



Northern  
California

October 24, 2018

**SENT VIA U.S. MAIL AND EMAIL**

Office for Civil Rights-San Francisco Office  
United States Department of Education  
Regional Manager  
c/o Michael Leoz  
50 Beale Street, Suite 7200  
San Francisco, CA 94105  
ocr.sanfrancisco@ed.gov

**ADMINISTRATIVE COMPLAINT**

**COMPLAINANTS**

B.S., J.H., K.C., J.C. and K.B.  
on behalf of themselves and other Black students in Visalia Unified School District

**COMPLAINANTS' COUNSEL**

Abre' Conner  
American Civil Liberties Union Foundation of Northern California  
500 Capitol Mall  
Sacramento, CA 95814  
aconner@aclunc.org  
(916) 824-3269

**RESPONDENT**

Visalia Unified School District  
5000 W Cypress Avenue  
Visalia, CA 93277

## TABLE OF CONTENTS

PRELIMINARY STATEMENT.....	3
JURISDICTION .....	4
PARTIES .....	4
LEGAL STANDARD .....	4
FACTUAL ALLEGATIONS .....	6
A. Excessive and Disparate Discipline of Black Students Directly Reflect Discriminatory Intent.....	6
B. Anecdotal Evidence of Racially Hostile Environment .....	10
1. Complainant B.S.....	10
2. Complainant J.H.....	12
3. Complainant K.C.....	13
4. Complainant J.C.....	13
5. Complainant K.B.....	14
6. Witness M.A .....	14
7. Witness M.L.....	15
8. Witness Y.S.....	15
9. Witness B.L.....	15
10. Witness L.C.....	15
C. The District has continuously heard from students and community groups that they need to address racial hostility.....	15
D. The ACLU-NC has intervened in the past due to the District’s racially hostile environment for Black students.....	16
E. The District’s policies and practices demonstrate that the District does not enforce its non-discrimination policies and procedures equally for Black students.....	17
REMEDIES.....	18
A. Collaboration of Stakeholders.....	18
B. Complaint Process.....	18

C. Professional Development .....	19
D. School Climate .....	19
E. Data Collection and Record Keeping .....	20
F. Monitoring .....	20
CONCLUSION .....	22

## PRELIMINARY STATEMENT

1. This complaint is filed by the American Civil Liberties Union Foundation of Northern California (“ACLU”) on behalf of five named Visalia Unified School District (“District”) Black students and all similarly situated Black students in the school district. The named District students referenced above (collectively, “Complainants”) bring this complaint against the District, located in Tulare County, California, in the Central Valley of the state. Complainants challenge the following discriminatory policies and practices by the District:
  - a. Perpetuating a high discipline rate for Black students. The District came under fire in 2010 for disparately disciplining Black students. Years later, Black students are still disciplined more frequently than any other student group based on race, even though they make up a small portion of the student population. The District enrolls 28,932 students, with Black students making up less than two percent of the population. Nevertheless, all suspension rates illustrate that Black students make up more than double their enrollment rate for in-school and out of school suspension rates. Thus, Black students are disciplined at disproportionately high rates.<sup>1</sup>
  - b. Actively enabling a racially hostile environment for Black students. Black students, as outlined below, are continuously subjected to racial epithets by students and inflammatory statements by teachers. White students and teachers have brought confederate flags to campuses that make Black students feel uncomfortable. Despite complaints to teachers and Administrators, the District has not intervened to address the pervasive racially hostile environment.<sup>2</sup>
2. While the District has a policy on diversity and non-discrimination in schools, the District does not implement this policy equally for Black students. Many Black students expressed frustration and hopelessness in expecting teachers and other administrators to address racial hostility in the District.
3. The District’s policies and practices, set out in more detail below, violate Title VI of the Civil Rights Act of 1964 (“Title VI”) and the District’s board policies and regulations.
4. Complainants request that the U.S. Department of Education Office of Civil Rights (“OCR”) investigate the District’s policies and practices regarding racial hostility towards Black students as well as the disproportionate discipline rates for Black students and that

---

<sup>1</sup> In addressing the District’s discipline disparities, this Complaint relies on three main sources of information. The OCR’s collection of suspension data through its Civil Rights Data Collection (“CRDC”) is the main source of discipline information in this Complaint. These data are sortable by race for out-of-school suspensions during the 2013 through 2015 academic years. Complainants also rely on the District’s online publication of a portion of its disciplinary codes, statistical analyses of records obtained by the ACLU pursuant to a Public Record Act request, and anecdotal evidence that the District continues to impose suspensions on Black students frequently and for minor infractions.

<sup>2</sup> In addressing the District’s racially hostile environment, this Complaint relies on three main sources of information. First, the Complaint relies on discipline and demographic data, school board meeting minutes, and letters and public comments to the District requesting the District to create tangible change for Black students. Second, the Complaint relies on anecdotal evidence from students and teachers. Lastly, the Complaint relies on the District’s policies and procedures and other documents obtained by the ACLU in response to its Public Records Act request to the District regarding how the District is mandated to respond to racism and discrimination across the District as well as how the District is aware of its racially hostile environment.

it take all steps necessary to ensure that the District comply with its obligations under federal law.

## **JURISDICTION**

5. The District is a public-school division and local education agency in the State of California. As a public entity that receives federal funding from the U.S. Department of Education, the District is subject to all non-discrimination laws enforced by OCR. The harms to Black students of the District's discipline policies and practices is ongoing.

