exists.⁵³

Hostile Environment under Title VI

Persistent, unaddressed racial harassment may create a hostile environment within a school that deprives the victims of a full opportunity to learn. A hostile environment occurs when a reasonable person of the same age and race, color, or national origin, under similar circumstances, would have been adversely affected.⁵⁴ A hostile environment typically results from persistent harassment, but a single incident of harassment may create a hostile environment “if the conduct is subjectively and objectively offensive and so severe that it limits or denies a student’s access to the education program or activity.”⁵⁵ To assess if a hostile environment exists, “OCR will examine the context, nature, scope, frequency, duration, and location of the race, color, or national origin-based harassment, as well as the identity, number, age, and relationships of the persons involved.”⁵⁶ More specifically, OCR assesses the totality of the circumstances to determine whether the harassment was “subjectively and objectively offensive; and so severe or pervasive that it limits or denies a person’s ability to participate in or benefit from the [school]’s education program or activity.”⁵⁷

To establish a hostile environment that violates Title VI, OCR analyzes whether the educational institution had actual or constructive knowledge of the existence of a hostile environment, yet failed to adequately address it.⁵⁸ A school is considered to have constructive knowledge if, upon “reasonably diligent inquiry,” it would or should know about persistent or unreasonable harassment within its institution.⁵⁹ Once a school has notice about the presence of a hostile environment, Title VI establishes a legal responsibility to remedy the effects of the harassment on the victim(s), as well as take reasonable steps to eliminate the harassment and prevent its future occurrence.⁶⁰ OCR evaluates the sufficiency of the school’s response by evaluating whether it was timely, reasonable, specific to the circumstances, and effective.⁶¹

In addition to conduct, curriculum may also create a hostile environment if it is “subjectively and objectively offensive, and is so severe or pervasive, that it limits or denies a person’s ability to participate in or benefit from the [school’s] education program or activity,” based on the totality of the circumstances.⁶² OCR does not regularly interfere with schools’ curricular choices, but it will investigate allegations that suggest content presented promotes negative or hateful stereotypes based on race, color, national origin, including shared ancestry, or that condones violence against a group protected by Title VI.⁶³ Examples of lessons that might violate Title VI by creating a hostile environment include asking students to discuss the positive aspects of the American slavery system⁶⁴ or asking students to pretend to be Nazi guards and share how they helped Germany during the Holocaust.⁶⁵

Once a school has notice about the presence of a hostile environment, Title VI establishes a legal responsibility to remedy the effects of the harassment on the victim(s), as well as take reasonable steps to eliminate the harassment and prevent its future occurrence.

Below are examples of schools failing to remedy harassment, allowing a hostile environment to form, in violation of Title VI.

Table 2. Examples of Hostile Environments

Hostile Environment Case Profile A	
<p>Type of Investigation: Complaint</p> <p>School District: Forsyth County Schools</p> <p>State: GA</p> <p>Title VI Area of Concern: Hostile Environment</p> <p>Date Resolved: 5/19/2023</p> <p>Type of Resolution: Resolution Agreement</p>	<p style="text-align: center;">Case Facts</p> <ul style="list-style-type: none"> • OCR investigated whether the District's removal of books from schools created a hostile environment for students based on race, color or national origin, in violation of Title VI and its implementing regulation at 34 C.F.R. § 100.3. • OCR reviewed District emails, board meeting summaries, and documents related to the District's Summer 2022 book review process as a part of its investigation into the complaint. OCR also interviewed the District's Chief Technology and Information Officer, the Director of Instructional Technology and Media, and the Chief Communications Officer. The investigation found that the District began receiving complaints in Fall 2021 from parents and community members regarding books in school and classroom libraries that some deemed inappropriate, particularly books by or about the LGBTQI+ community, women, and people of color. The District subsequently decided to remove or restrict fifteen book titles. It then formed a review committee to assess the nine books recommended for removal. • At a February 2022 school board meeting, students shared the impact book removals had on them, "One student stated that the book ban immediately made the environment more harsh for students; people like him who are not in the closet are watching their safe spaces disappear, and he is sick of being fearful at school. A student who identified herself as Asian said it is hard for her to find books with main characters who are of her race; she knows that people of other minority backgrounds have the same struggle and banning books written with diversity silences mainly minority voices. A third student -- who characterized the District's actions as singling out books by authors who are gay, supporters of the LGBTQI+ community, women and people of color -- expressed the belief that the District does not care about diversity." No additional formal complaints were filed. • OCR commended the District for their effort to handle the book concerns with thoughtfulness, but expressed concern that the District had notice that its "book screening process may have created a hostile environment for students, yet the District's responsive steps related to the book screening process were not designed to, and were insufficient to, ameliorate any resultant racially and sexually hostile environment." <p style="text-align: center;">Case Resolution</p> <ul style="list-style-type: none"> • The District requested to enter into a Resolution Agreement prior to OCR concluding its investigation. The Resolution Agreement requires the District to, among other things: <ul style="list-style-type: none"> ◦ provide impacted students with supportive measures; ◦ release a statement to students that explains the book removal process; ◦ at the end of each semester, submit to OCR a list detailing each complaint from any student regarding a book removal and how the Title IX/Title VI Coordinator responded to the concern; ◦ disseminate a school climate survey at all middle and high schools to determine the prevalence of harassment, the perception of how the school handles reports of harassment, and suggestions on how to reduce harassment and improve the school's response; and ◦ use this data from the climate survey to develop a plan to remedy all harassment.

Letter from Jana L. Erickson, Program Manager, Off. for Civil Rights, U.S. Dept of Educ., to Jeff Beardem, Superintendent, Forsyth Cnty Schs. (May 19, 2023) (OCR Case No. 04-22-1281), <https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/investigations/more/04221281-1a.pdf>.