## **PARTIES<sup>3</sup>**

6. Complainant B.S. attended the District through 2018 and alleges that the District has created a hostile environment for herself and other Black students. B.S. has continued to raise these instances with the District, to no avail.
7. Complainant J.H. attends the District and alleges that students and administration create a racially hostile environment for him and other Black students. He has given up hope that the District will address racially charged statements that are made regarding Black students.
8. Complainant K.C. is a Black student who attends the District and feels that racial hostility against Black students is often overlooked, based on his personal experiences and what other students tell him. He recognizes that the District must do more to address racial hostility against Black students.
9. Complainant J.C. is a Black student who attends the District and perceives that based on how the District has responded to claims of racial hostility, the District does not actively try to deter racial hostility against Black students; nor does the District address blatant racism against Black students.
10. Complainant K.B. is a Black student in the District and observes there are few, if any, safe spaces for Black students at her school. She notices that the District creates this unwelcoming environment for Black students.
11. Respondent District serves approximately 28,932 students and comprises 27 elementary schools, 5 middle schools, 6 comprehensive high schools and 6 specialty schools. According to data from the 2016-2017 school year, over 65% of students in the District receive free or reduced lunch. Almost 15% are classified as English learners.

## **LEGAL STANDARD**

12. Title VI prohibits recipients of federal financial assistance ("Recipients") from discriminating based on race, color, or national origin.<sup>4</sup> Specifically, Title VI prohibits a Recipient from discriminating against a protected group either through disparate treatment of that group or through practices or policies that have a disparate impact on that group.<sup>5</sup>

---

<sup>3</sup> Because this will be a public-facing document, the students' names have been redacted. They can be made available to OCR's investigating attorneys.

<sup>4</sup> 42 U.S.C. § 2000d (2013).

<sup>5</sup> 34 C.F.R. § 100.3(b)(1)-(2) (2013). The regulations promulgated by the U.S. Department of Education to implement Title VI prohibit a Recipient of federal funds from "utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin." 34 C.F.R. § 100.3(b)(2).

13. Title VI requires educational agencies to operate in a non-discriminatory manner in “admissions, recruitment, financial aid, academic programs, student treatment and services, counseling and guidance, discipline, classroom assignment, grading, vocational education, recreation, physical education, athletics, housing and employment.”<sup>6</sup> To enforce Title VI, OCR may investigate and bring actions against a Recipient that discriminates on the basis of race and color.
14. For claims of racial harassment, OCR evaluates the unique setting of the educational institution. Indeed, the racially hostile environment can be targeted at anyone, not just the complainant. Thus, witnesses of a racially hostile environment can establish the necessary evidence for OCR to determine there is a racially hostile school environment.<sup>7</sup>
15. Under Title VI, courts analyze disparate treatment discrimination similarly to intentional discrimination under the Equal Protection Clause of the Fourteenth Amendment.<sup>8</sup> Proving disparate treatment requires evidence that a Recipient was motivated, at least partially, by discriminatory intent.<sup>9</sup> Discriminatory intent can be proven through either direct or circumstantial evidence.<sup>10</sup>
16. Circumstantial evidence of discriminatory intent includes such factors as:<sup>11</sup>
  - substantial disparate impact to a protected group;
  - a history of discriminatory official actions against a protected group;
  - procedural and substantive departures from the norms generally followed by the decision-maker;
  - discriminatory statements in the administrative history of the decision;<sup>12</sup> and
  - deliberate indifference to known discrimination.<sup>13</sup>

---

<sup>6</sup> “EDUCATION AND TITLE VI OF THE CIVIL RIGHTS ACT OF 1964” US Department of Education, *available at* <https://www2.ed.gov/about/offices/list/ocr/docs/hq43e4.html>.

<sup>7</sup> U.S. Department of Education Office of Civil Rights Guidance on “Racial Incidents and Harassment Against Students” (1994), *available at* <https://www2.ed.gov/about/offices/list/ocr/docs/race394.html> (“Finally, racial acts need not be targeted at the complainant in order to create a racially hostile environment. The acts may be directed at anyone. The harassment need not be based on the ground of the victim's or complainant's race, so long as it is racially motivated (e.g., it might be based on the race of a friend or associate of the victim). Additionally, the harassment need not result in tangible injury or detriment to the victims of the harassment.”).

<sup>8</sup> *Elston v. Talladega County Bd. of Educ.*, 997 F.2d 1394, 1405 n.11 (11th Cir. 1993).

<sup>9</sup> *Id.* at 1406.

<sup>10</sup> *See, e.g., Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 426 U.S. 252, 265-69 (1977) (holding that discriminatory intent may be found “even where the record contains no direct evidence of bad faith, ill will or any evil motive on the part of public officials”).

<sup>11</sup> *See Arce v. Douglas*, 793 F.3d 968, 977-8 (9th Cir. 2015) (explaining that factors as outlined in *Arlington Heights* are not exhaustive and courts can consider other types of circumstantial evidence in evaluating discriminatory intent); *see also Pac. Shores Props., LLC v. City of Newport Beach*, 730 F.3d 1142, 1158 (9th Cir. 2013).

<sup>12</sup> *Williams v. City of Dothan, Ala.*, 745 F.2d 1406, 1414 (11th Cir. 1984); *Arlington Heights, supra*.

<sup>13</sup> *Gant v. Wallingford Bd. of Educ.*, 195 F.3d 134, 137-38 (2d Cir. 1999) (defining deliberate indifference as circumstantial evidence permitting an inference of intentional race discrimination); *Garcia v. Clovis Unified Sch. Dist.*, 627 F. Supp. 2d 1187, 1196 (E.D. Cal. 2009) (“Courts have indicated that continuing to utilize the same response after it has been shown to be ineffective, or not responding at all, or utilizing a “minimalist response” may demonstrate ‘deliberate indifference’”); *see also Zenon v. Pine Plains Cent. Sch. Dist.*, 702 F.3d 655, 667 (2d Cir. 2012) (holding that calling a student the “n” word consistently goes beyond “simple acts of teasing and name-calling among school children” within context was direct evidence of intentional discrimination. Indeed, consistent racial epithets can be the basis of depriving a Black student “of a supportive, scholastic environment free of racism and harassment” which is an educational benefit).

17. Direct evidence is a statement that directly leads to an adverse result for an individual and differential treatment. Racial slurs, such as the “n” word, or the use of racially inflammatory symbols are direct evidence for intentional discrimination.<sup>14</sup>

## FACTUAL ALLEGATIONS

### *General allegations*

18. In violation of Title VI, the District discriminates against Black students by treating them differently based on their race.
19. The District has notice of disparate discipline and the racially hostile environment that is created for Black students across the District.
20. The District continues to disparately discipline Black students and regularly fails to adequately redress the racially hostile environment created for Black students.

### ***A. Excessive and Disparate Discipline of Black Students Directly Reflect Discriminatory Intent***<sup>15</sup>

21. The District has a policy that “Staff who receive notice of hate-motivated behavior or personally observe such behavior shall notify the principal, Superintendent or designee, and law enforcement, as appropriate. Students demonstrating hate-motivated behavior shall be subject to discipline in accordance with board policy and administrative regulation.”<sup>16</sup> The District does not discipline white students who regularly harass Black students, which departs from District policy. However, Black students are regularly disciplined for making verbal statements and/or defending themselves after being subjected to racially-motivated harassment.
22. Though the board is required to annually assess disparate discipline under its policies, the District continues to disparately discipline Black students.<sup>17</sup>
23. Complainant B.S. is a Black bi-racial female past student at El Diamante High School through 2018 and was enrolled in District schools since kindergarten. B.S. has faced racial discrimination during her entire time in the District. Complainant B.S. recounts that during her freshman year (2014-2015), another Black student was disciplined because he felt uncomfortable being in a classroom with another white student who wore a confederate flag belt. The other Black student was uncomfortable due to the history of the confederacy. That Black student feared for his safety in that classroom, after the white student called the Black student the “n” word during class that day. During this same interaction, the white student became aggressive towards the Black student. Although the District has an affirmative obligation to combat racism under the California Education Code and the board policies, the District administrator did not discipline the white student when the white student called the Black student the “n” word. The District waited until

---

<sup>14</sup> *Epileptic Found. v. City and County of Maui*, 300 F. Supp. 2d 1003, 1013-14 (D. Haw. 2004).

<sup>15</sup> Additional graphs outline the disparate discipline rates are included as exhibits.

<sup>16</sup> See Exh. A.

<sup>17</sup> See Exh. B. (according to the District board policies, “At the end of each school year, the Superintendent or designee shall present a report to the Board regarding the use of suspension and/or expulsion in district schools. The report shall include, but is not limited to, outcome data which the district is required by law to collect and data related to the effect of suspension and/or expulsion on the district's minority student populations or groupings”).

that Black student retaliated and disciplined the Black and white students as though they equally contributed to the racially hostile environment.