Hostile Environment Case Profile B

Type of Investigation:
Complaint leading to a Compliance Review followed by an additional Complaint

School District:
Kyrene School District

State:
AZ

Title VI Area of Concern:
Hostile Environment

Date Resolved:
3/29/2023

Type of Resolution:
Resolution Agreement

Letter from Michael D. Todd, Supervisory Atty. Off. for Civil Rights, U.S. Dept of Educ. to Laura Toornjes, Superintendent, Kyrene Sch. Dist. (Mar. 29, 2023) (OCR Case No. 08-22-1627), https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/investigations/more_08221627-a.pdf.

Case Facts

- OCR investigated allegations that the District discriminated against the Complainant's daughter and other students on the basis of race, color, and national origin by failing to respond to individual instances of harassment and the creation of a hostile environment both in the classroom and on the school bus.
- A biracial middle school student made allegations about "recurring uses of racial epithets and other racially derogatory language," such as the N-word, "monkey," "ching chong," and statements like, "Muslims are terrorists[.]" These comments were often made in front of or reported to a long-term substitute teacher. In at least one instance, the Complainant emailed the long-term substitute expressing concerns about the comments. The substitute responded dismissively and did not honor the Student's request to move seats so as not to be near "a racist kid." The substitute never reported the incidents to school leadership.
- Separately, the Student reported to a school specialist that Student B called her a "monkey" on the bus. Student B admitted to making this comment and received a one-day in school suspension and a two-day bus suspension. The Complainant informed OCR that she and the Student notified the school regarding "at least seven additional incidents of students using derogatory, race-based comments or racial epithets while on the bus."
- The District reviewed their incident tracking system to have targeted conversations with students regarding the use of race-based language on the bus. Further, they implemented lessons in social studies classes about "respectful and appropriate language," but not explicitly about race.

Case Resolution

- A few months prior to the second complaint, the District entered into a Resolution Agreement with OCR regarding failure to adequately respond to "notice of hostile environment harassment on the basis of national origin." OCR then confirmed the additional race-based concerns in the subsequent complaint. OCR decided to address both complaints concurrently through the steps agreed to in the original Resolution Agreement. The original Resolution Agreement required the District to, among other things:
 - issue anti-harassment statements to students, employees, and families and encourage them to report all incidents of harassments;
 - review and revise its policies related to Title VI and train all staff and its investigative team;
 - hire a consultant to develop student programming to target harassment; and
 - conduct and administer a school climate survey to inform next steps.

Hostile Environment Case Profile C

Type of Investigation:
Complaint

School District:
Mt. Diablo Unified School District

State:
CA

Title VI Area of Concern:
Hostile Environment

Date Resolved:
6/15/2023

Type of Resolution:
Insufficient Evidence

Note: This complaint alleged overlapping discrimination between race, sex, disability and religion. For the purpose of this report, the details provided focus primarily on the Title VI claims.

Letter from Ava De Almeida Law, Team Leader, Off. for Civil Rights, U.S. Dept of Educ., to Adam Clark, Superintendent, Mt. Diablo Unified Sch. Dist. (June 15, 2023) (OCR Case No. 09-22-1077).
<https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/investigations/more/09221072-a.pdf>

Case Facts

- OCR investigated a complaint alleging that the District failed to respond in a timely, reasonable, and effective manner to notice of harassment. In October 2021, a White female student reported to school officials that she and other female students “witnessed and were subjected to harassing comments by a Latino male student (Student 1).” She alleged that Student 1 made vulgar statements based on race, national origin, and sex* including using the N-word toward another student and making comments Student considered homophobic.
- Upon receiving the Student’s report and interviewing witnesses, the District received conflicting accounts regarding what Student 1 may or may not have said. Still, the District providing counseling to Student and Student 1 and offered a restorative circle, though Student declined the latter and told school officials that she felt the issue had been resolved. The next day, however, Student confronted Student 1 about his alleged statements and the two began to fight.
- Student received a punishment for the fight harsher than Student 1, because she confronted Student 1 and threw the first punch. OCR agreed that the punishment was fair.
- In November 2021, Student 1 again made harassing comments directed at another student. The school attempted to convene a restorative justice circle and counseling for both students, but the target of harassment was not comfortable participating. One week later students started threatening and assaulting Student 1. His mother briefly removed him from school out of fear for his safety.
- In response to these escalating tensions, counselors in the District developed and implemented a series of trainings on racial and sexual harassment, bullying, and the role of bystanders.

Case Resolution

OCR found insufficient evidence to validate the allegations that the District violated Title VI regarding its response to a racial harassment report. “Under Title VI, OCR evaluates a recipient’s response to reports of race-based harassment to determine if steps taken were reasonable, timely, and effective to end the harassment. Here, in response to reports made by the Student about Student 1, School administrators interviewed sixteen students and three teachers, addressed the issues with Student 1 directly, developed and delivered training on racial harassment to all students, and initiated voluntary and non-exclusionary affinity groups so that students had a ‘safe space’ to discuss any issues of concern. Neither the Student nor the Complainant reported any further incidents. Based on this evidence, OCR found that the District’s response to the comments attributed to Student 1 were reasonable, timely, and effective to end any harassment based on race or national origin that occurred.”

Why a Harassment and Hostility Free Environment Matters

Beyond a school's legal obligation to provide a learning environment free from harassment and a hostile environment, compliance protects student well-being. For instance, a 2021 federal investigation found widespread racial harassment against Black and Asian American students over a five year period in a Utah school district.⁶⁶ Merely two weeks after this finding, a ten-year-old Black girl in that school district took her own life.⁶⁷ Her peers had regularly called her the N-word, told her she was smelly (a possible racial stereotype), and made fun of her disability.⁶⁸ Though her school was aware of this harassment and the harassment other Black and Asian American students regularly experienced, their response to the harassment was wholly inadequate.⁶⁹ Although this is just one tragic outcome resulting from unmitigated racial harassment, it serves as an important reminder regarding the far-reaching effect that harassment and a hostile environment can have in schools.