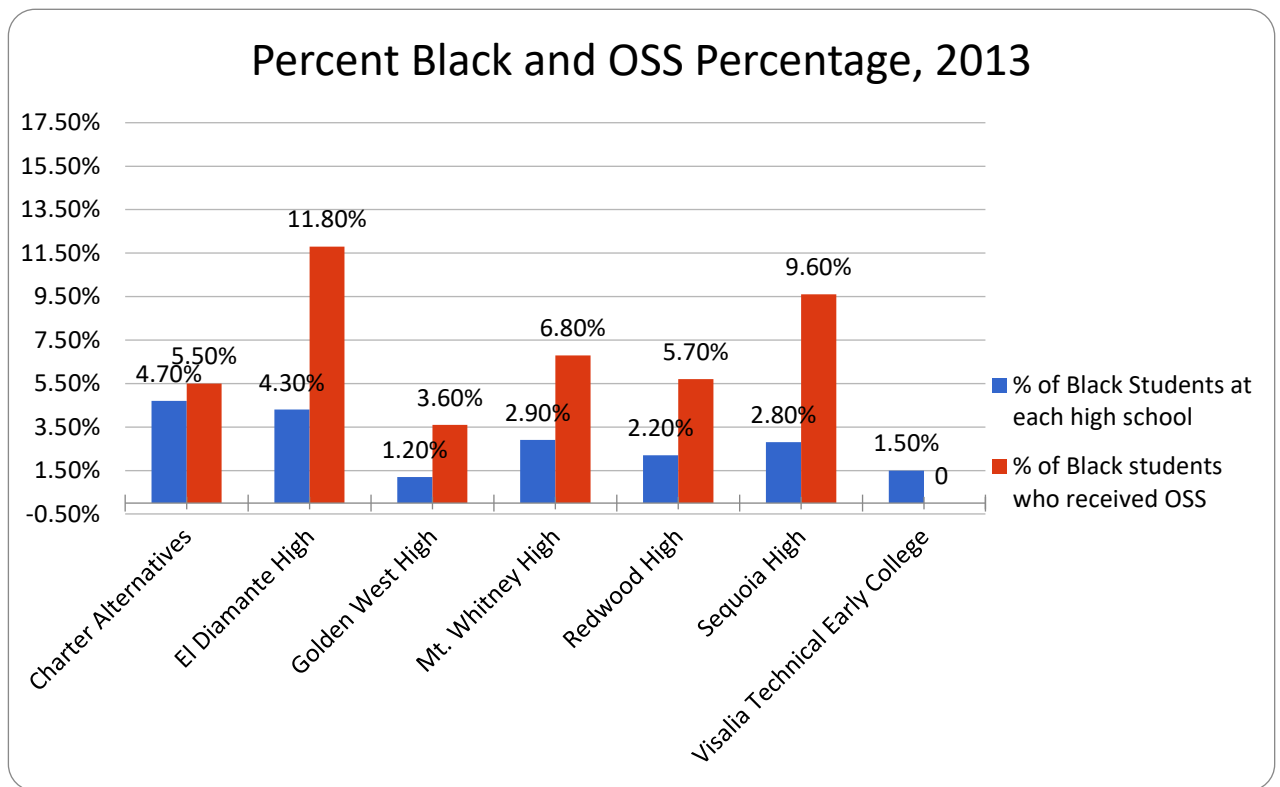
24. Complainant K.C. is a Black senior at Redwood High School. Other students treat K.C. differently due to his race as a Black student. Even though his teachers are aware that he is treated differently by other non-Black students, his teachers do not discipline white students for creating a racially hostile environment for him, in violation of school board policies and the California Education Code to actively combat racism and bullying. He has also witnessed that Black students are regularly disciplined when teachers believe Black students have broken school policies. Additionally, white students direct the “n” word and other racial epithets towards him in an offensive way, making him feel unsafe at the school. Specifically, a white male classmate often calls him the “n” word and this makes K.C. feel uncomfortable in those environments at the District. The white student is not disciplined for bullying K.C., although teachers are often in the classroom, which departs from the clear District policy against bullying and harassment. This white student’s actions actively add to a racially hostile environment for K.C. and other Black students. Other students hear this white student repeatedly call K.C. the “n” word and witness that no discipline comes of bullying when it is directed towards K.C. K.C. also expressed that, currently, when he speaks up in class, some white students tell him to “shut [his] Black a\*\* up.” This has happened while a District teacher is in the classroom and the classroom witnesses that white students are not disciplined for bullying K.C. K.C. does not want to be an active participant in some teacher-led classroom discussions based on these interactions.
25. The District departed from its standard discipline policies in responding to an incident in which Complainant J.H. was racially harassed by another student. The District’s standard bullying policy is to discipline a student who racially harasses another student. However, in this situation, like many other times when Black students have reported racial harassment, the District shirked any responsibility to respond to blatant racial harassment. During J.H.’s sophomore year (around May 2017), he was sitting at a table during lunch when F.P, a white special education student, told J.H. to move. When J.H. refused, F.P. was angered and repeatedly used the “n” word to address J.H. J.H. asked F.P. to stop several times, but F.P. continued to use the racial slur. J.H. reacted by physically touching F.P. out of anger in the moment because F.P. made him uncomfortable. Although an administrator, Mr. Lor, immediately got involved once F.P was touched by J.H., J.H. was taken into the office. J.H. then reported what had happened. J.H. was given after-school detention as a result and he does not know if F.P was reprimanded. This remedy also broke school policy as J.H. was supposed to be informed of a resolution regarding racial harassment and bullying under District policies.<sup>18</sup>
26. In the District, Black children are disciplined at rates that are nearly double their percentage of the student population. This trend does not exist for non-Black students in the District.

---

<sup>18</sup> See Exh. C. (Unlawful discrimination and/or harassment “shall be investigated and prompt action taken to stop the discrimination, prevent recurrence, and address any continuing effect on students”).