Research consistently shows that racial discrimination negatively impacts academic outcomes, including decreased motivation and lower grades.⁷⁰ A study conducted nearly twenty years before the Utah tragedy found that academically gifted Black students who had a prior negative experience attending a predominantly White school with a hostile environment chose to forego an opportunity to attend a predominantly White magnet school out of fear that they would again experience racial harassment and a sense of being unwelcome.⁷¹ Racial harassment may also lead to feelings of distress, anger, sadness, anxiety, and depression.⁷² Students may respond in turn by disidentifying with academic achievement, not participating in class, skipping school, or engaging in behavior that leads to increased disciplinary infractions.⁷³ Students' attitude toward and identification with education are intricately connected with academic outcomes; so, when students feel unwelcome, unsafe, or that their teachers do not believe in them, these negative outcomes increase.⁷⁴ While protective factors such as possessing a positive ethnic identity may allow students to succeed academically despite harassment or a hostile learning environment, the onus should not be on our nation's youth to overcome a discriminatory environment.⁷⁵ Rather, educational institutions must transform so that all students can enjoy a safe learning environment.⁷⁶

“In addition to the curriculum, students learn about many different aspects of human life and interaction from school. The type of environment that is tolerated or encouraged by or at a school can therefore send a particularly strong signal to, and serve as an influential lesson for, its students.”

In its longstanding guidance on racial harassment, OCR articulated its view on harassment's potential impact: “In addition to the curriculum, students learn about many different aspects of human life and interaction from school. The type of environment that is tolerated or encouraged by or at a school can therefore send a particularly strong signal to, and serve as an influential lesson for, its students.”⁷⁷ In 2023, Secretary Cardona shared the sentiments of a community member who told him, “Our students can't learn when they're afraid.”⁷⁸ He went on to instruct schools to, “be direct and unapologetic in condemning any hate in our schools and . . . do everything in our power to ensure every student is safe in their schools.”⁷⁹ Thus, not only do

schools risk losing their federal funding for failing to halt racial harassment or remedy a hostile environment, students suffer when their learning environment permits discrimination.

OCR’s Guidance for Remediating and Preventing Racial and National Origin Harassment and a Hostile Environment in Schools

As mentioned above, OCR measures the sufficiency of a school’s response to harassment or a hostile environment based on the timeliness, reasonableness, and effectiveness of the response, ensuring they address the specific issues in that matter.⁸⁰ The response must also “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” with policies in place that match the responsive actions.⁸¹ In its role as a technical assistance provider, OCR’s website offers guidance to education leaders on how to address harassment.⁸² This guidance includes the 1999, “Checklist for a Comprehensive Approach to Addressing Harassment,” that remains instructive for districts and schools today.⁸³ A copy of this checklist is included in Appendix A.

In addition to the checklist, OCR has published multiple *Dear Colleague* letters and fact sheets for schools that explain what does and does not constitute a civil rights violation and offer tips to prevent and remedy these matters.⁸⁴ Appendix B provides a sample of these guidance documents. OCR published a *Dear Colleague* letter on “Race and School Programming” in August 2023 that provided a comprehensive review of schools’ Title VI obligations paired with examples of how OCR would address possible race-related complaints.⁸⁵ In July 2024, OCR published a fact sheet titled, “Harassment based on Race, Color, or National Origin on School Campuses,” providing additional examples of what may or may not constitute racial harassment.⁸⁶ Below are two excerpts from these guidance documents.

OCR measures the sufficiency of a school’s response to harassment or a hostile environment based on the timeliness, reasonableness, and effectiveness of the response, ensuring it is tailored to the specific issues in that matter.

Table 3. Harassment Scenarios

Harassment based on Race, Color, or National Origin on School Campuses	
<p style="text-align: center;">Example 4</p> <p>Indian students at a middle school report being mocked for their accents or English language skills. Additionally, Indian students report that their names are ridiculed and intentionally mispronounced by students and staff. Students also call an Afghan student “evil” and tell him to “go back to his country.” Students report the incidents to administrators because they have started avoiding clubs and activities where they will encounter the offending students and staff. In response, the school’s principal investigates but only interviews one student involved. In morning announcements, the principal tells students to treat each other with kindness, but the students’ conduct continues.</p> <p>OCR would have reason to open an investigation based on this complaint. Because the complaint alleges specific facts that suggest that these students may have experienced a hostile environment based on their actual or perceived national origin, an investigation by OCR is warranted. OCR’s investigation would need to confirm that the statements directed at the students constituted harassing conduct that is subjectively and objectively offensive as well as so severe or pervasive that it limits or denies the students’ ability to participate in or benefit from the school’s education programs or activities. Additionally, if OCR’s investigation confirms that the school’s only response was to talk to one student and issue a morning announcement, and that the school failed to otherwise take prompt and effective steps reasonably calculated to (1) end the harassment, (2) eliminate any hostile environment and its effects, and (3) prevent the harassment from recurring, OCR could find a violation of Title VI.</p> <p><small>Off. for Civil Rights, U.S. Dep’t of Educ., Fact Sheet: Harassment based on Race, Color, or National Origin on School Campuses (2024)</small></p>	<p style="text-align: center;">Example 5</p> <p>In the wake of race-based violence on campus directed against Asian students, a college’s Asian American Student Alliance establishes recurring facilitated discussion groups for concerned students with a licensed counselor. The Asian American Student Alliance is a recognized student group that is open to all students. The events are advertised via flyers and on the campus intranet as a “safe space for students to discuss hate incidents against Asian students.” A white student files a complaint alleging that the college is promoting separation of students based on race by permitting the Asian American Student Alliance to establish recurring events for concerned students because all the students who participate are Asian.</p> <p>OCR may decline to open an investigation based on this complaint. The complaint does not allege that the college treated students differently or separated students based on race. Both the Asian American Student Alliance and the events are open to all students.</p> <p><small>“Dear Colleague” Letter, Race and School Programming, from Catherine E. Lhamon, Assistant Sec’y for Civil Rights, U.S. Dep’t of Educ. (Aug. 24, 2023), https://www.ed.gov/about/news/press-release/us-department-of-education-office-civil-rights-issues-resource-race-and</small></p>

These federal resources provide essential reminders for the entities ED funds.

It is important to remember that OCR does not necessarily penalize schools for instances of racial harassment itself. Rather, schools and school districts face scrutiny regarding their response to such acts.

School leaders that want step-by-step instructions on how to maintain schools that prevent and appropriately address harassment can request free individualized technical assistance through their regional Equity Assistance Center (EAC). EACs are education nonprofits that ED funds which offer support in the areas of equity, school reform, and civil rights compliance.⁸⁷ EACs can be helpful with creating, administering, and analyzing school climate surveys, leading focus groups, revising policies, and providing professional development to improve the school environment. Unfortunately, the need for this support can exceed an EAC’s capacity and this can limit how many schools they can serve and may impact the service quality. Districts may also contact OCR directly for technical assistance related to civil rights.⁸⁸

In addition to seeking technical support, school districts should turn to evidence-based best practices that research shows to be effective at preventing and remedying race, color, and national origin harassment and hostile environments. Part II of this report will provide evidence-based best practices that can be implemented at the local level to prevent and remedy racial harassment and hostile environments in schools.

Conclusion

Race, color, and national origin harassment frequently occurs in U.S. schools and continues to inflict harms on the students and communities that experience it. School districts that receive federal financial assistance must take steps to prevent and remedy such harassment or risk violating Title VI of the Civil Rights Act of 1964. The Education Rights Institute is committed to closing knowledge gaps between law, research, and practice. In our effort to support school districts, we are synthesizing and amplifying current legal obligations under Title VI to assist with preventing and remedying racial harassment and hostile environments in schools, which violate Title VI of the Civil Rights Act of 1964. In addition to providing evidence-based best practices in this report's forthcoming second part, ERI will produce a webinar on this topic that can serve as a useful resource for districts and schools that are dealing with racial and national origin harassment and a hostile environment.

Glossary

Discrimination: occurs when a person or group of people are unjustly or unfairly treated, often based on a characteristic outside of their control.

Hostile Environment: occurs when harassment has elevated to the point that a person can no longer participate in or benefit from the operations of the school.

Racial or National Origin Harassment: unwelcome conduct based on a student's actual or perceived race or national origin. Harassment "denies students the right to an education free from discrimination" and may negatively impact student outcomes, in addition to other harms.

Reasonable person standard: how a person with the same age and background would objectively respond to a situation.

Appendix A

Checklist for a Comprehensive Approach to Addressing Harassment

- Board members, district administrators, and the superintendent recognize the urgency of the problem of unlawful harassment and hate crime, identify people and agencies that can help them develop effective prevention and response strategies, and compile a library of useful materials
- School officials select personnel to work on creating an effective anti-harassment program in consultation with parents, students, and community groups
- Compliance coordinators are appointed and trained
- School personnel assess the school climate to determine the prevalence and types of harassment that may exist and the potential for hate-motivated violence
- School district adopts a written anti-harassment policy or reviews and revises existing policies for accuracy, clarity and legal compliance; the policy is clearly communicated to all members of the school community; and school personnel and students are held accountable for their actions
- School district develops a formal grievance procedure and takes steps to make sure it is working properly
- Instructional personnel use or supplement the district's curriculum and pedagogical strategies to foster respect and appreciation for diversity
- School sites institute, improve, or expand age appropriate student activities to prevent or reduce prejudice and conflict
- School district and individual school sites institute specific measures to respond immediately and effectively when harassment occurs to stop the harassment and prevent recurrence
- School officials flexibly apply response mechanisms to both the victim and the perpetrator, taking into account the parties' ages and the context of the behavior
- School personnel continually monitor the school climate and promptly address problems that could lead to harassment or violence or that indicate that harassment could be occurring
- Appropriate school officials become familiar with pertinent civil and criminal laws at the state, local, and federal levels, so that they are able to recognize possible civil rights violations, hate crimes and other criminal acts
- Schools develop guidelines and procedures for collaboration with law enforcement officials, make appropriate referrals to outside agencies, and designate liaison personnel
- Crisis intervention plans are in place to minimize the possibility of violence or disruption of the educational process
- District-level personnel and individual school sites form continuing partnerships with parents and the community to prevent hate crimes and harassing behaviors
- Staff training and professional development programs support the district's anti-harassment efforts
- All harassment incidents are carefully documented and incidents are reported to outside authorities as required
- District regularly assesses the effectiveness of its anti-harassment efforts

Source: Protecting Students from Harassment and Hate Crime, A Guide for Schools, January 1999

Appendix B

Selected Guidance on Racial Harassment and Hostile Environment from the U.S. Department of Education Office for Civil Rights:

- U.S. Department of Education Office for Civil Rights, [Fact Sheet: Harassment based on Race, Color, or National Origin on School Campuses](#) (July 2024).
- U.S. Department of Education Office for Civil Rights, [Dear Colleague Letter: Protecting Students from Discrimination, such as Harassment, Based on Race, Color, or National Origin, including Shared Ancestry or Ethnic Characteristics](#) (May 2024).
- U.S. Department of Education Office for Civil Rights, [Dear Colleague Letter: Addressing Discrimination Against Muslim, Arab, Sikh, South Asian, Hindu, and Palestinian Students](#) (March 2024).
- U.S. Department of Education Office for Civil Rights, [Dear Colleague Letter: Discrimination, including Harassment, Based on Shared Ancestry or Ethnic Characteristics](#) (November 2023).
- U.S. Department of Education Office for Civil Rights, [Race and School Programming Dear Colleague Letter](#) (August 2023).
- U.S. Department of Education Office for Civil Rights, [Addressing Discrimination Against Jewish Students Dear Colleague Letter](#) (May 2023).
- U.S. Department of Education Office for Civil Rights, [Fact Sheet: Protecting Students from Discrimination Based on Shared Ancestry or Ethnic Characteristics](#) (January 2023).
- U.S. Department of Education Office for Civil Rights, [Fact Sheet: Diversity & Inclusion Activities Under Title VI](#) (January 2023).
- U.S. Department of Education Office for Civil Rights, U.S. Department of Justice Civil Rights Division, White House Initiative on Asian Americans and Pacific Islanders, [Combating Discrimination Against Asian American, Native Hawaiian, and Pacific Islander \(AANHPI\) and Muslim, Arab, Sikh, and South Asian \(MASSA\) Students](#) (June 2016).
- U.S. Department of Education Office for Civil Rights, [Harassment and Bullying Dear Colleague Letter](#) (October 2010).