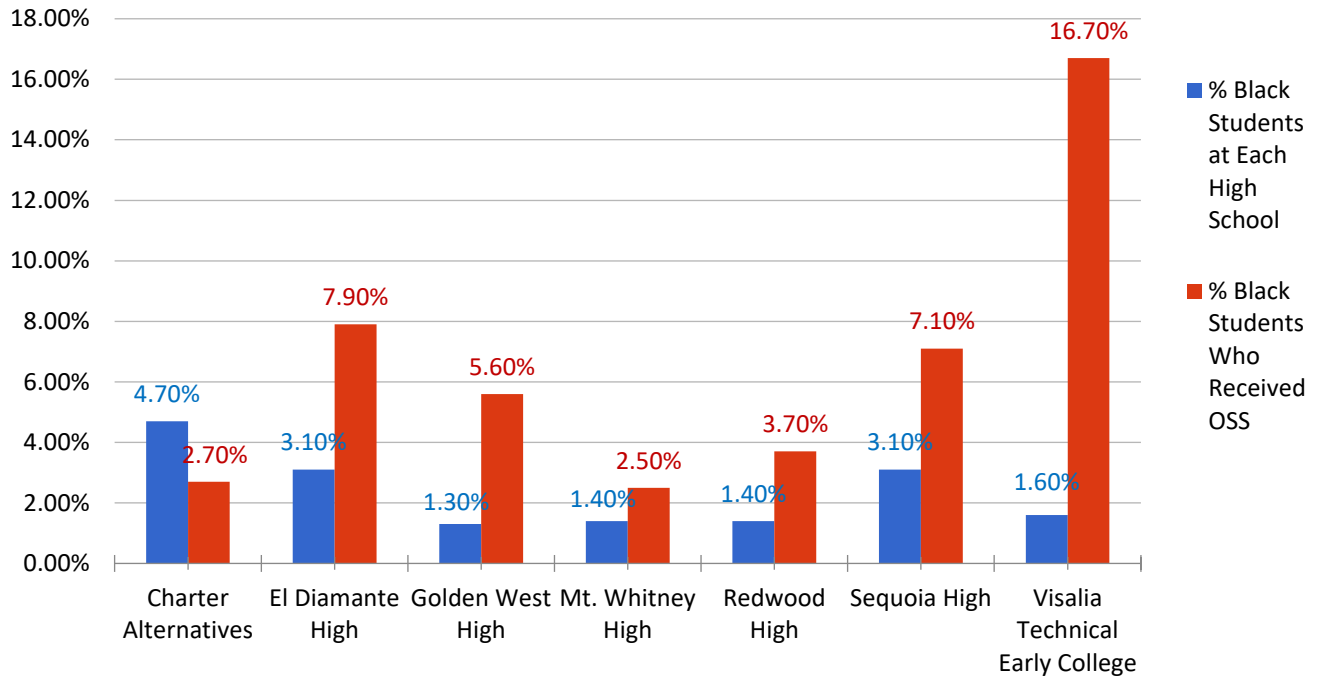
27. In 2015, Black students made up 1.6% of total enrollment in the District,<sup>19</sup> but received 3.9% of all In-School-Suspensions, 5.6% of all Out-of-School-Suspensions, 6.6% of all Expulsions, and 10.5% of all referrals to law enforcement. 83.3% of Black male IDEA students received Out-of-School Suspensions. 13.2% of Black non-IDEA males and 9.1% percent of Black non-IDEA females received Out-of-School Suspensions, the highest percentage of any ethnicity or gender in both accounts.<sup>20</sup>
28. For high school students, the data demonstrate that the disparities are even greater. For example, at El Diamante, Black students made up almost 12% of all out-of-school suspensions, despite being less than 4% of the student population.
29. The following charts provide demographics and Out-of-School Suspension rates for Black students in District high schools:



<sup>19</sup> Visalia Unified School District “Enrollment by Ethnicity” 2013-2018 data, Ed-Data, *available at* <http://www.ed-data.org/district/Tulare/Visalia-Unified>.

<sup>20</sup> These charts are based on PRA documents from the District and data from the Civil Rights Data Collection. CRDC data “LEA Summary of Selected Facts for Visalia Unified School District,” *available at* <https://ocrdata.ed.gov/Page?t=d&eid=27777&syk=8&pid=2278>. Because CRDC data are current through 2015, the graphs reflect the most current data available via the website.

## Percent Black and OSS Percentage, 2015



30. In Charter Alternatives, **4.7%** of students were Black in 2013, but Black students received **5.5%** of Out of School Suspensions.<sup>21</sup>
31. In El Diamante High, **4.3%** of students were Black in 2013, but Black students received **11.8%** of Out-of-School suspensions, and **3.1%** of students were Black in 2015, but Black students received **7.9%** of Out-of-School suspensions.
32. In Golden West High, **1.2%** of students were Black in 2013, but Black students received **3.6%** of Out-of-School suspensions, and **1.3%** of students were black in 2015, but Black students received **5.6%** of Out-of-School suspensions.
33. In Mt. Whitney High, **2.9%** of students were Black in 2013, but Black students received **6.8%** of Out-of-School suspensions, and **1.4%** of students were Black in 2015, but Black students received **2.5%** of Out-of-School suspensions.
34. In Redwood High, **2.2%** of students were Black in 2013, but Black students received **5.7%** of Out-of-School suspensions, and **1.4%** of students were Black in 2015, but Black students received **3.7%** of all suspensions.
35. In Sequoia High, **2.8%** of students were Black in 2013, but Black students received **9.6%** of Out-of-School suspensions, and **3.1%** of students were Black in 2015, but Black students received **7.1%** of Out-of-School suspensions.
36. In Visalia Technical Early College, the numbers dramatically increased between 2013 and 2015. **1.5%** of students were Black in 2013, and Black students received **0%** of Out-of-School suspensions (but **14.3%** of In-School Suspensions). But in 2015, **1.6%** of students were Black and received **16.7%** of Out-of-School suspensions.

<sup>21</sup> Because In-School Suspensions from Charter Alternatives were not reported to the CRDC for 2015, the data included in this complaint are only from 2013.

37. Across almost every high school, Black students are disciplined at rates that are higher than the percentage of their enrollment. This alone demonstrates proof of disproportionate impact of disparate discipline.<sup>22</sup>
38. The District's suspension data suggest that suspensions for Black students are still above the state average for suspensions in almost every high school.

***B. Anecdotal Evidence of Racially Hostile Environment***

39. The District also creates a racially hostile environment which violates Title VI.
40. The Visalia Unified school board's policy on diversity and non-discrimination in schools reads, "The Board encourages staff to teach students the meaning of equality, human dignity, and mutual respect, and to employ cooperative learning strategies that foster positive interactions in the classroom among students from diverse backgrounds. The district shall provide instruction and counseling designed to promote positive racial and ethnic identity, help students understand diverse cultures, teach them to think critically about racial bias, and show them how to deal with discriminatory behavior in appropriate ways."<sup>23</sup>
41. Specifically, District staff have a duty to "immediately report" instances of racial harassment, including verbal,<sup>24</sup> electronic (such as social media), and other forms of harassment to District administrators.<sup>25</sup>
42. Additionally, the District adopted policies to promptly receive and investigate "complaints of discrimination, harassment, intimidation, and bullying based on actual or perceived characteristics" such as race.<sup>26</sup>
43. The ACLU- NC has intervened for over a decade regarding the racial hostility against Black students in the District. However, the District has not taken more amicable steps seriously, thus, perpetuating this hostile environment for Black students.<sup>27</sup>
44. Black and non-Black students acknowledge the racial hostility created towards Black students by District staff and that racially hostile comments and actions by students are ignored by District staff.
45. Despite the requirements of its policy on diversity and non-discrimination in schools, the District has repeatedly and consistently failed to affirmatively combat racism and has shown deliberate indifference towards known discrimination towards Black students, as shown by the anecdotal evidence summarized below.