Endnotes

¹ Discrimination is defined as, “Unjust or prejudicial treatment of a person or group, esp. on the grounds of race, gender, sexual orientation, etc.” *Discrimination, n.*, OXFORD ENGLISH DICTIONARY, OXFORD UNIVERSITY PRESS, https://www.oed.com/dictionary/discrimination_n?tl=true&tab=meaning_and_use-paywall (last visited Sept. 2023). People may also face discrimination due to their color, ethnicity, national origin, socioeconomic status, age, and a host of other immutable characteristics.

² *Race, Color, or National Origin Discrimination: Frequently Asked Questions*, U.S. DEP’T OF EDUC. (May 11, 2023), <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/race-origin.html> (“Racial and national origin harassment is unwelcome conduct based on a student’s actual or perceived race or national origin.”); OFF. FOR CIVIL RIGHTS, U.S. DEP’T OF EDUC., FACT SHEET: HARASSMENT BASED ON RACE, COLOR, OR NATIONAL ORIGIN ON SCHOOL CAMPUSES (2024) [hereinafter FACT SHEET ON RACIAL HARASSMENT]; Settlement Agreement Between the United States of America and the Madison Cnty. Sch. Dist. (June 12, 2023), <https://www.justice.gov/opa/press-release/file/1587111/dl> [hereinafter Madison County Settlement Agreement] (“Racial harassment’ is unwelcome conduct based on a student’s race or color that may contain the use of derogatory language (including racial slurs or epithets or jokes) including images, graffiti, pictures, drawings, notes, electronic mail, social media or electronic postings, or phone messages. Racial harassment can also include intimidation, threats, unwanted physical contact, or physical violence. Racial harassment need not include intent to harm, be directed at a specific person, or involve repeated incidents.”).

³ Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d to 2000d-7.

⁴ 34 C.F.R. § 100.13(i).

⁵ Letter from Meena Morey Chandra, Director, Off. for Civil Rights, U.S. Dep’t of Educ., to Rick Todd, Superintendent, Pinckney Community Schs. (Apr. 21, 2015) (OCR Case No. 15-13-1083), <https://ocrcas.ed.gov/sites/default/files/ocr-letters-and-agreements/15131083-a.pdf>.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* See also KIMBERLY JENKINS ROBINSON & GEDÁ JONES HERBERT, EDUC. RTS. INST., PREVENTING AND REMEDYING RACE, COLOR, AND NATIONAL ORIGIN DISCRIMINATION IN SCHOOLS: A PRIMER ON TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 17-19, <https://www.law.virginia.edu/document/title-vi-primer/view> (describing the OCR investigation and resolution process).

¹¹ Resolution Agreement, Pinckney Community Schs. (Apr. 21, 2015) (OCR Case No. 15-13-1083), <https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/investigations/more/15131083-b.pdf>.

¹² *Id.*

¹³ Complaint & Demand for Jury Trial at 18, *Crowe v. Pinckney Cmty. Schs.*, No. 2:24-cv-11745 (E.D. Mich. Jul. 7, 2024); see also Sara Powers, *Lawsuit Alleges Black Students Were Racially Profiled, Called Slurs in Livingston County Schools*, CBS NEWS (July 16, 2024, 11:46 AM), <https://www.cbsnews.com/detroit/news/black-students-livingston-county-racial-discrimination-lawsuit/>.

¹⁴ Complaint & Demand for Jury Trial, *supra* note 13, at 6-9.

¹⁵ *Id.* at 9.

¹⁶ *Id.* 9-19.

¹⁷ *Id.* at 14-15; see also Powers, *supra* note 13.

¹⁸ Complaint & Demand for Jury Trial, *supra* note 13, at 15; see also Powers, *supra* note 13.

¹⁹ See, e.g., McKenna Harford, *Lawsuit Alleging Racial Discrimination in Douglas County Schools Goes Ahead*, DOUGLAS COUNTY NEWS-PRESS (Aug. 8, 2024), <https://coloradocommunitymedia.com/2024/08/08/lawsuit-alleging-racial-discrimination-in-douglas-county-schools-goes-ahead/> (explaining that a lawsuit against the Douglas County School District in Douglas, CO alleges Black and biracial students endured racial harassment such as discussions about bringing back the Holocaust and being called “cotton pickers”); *Stanford Health Care Worker Awarded \$10M in Racist Harassment Case*, CBS NEWS (June 25, 2024, 8:22 A.M.), <https://www.cbsnews.com/sanfrancisco/news/stanford-health-care-racist-harassment-lawsuit-worker-awarded-10m/> (explaining jury found employee had been subject to racial harassment, and that Stanford University leaders publicly defamed her after she filed a lawsuit claiming her coworkers mistreated Black