**1. Complainant B.S.**

46. Complainant B.S. has witnessed racial discrimination from students and teachers towards her and other Black students. As late as Spring 2018, as the only Black student in her

---

<sup>22</sup> *Larry P. by Lucille P. v. Riles*, 793 F.2d 969, 987 (9th Cir. 1984) (statistics can be used to prove discriminatory effect); see also *The Comm. Concerning Cmty. Improvement v. City of Modesto*, 583 F.3d 690, 703 (9th Cir. 2009) ("[P]roof of disproportionate impact on an identifiable group, such as 'gross statistical disparities,' can satisfy the intent requirement where it tends to show that some invidious or discriminatory purpose underlies the policy." (quoting *Vill. of Arlington Heights*, 426 U.S. at 264)).

<sup>23</sup> See Exh. D.

<sup>24</sup> See Exh. E. The District's definition of verbal harassment includes "Derogatory comments, jokes, or slurs; graphic verbal abuse of a racial or sexual nature" among other statements.

<sup>25</sup> See *id.*

<sup>26</sup> See *id.*

<sup>27</sup> See Exh. F.

classes, she felt uncomfortable at her high school, El Diamante. In the 2017-2018 school year, B.S. was called a “black bitch” by a white student over a small relationship-based conflict at school. This made her feel upset, confused and extremely uncomfortable. B.S. continues to feel that the District creates a racially hostile environment for Black students. This led her to have less participation in certain school club activities. She also felt the need to create and foster a non-District safe space for Black students because of the lack of support by the District.

47. The District continues to fail Black students by responding poorly or failing to respond at all to instances of racial hostility towards Black students as evidenced by B.S.’s experiences.
48. During the last week of school on May 31, 2017, a white student took a picture on Snapchat of another Black student. The picture was captioned, “Always your rebel pride-STUDENT NAME” The student referenced in the caption is another Black student.<sup>28</sup> A confederate flag was also drawn over the Black student’s face. B.S. saw this and was deeply concerned and disgusted. B.S. emailed superintendent Todd Oto, principal Angela Sanchez, assistant principal Joy Naylor, and the 12th grade learning director Melissa Garcia on the same day at 6:39 PM. In the email she said that she has noticed a huge increase in racial and political tension at her school. B.S. also put the District on notice that confederate flags are regularly waived on and off campus and that this propounds the uncomfortable environment she faces as a Black student in the District. She explained that staff do not seem to care about the uncomfortable environment that was created for Black students.
49. Moreover, B.S. put the District on notice that this racially hostile environment is not a new occurrence, and that her friends have reported to her that white students regularly use the “n” word to demean Black students on campus, making the Black students feel unsafe and bullied by white students. Some of these white students also use the phrase “White Power” to intimidate Black students. This makes the Black students hesitant to attend classes knowing that the environment is unsafe for them.
50. No one from the District responded to B.S.’s email regarding the unsafe environment for Black students. This impacted B.S.’s trust in District administrators and she did not feel comfortable approaching them regarding other topics relating to her educational success due to District administrators’ lack of support for Black students.
51. These incidents are consistent with the racially hostile environment that has persisted throughout B.S.’s enrollment at the District. For example, in October 2016, B.S. witnessed a Black student and friend upset because a white student said to her friend, “Why don’t you go hang from a tree?” B.S. perceived that these instances impacted her friend’s enthusiasm to attend District classes and events as well.
52. In September 2015, another white student used the “n” word in a group chat with B.S. and other students in her English class. B.S. witnessed another Black student harassed by their P.E. teacher Mr. Kaplan.
53. While they were in 8th grade, during a P.E. class, the teacher yelled to a Black student to “Get your cotton-picking hands away from that” while the Black student was touching basketballs. No action was taken to correct the incident, and Mr. Kaplan kept teaching and only retired very recently.

---

<sup>28</sup> The ACLU has the names and identities of each of these students available to provide to the US. Department of Education if needed once an investigation is opened.

54. In B.S.'s freshman year (2014-2015), B.S. recounts that another Black student was disciplined because he felt uncomfortable being in a classroom with another white student who wore a confederate flag belt. During this altercation, the white student called the Black student the "n" word in response and became aggressive towards the Black student. Nevertheless, the District disciplined the Black and white students.
55. These instances confirmed to B.S. that the District failed to understand that Black students were victimized by white supremacy and racism in these instances. From her perspective, this leads to less engagement by her and her Black peers in the classroom context.
56. B.S.'s campus, like many District campuses, does not have a Black Student Union. This is even though there are other clubs and organizations on District campuses based on affinity, race, or ethnicity. The lack of additional clubs leads to fewer leadership opportunities and outlets for Black students to feel comfortable in extracurricular activities that are school-funded.
57. On July 8, 2016, B.S. organized a Black Lives Matter meeting in Visalia at the convention center to plan a vigil for Alton Sterling and Philando Castile because as a Black student, she did not feel the District's environment openly supported Black voices. Other white El Diamante students heard of the meeting and drove around the convention center. Their truck had a blue lives matter flag. These students were her classmates and she still felt uncomfortable knowing that she had to see them in the halls at her school.
58. B.S. would like to see the District address the racially hostile environment that exists for her and other Black students.