patients); Kimberlee Kruesi, *DOJ, Tennessee School Reach Settlement After Racial Harassment Investigation*, AP NEWS (June 11, 2024, 1:26 P.M.), <https://apnews.com/article/school-racial-harassment-tennessee-228e2d0907cc512e41c688790c46391c> (describing settlement agreement after school administrators allegedly showed deliberate indifference to multiple incidents of racial harassment, including students holding a mock “slave auction” in a school bathroom to “sell” a Black student to white classmates); Murry Lee, *DOJ: Settlement Reached with Hawkins County Schools in Racial Harassment Investigation*, WJHL (June 11, 2024, 11:36 AM), <https://www.wjhl.com/news/local/doj-settlement-reached-with-hawkins-county-schools-in-racial-harassment-investigation/> (explaining Hawkins County Schools in Hawkins, TN settled lawsuit filed by Department of Justice upon its finding that the district was “deliberately indifferent to known race-based harassment in its schools.”); Nicole Chavez, *Students Are Fed Up with Racist Slurs and Bullying. Now They’re Walking out of Class*, CNN (Dec. 5, 2021, 8:05 AM), <https://www.cnn.com/2021/12/05/us/racist-bullying-school-incidents/index.html> (explaining a Government Accountability Office report estimated that during the 2018-2019 school year, “there were 1.6 million students who were subjected to hate speech due to their identity. Among those incidents, half targeted students’ race and 24% related to their national origin.”); Isabel Wilkerson, *Racial Harassment Altering Blacks’ Choices on Colleges*, THE NEW YORK TIMES (May 9, 1990), <https://www.nytimes.com/1990/05/09/us/racial-harassment-altering-blacks-choices-on-colleges.html> (digitized version of article from The Times’s print archive).

²⁰ Racial Incidents and Harassment Against Students at Educational Institutions; Investigative Guidance, 59 Fed. Reg. 11,448, 11,449 (March 10, 1994) [hereinafter *Investigative Guidance on Racial Incidents and Harassment*].

²¹ OFF. FOR CIVIL RIGHTS, U.S. DEP’T OF EDUC., REPORT TO THE PRESIDENT AND SECRETARY OF EDUCATION UNDER SECTION 203(B)(1) OF THE DEPARTMENT OF EDUCATION ORGANIZATION ACT, FY 2023 (2024), <https://www2.ed.gov/about/reports/annual/ocr/report-to-president-and-secretary-of-education-2023.pdf> [hereinafter *OCR FISCAL YEAR 2023 REPORT*].

²² *Protecting Students: Race and National Origin Discrimination*, U.S. DEP’T OF EDUC.: OFF. FOR CIVIL RIGHTS (July 2, 2024), <https://www2.ed.gov/about/offices/list/ocr/frontpage/pro-students/issues/roi-issue06.html>.

²³ “Dear Colleague” Letter from Russlynn Ali, Assistant Secretary for Civil Rights, U.S. Dep’t of Educ. (Oct. 26, 2010), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf> (not to be relied on for Title IX purposes) (“[S]ome student misconduct that falls under a school’s anti-bullying policy also may trigger responsibilities under one or more of the federal antidiscrimination laws”) [hereinafter “Dear Colleague” Letter from Ali].

²⁴ *Investigative Guidance on Racial Incidents and Harassment*, 59 Fed. Reg. at 11,448.

²⁵ “Dear Colleague” Letter Harassment and Bullying (Oct. 26, 2010): Background, Summary, and Fast Facts, U.S. Dep’t of Educ.: Off. for Civil Rights, <https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/dcl-factsheet-201010.pdf>.

²⁶ Madison County Settlement Agreement, *supra* note 2 (“‘Hostile environment’ exists when harassment is objectively offensive and sufficiently serious that it interferes with or limits a student’s ability to participate in or benefit from the services, activities, or opportunities in the educational program.”).

²⁷ 34 C.F.R. § 100.3; *Race, Color, or National Origin Discrimination: Frequently Asked Questions*, U.S. DEP’T OF EDUC. (May 11, 2023), <https://perma.cc/PK42-RR7D> [hereinafter *FAQs on Racial Discrimination*]; see also *Protecting Students: Race and National Origin Discrimination*, *supra* note 22.

²⁸ 34 C.F.R. § 100.7(a)-(c).

²⁹ OFF. FOR CIVIL RIGHTS, U.S. DEP’T OF EDUC., CASE PROCESSING MANUAL (CPM) 16-18, 20-21 (2022), <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

³⁰ *Id.* at 23-24.

³¹ *Id.*

³² CIVIL RIGHTS DIV., U.S. DEP’T OF JUST., TITLE VI LEGAL MANUAL § 9 (2021), <https://www.justice.gov/crt/book/file/1364106/dl?inline> [hereinafter *TITLE VI LEGAL MANUAL*].

³³ KIMBERLY JENKINS ROBINSON & GEDÁ JONES HERBERT, EDUC. RTS. INST., PREVENTING AND REMEDYING RACE, COLOR, AND NATIONAL ORIGIN DISCRIMINATION IN SCHOOLS: A PRIMER ON TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, <https://www.law.virginia.edu/document/title-vi-primer/view>.

³⁴ FACT SHEET ON RACIAL HARASSMENT, *supra* note 2.

³⁵ *FAQs on Racial Discrimination*, *supra* note 27; see also FACT SHEET ON RACIAL HARASSMENT, *supra* note 2.

- ³⁶ FAQs on Racial Discrimination, *supra* note 27 (“Although none of the laws OCR enforces expressly address religious discrimination, OCR can investigate complaints that students were subjected to ethnic or ancestral slurs.”); see also “Dear Colleague” Letter, Title VI and Shared Ancestry or Ethnic Characteristics Discrimination from Catherine E. Lhamon, Assistant Sec’y for Civil Rights, U.S. Dep’t of Educ. (May 7, 2024), <https://www.whitehouse.gov/wp-content/uploads/2024/05/colleague-202405-shared-ancestry.pdf>.
- ³⁷ Letter from Daniel Contreras, Supervisory Team Leader, Off. for Civil Rights, U.S. Dep’t of Educ., to Jason Reynolds, Superintendent, Peoria Unified Sch. Dist. (Sept. 30, 2022) (OCR Case No. 08-221273), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/08221273-a.pdf>.
- ³⁸ “Dear Colleague” Letter from Ali, *supra* note 23; Madison County Settlement Agreement, *supra* note 2.
- ³⁹ FACT SHEET ON RACIAL HARASSMENT, *supra* note 2; Letter from Daniel Contreras to Jason Reynolds, *supra* note 37.
- ⁴⁰ FAQs on Racial Discrimination, *supra* note 27.
- ⁴¹ Racial Incidents and Harassment Against Students at Educational Institutions: Investigative Guidance, 59 Fed. Reg. 11,448, 11,449-50 (March 10, 1994).
- ⁴² Baltimore & O.R. Co. v. Griffith, 159 U.S. 603, 611 (1895) (defining the reasonable man standard which is now the reasonable person standard: “The policy of the law has relegated the determination of such questions to the jury, under proper instructions from the court. It is their province to note the special circumstances and surroundings of each particular case, and then say whether the conduct of the parties in that case was such as would be expected of reasonable, prudent men, under a similar state of affairs.”).
- ⁴³ Investigative Guidance on Racial Incidents and Harassment, 59 Fed. Reg. at 11,449-50, 11,452.
- ⁴⁴ *Id.* at 11,449.
- ⁴⁵ *Id.*
- ⁴⁶ FAQs on Racial Discrimination, *supra* note 27.
- ⁴⁷ *Id.*
- ⁴⁸ *Id.*
- ⁴⁹ *Id.*
- ⁵⁰ KIMBERLY JENKINS ROBINSON, SARAH BEACH, & HELEN MIN, EDUC. RTS. INST., A PRIMER ON OPPORTUNITY GAPS, ACHIEVEMENT GAPS, AND THE PURSUIT OF A HIGH-QUALITY EDUCATION 11-14 (2024), https://www.law.virginia.edu/sites/default/files/documents/primer-march4-2024_1.pdf (“[Civic engagement] requires students to be able to critically consume knowledge and determine how to communicate what they have learned with others who hold diverse perspectives. Schools are a central avenue to foster this commitment[.]”).
- ⁵¹ Rene Marsh & Katie Lobosco, *Exclusive: Education Secretary Says Federal Funds Are at Stake if Schools Fail to Combat Antisemitism and Islamophobia*, CNN (Nov. 7, 2023, 7:00 A.M.), <https://www.cnn.com/2023/11/07/politics/cardona-antisemitism-schools-funding/index.html>.
- ⁵² Letter from Jana L. Erickson, Program Manager, Off. for Civil Rights, U.S. Dep’t of Educ., to Jeff Bearden, Superintendent, Forsyth Cnty. Schs. (May 19, 2023) (OCR Case No. 04-2-1281), <https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/investigations/more/04221281-a.pdf>; Letter from Dawn R. Matthias, Team Leader, Off. for Civil Rights, U.S. Dep’t of Educ., to Rob Wright, Superintendent, Anna-Jonesboro Cmty. High Sch. Dist. (Dec. 15, 2021) (OCR Case No. 05-21-1298), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/05211298-a.pdf>.
- ⁵³ Letter from Jana L. Erickson to Jeff Bearden, *supra* note 52; “Dear Colleague” Letter, Race and School Programming, from Catherine E. Lhamon, Assistant Sec’y for Civil Rights, U.S. Dep’t of Educ. (Aug. 24, 2023), <https://www.ed.gov/about/news/press-release/us-department-of-educations-office-civil-rights-issues-resource-race-and>.
- ⁵⁴ “Dear Colleague” Letter, Title VI and Shared Ancestry or Ethnic Characteristics Discrimination from Catherine E. Lhamon, Assistant Sec’y for Civil Rights, U.S. Dep’t of Educ. (May 7, 2024), <https://www.whitehouse.gov/wp-content/uploads/2024/05/colleague-202405-shared-ancestry.pdf>.
- ⁵⁵ FACT SHEET ON RACIAL HARASSMENT, *supra* note 2.
- ⁵⁶ Letter from Jana L. Erickson, to Jeff Bearden, *supra* note 52.
- ⁵⁷ FACT SHEET ON RACIAL HARASSMENT, *supra* note 2 (citing Racial Incidents and Harassment against Students at Educational Institutions: Investigative Guidance, 59 Fed. Reg. 11,448, 11,449 (Mar. 10, 1994)) (citing OCR’s Guidance on Schools’ Obligations to Protect Students from Student-on-Student Harassment on Basis of Sex;

Race, Color and National Origin; and Disability at 2, 4, 6 (Oct. 2010)) (citing OCR’s Dear Colleague Letter on Race and School Programming (Aug. 2023)).

⁵⁸ FACT SHEET ON RACIAL HARASSMENT, *supra* note 2; see also Letter from Jana L. Erickson, to Jeff Bearden, *supra* note 52 (“To establish a violation of Title VI under the hostile environment theory, OCR must find that: (1) a hostile environment based on race, color, or national origin existed; (2) the recipient had actual or constructive notice of a hostile environment based on race, color, or national origin; and (3) the recipient failed to respond adequately to redress the hostile environment based on race, color, or national origin.”).

⁵⁹ Letter from Jana L. Erickson, to Jeff Bearden, *supra* note 52; Letter from J. Aaron Romine, Regional Director, Off. for Civil Rights, U.S. Dep’t of Educ. to Jill Gildea, Superintendent, Park City Sch. Dist. (Mar. 20, 2024), <https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/investigations/more/08231193-a.pdf>.

⁶⁰ Letter from Jana L. Erickson, to Jeff Bearden, *supra* note 52; Letter from Dawn R. Matthias, Team Leader, Off. for Civil Rights, U.S. Dep’t of Educ. to Rob Wright, Superintendent, Anna-Jonesboro Cmty. High Sch. Dist. (Dec. 15, 2021), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/05211298-a.pdf>.

⁶¹ Letter from J. Aaron Romine to Jill Gildea, *supra* note 59.

⁶² “Dear Colleague” Letter, Race and School Programming, *supra* note 53.

⁶³ *Id.*

⁶⁴ See Paul P. Murphy, *Homework Assignment Asks Students to List Positive Aspects of Slavery*, CNN (Apr. 20, 2018, 9:44 P.M.), <https://www.cnn.com/2018/04/20/us/homework-assignment-slavery-trnd/index.html>.

⁶⁵ “Dear Colleague” Letter, Race and School Programming, *supra* note 53.