## **2. Complainant J.H.**

59. J.H. is a Black junior at Redwood High School and has been enrolled in the District since the fourth grade. J.H. feels that throughout his schooling he has faced discrimination from other students because he is Black. J.H. expressed that students continued to harass him throughout his schooling in the District. J.H. feels that he cannot fully engage in the classroom due to the hostile environment that is created because teachers do not make him feel supported as a Black student.
60. Throughout high school other students have called him racially charged names, such as "brown boy." During football practice, his teammate recently stated that "he should be good at [football], because he is Black" and that he needs to "act more hood." These statements negatively impacted J.H.'s performance in school-related sports because of the mental and emotional impact of constantly being harassed because he is Black.
61. The District has departed from its standard discipline policies in responding to an incident in which J.H. was racially harassed by another student, described above in Paragraph 26. The District's policy is to always intervene, if safe, document, and investigate instances of racial hostility.<sup>29</sup> Yet after the incident, J.H. was disciplined and was never made aware of any discipline to F.P because of the harassment. Indeed, no administrator or staff member checked in with J.H. after the incident.
62. J.H. does not report these instances to administration, coaches, or teachers because he tried to report racial hostility in the past and the results yielded bad action or no action listed above from staff. Now, he does not report the ongoing harassment because he has observed that his school's administration will do anything about it. This leads him to be

---

<sup>29</sup> See Exh. E.

less engaged with teachers regarding any problems he faces in the classroom, through sports, and otherwise that arise while on District property.

### **3. Complainant K.C.**

63. Complainant K.C has seen and experienced substantial racism on campus towards Black students but has not observed teachers, staff, or administrators take any steps to address it.
64. In August 2016, his white chemistry teacher, Ms. Laufer used profanity and racial slurs in a story she was telling her class, such as the “n” word (she said people called her this). He reported this to his counselor, Daisy Molina. Contrary to the District’s policy BP 5145.3(b), the only consequence of this was that Ms. Laufer was told to watch her language.<sup>30</sup>
65. Other students have treated K.C. differently due to his race. As noted above in Paragraph 25, students direct the “n” word towards him in an offensive way. This pervasive harassment and bullying leads to K.C. feeling less engaged in the classroom and with classroom discussions.
66. K.C. said he often witnesses white students harassing Black students and feels that the administrators need to “address the problem more.” In his experience, racial hostility on District school campuses is often overlooked. K.C. never reported these instances because he believed the District would overlook the problems.
67. K.C. detailed as an example of why he does not report problems to the District when the 2017-2018 president of the school’s Black Student Union asked the principal to address the confederate flag and white power messaging at his school that made Black students feel uncomfortable. The principal issued an oral message that, in K.C.’s opinion, did not address the pain and safety of Black students, which was the Black Student Union’s main concern in raising the issue with the principal. Black Student Union members perceived that their voice did not matter to the school and lowered morale within the organization.

### **4. Complainant J.C.**

68. J.C. is a Black bi-racial senior at El Diamante High School in the District. She has been going to schools within the District since kindergarten.
69. J.C. feels that students at El Diamante do not make her feel welcome or comfortable due to her race and that teachers do not know how to address issues that involve racial discrimination or hostility. In J.C.’s words, “if a student says or does something racist, there is no real punishment.” From a broader sense, J.C. does not feel that the Visalia area is friendly or welcoming to Black people. She observes that the District staff reflects apathy towards the environment created for Black students and allows this behavior in the student body and how she has been treated by certain students. Because J.C. observes this trend with staff, she does not feel comfortable entrusting the staff to solve school-related issues for her.
70. During J.C.’s sophomore year, in mid-October 2016, a white male student was talking to J.C. during lunch, and jokingly said, “Why don’t you go hang from a tree?” Moreover, he would constantly make racist jokes about Black people around her, until she confronted him about it at the end of January of 2018. These comments and threats would happen on District campuses and made J.C feel less engaged in the classroom.

---

<sup>30</sup> See Exh. C.

71. In the middle of J.C.'s sophomore year (January 2017), she was given the nickname "Janigga" by three non-Black students. According to J.C., "it makes her really upset when they use [that name]." She has asked them to stop multiple times.
72. In October 2017, at the end of a lunch period, a Black student was staring at a tree and J.C. asked him if he was okay. He told J.C. that he was severely depressed and had attempted suicide a few days beforehand. While J.C. was talking to him, their learning director Tammy Olson came and tried to get them to go to class because the bell had rung already. J.C. told Tammy Olson all the comments the other Black student told her about being depressed and suicidal. According to J.C., Tammy Olson acted very dismissive, saying that the Black student was okay because he was on medications for his condition. According to J.C., Tammy Olson did not try to take the other Black student to see a guidance counselor or ensure that he was okay. J.C. felt disheartened as another Black student who saw an administrator so dismissive of the student's condition.