⁶⁶ The Associated Press, *A Woman Hired to Investigate Racial Harassment in a Utah School District Says She Experienced It Herself*, NBC NEWS (Jan. 12, 2024, 12:10 P.M.), <https://www.nbcnews.com/news/nbcblk/woman-hired-investigate-racial-harassment-utah-school-district-says-ex-rcna133691>; The Associated Press, *Black Family Mourns 10-Year-Old Girl Who Died by Suicide*, NBC NEWS (Nov. 11, 2021, 12:34 P.M.), <https://www.nbcnews.com/news/nbcblk/family-mourns-black-10-year-old-daughter-died-suicide-rcna5255>.

⁶⁷ *Woman Hired to Investigate Racial Harassment*, *supra* note 66; *Black Family Mourns*, *supra* note 66.

⁶⁸ *Woman Hired to Investigate Racial Harassment*, *supra* note 66.

⁶⁹ *Id.*

⁷⁰ Alison L. Mroczkowski & Bernadette Sánchez, *The Role of Racial Discrimination in the Economic Value of Education Among Urban, Low-Income Latina/o Youth: Ethnic Identity and Gender as Moderators*, 56 AM. J. CMTY. PSYCH. 1, 2 (2015) (“The experience of racial discrimination is associated with negative academic outcomes, such as decreased academic motivation, decreased achievement motivation, and lower grade point average.”) (internal citations omitted); Elan C. Hope, Alexandra B. Skoog, & Robert J. Jagers, “*It’ll Never Be the White Kids, It’ll Always Be Us*”: *Black High School Students’ Evolving Critical Analysis of Racial Discrimination and Inequity in Schools*, 30(1) J. OF ADOLESCENT RSCH. 83, 85 (2014) (“Experiencing discrimination has been shown to have a range of deleterious effects on Black youth. This includes undermining academic achievement and psychological adjustment”); Christy Lleras, *Hostile School Climates: Explaining Differential Risk of Student Exposure to Disruptive Learning Environments in High School*, 7(3) J. OF SCH. VIOLENCE 105, 106 (2008) (“More specifically, a hostile school climate is defined as one in which students experience disruptive, physically and/or psychologically abusive situations that may directly or indirectly interfere with or draw attention away from the learning environment, resulting in a school climate that can negatively affect student engagement and performance in school.”).

⁷¹ Deborah A. Harmon, *They Won’t Teach Me: The Voices of Gifted African American Inner-City Students*, 24 ROPER REV. 68 (2001).

⁷² Dawn X. Henderson, et al., *A Phenomenological Study of Racial Harassment in School and Emotional Effects Among the Retrospective Accounts of Older Black Adolescents*, 52 THE URB. REV. 458, 459 (2020); Aryn M. Dotterer, Susan M. McHale & Ann C. Crouter, *Sociocultural Factors and School Engagement Among African American Youth: The Roles of Racial Discrimination, Racial Socialization, and Ethnic Identity*, 13(2) APPLIED DEV. SCIENCE 61, 63 (2009) (“For example, racial discrimination has been linked to depressive symptoms in African American youth (Simons, Murry, McLoyd, Cutrona, & Conger, 2002). Examining psychological adjustment in African American college students, Fischer and Shaw (1999) found that reports of racist events were related to poorer mental health, particularly among those with less racial socialization experience.”).

⁷³ Lleras, *supra* note 70; Hope, Skoog & Jagers, *supra* note 70, at 85 (discussing the increase in problematic

behavior as a result of discrimination).

⁷⁴ Mroczkowski & Sanchez, *supra* note 70 at 2 (“These attitudes toward education are important to examine because they have been found to be related to GPA, attendance, and discipline referrals.”) (internal citations omitted).

⁷⁵ *Id.* (“Although racial discrimination is associated with several negative academic outcomes, not all Latina/o students who experience racial discrimination do poorly in school. It is likely that those students who experience racial discrimination and succeed academically experience one or more protective factors that help attenuate the negative effects of racial discrimination. In order to prevent Latina/o students from failing academically, it is important to identify protective factors that buffer the negative effects of racial discrimination on academic outcomes. One such protective factor is ethnic identity.”).

⁷⁶ PAUL GORSKI & KATY SWALWELL, *FIX INJUSTICE, NOT KIDS* (2023).

⁷⁷ Racial Incidents and Harassment Against Students at Educational Institutions; Investigative Guidance, 59 Fed. Reg. 11,448, 11,449 (March 10, 1994).

⁷⁸ Miguel Cardona, Sec’y of Educ., Remarks at the Leading Safe, Inclusive, and Non-Discriminatory Learning Environments Webinar (Dec. 15, 2023).

⁷⁹ *Id.*

⁸⁰ Investigative Guidance on Racial Incidents and Harassment, 59 Fed. Reg. at 11,450.

⁸¹ *Id.*

⁸² *Harassment, Bullying, and Retaliation*, U.S. DEP’T OF EDUC. (Sept. 23, 2024), <https://www.ed.gov/laws-and-policy/civil-rights-laws/harassment-bullying-and-retaliation>.

⁸³ *Checklist for a Comprehensive Approach to Addressing Harassment*, OFFICE FOR CIVIL RIGHTS, U.S. DEP’T OF EDUC. (Oct. 15, 2015), <https://www2.ed.gov/about/offices/list/ocr/checklist.html>.

⁸⁴ See, e.g., “Dear Colleague” Letter, Race and School Programming from Lhamon, *supra* note 53.

⁸⁵ *Id.*

⁸⁶ FACT SHEET ON RACIAL HARASSMENT, *supra* note 2.

⁸⁷ *Training and Advisory Services—Equity Assistance Centers*, U.S. DEP’T OF EDUC. (Sept. 20, 2024), <https://oese.ed.gov/offices/office-of-formula-grants/program-and-grantee-support-services/training-and-advisory-services-equity-assistance-centers/>.


⁸⁸ *Contact OCR*, OFF. FOR CIVIL RIGHTS, U.S. DEP’T OF EDUC., https://ocras.ed.gov/contact-ocr?field_state_value=.



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