### **5. Complainant K.B.**

73. K.B., a Black student who attended El Diamante High School through 2018. K.B. states that the n-word was used regularly around teachers and there were no repercussions towards students for those actions. K.B. stated that it made her feel uncomfortable that teachers did nothing when they heard the n-word being used. Moreover, K.B. stated that students made racist, stereotypical comments to her regarding her hair and other statements regarding her physical appearance on a regular basis.
74. In K.B.'s experience, the District did nothing to combat the fact that students who are not white are automatically left out of the school environment. There were few to no safe spaces for Black students on K.B.'s campus. K.B. was involved in Urban Arts Club for the first three years of high school (2014-2017). While K.B. was involved, Urban Arts club was comprised of Black students and K.B. felt welcome and comfortable among them. K.B. also states there were no actual Black clubs or organizations on her campus, for example, this campus did not have a Black Student Union. K.B. perceived that because there was no Black Student Union or other safe space on campus for Black students, this negatively impacted the morale of Black students in the classroom and in other spaces.
75. K.B.'s English class was predominantly white students. There were 6 male students who constantly say racist things and are disruptive in class. In one class where the topic was race and racism, K.B. overheard a white student say loudly, "Yeah, I'm pretty racist," and then the rest of the group started laughing. The teacher did not take any action regarding this statement. In general, K.B. believes that the District has not done enough to address racial hostility that Black students face in the District.

### **6. Witness M.A.**

76. M.A. is a student in the District and stated that earlier in 2018, a Black classmate was in a seat in her class and another student came in and told the Black student to, "Move, Slave," to get her out of the seat. According to M.A., the Black student seemed "really distraught" when she came into class for 2nd period. According to M.A., after the Black student told their second period teacher, Mr. Jolly, the story, Mr. Jolly told her that she should report it to the office and did not take any immediate actions even though he is a District staff member.

**7. Witness M.L.**

77. M.L. graduated from the District and stated that less than three years ago, it was well-known that Black students were called apes by non-Black students. Additionally, white and other non-Black students would try to sit far away from Black students in classes and would tell other non-Black students that Black students had a bad smell. In M.L.'s words, a non-Black student told him that, "Black students smelled funny." This was not an isolated occurrence.

**8. Witness Y.S.**

78. Y.S., a sophomore at El Diamante, has observed that Black students and students with darker skin tones are often picked on by white students. According to Y.S., the "n" word is frequently used to demean Black students and students of darker complexion on campus. During the rare times when teachers or administrators address racial slurs being used, they just tell students not to use racial slurs and no further action is taken.

**9. Witness B.L.**

79. B.L., a senior at Redwood, regularly hears non-Black students use the "n" word. According to B.L., teachers and administrators also hear these students use terms that make Black students feel uncomfortable, but they do not say anything to the non-Black students using those terms.

**10. Witness L.C.**

80. L.C., a past District student, remembers when two Black students left Golden West nearly a decade ago because of the racial hostility at that campus. Similar to now, there were only a few Black students on campus.
81. Several years ago, a white student was playing music before a class. L.C. said the song was "Rudolf the Red Nose Reindeer," except the lyrics were changed to say, "Leroy the big lip [n-word]." Although no Black students were present, L.C. said this made many students including himself feel uncomfortable, based on his previous observations of a failure of staff to take actions to create a safer environment for Black students, L.C. did not report this instance to administration because he and other students observed that the administration would not do anything regarding those instances. That had been the trend in the District.

***C. The District has continuously heard from students and community groups that they need to address racial hostility.***

82. The District heard from students in at least three school board meetings in the past school year urging the board and the District to address racial hostility.<sup>31</sup>
83. Teachers also outlined their concerns that the District was not properly handling claims of racial hostility and that it was negatively impacting student morale.
84. On April 11, 2018, Board member Guerrero confirmed that the District continued to hear from students that racial hostility was indeed a problem on campuses and that the school district had not been taking actions.<sup>32</sup>

---

<sup>31</sup> See Exh. G – I.

<sup>32</sup> See Exh. J.



85. The District has been on notice and had ample opportunities to correct its disparate discipline and racially hostile environment for Black students, but the District chose to ignore and deflect the several letters and comments from the ACLU, local community groups, and students urging the District to address racial hostility. After the ACLU and community partners tried to reason with the District to address these problems with students, community groups, and the ACLU, the District declined to take those steps. The suggested steps were centered on recommendations from Black students and students who regularly witnessed the District's lack of emphasis in helping Black students. The result was the District balking at these requests, pushing completely back on their earlier promises to negotiate a better District environment for Black students, and ultimately a continued bad environment for Black students.<sup>33</sup>

***D. The ACLU-NC has intervened in the past due to the District's racially hostile environment for Black students.***

86. On March 10, 2006, the ACLU sent a letter to the District putting them on notice that Black students were regularly called racial epithets and it created a hostile environment for Black students. In the letter, the ACLU outlined that two Black boys were "treated to racial insults every day in classrooms, in the practice fields, on the quad, everywhere on campus."<sup>34</sup> Additionally, "a white student yelled 'nigger' while he waved a hat bearing a confederate flag at him," and "youths lifting weights in [the] presence [of African-American students] repeated the word ('nigger') again and again."<sup>35</sup>

87. The District has been on notice for over a decade that racial harassment has been pervasive for Black students and that school administrators witness this harassment, yet do nothing.<sup>36</sup> In the 2006 case, one of the Black students told his mother "that a white student had called him 'nigger' in front of a Golden West administrator. When the administrator said, 'Excuse me?' the white boy replied, 'My bad. Monkey.'"

88. The ACLU sent a public comment letter to the District on November 7, 2017 outlining ongoing instances where the District failed to address racial hostility towards Black students. The ACLU also gave public comment at the school board meeting highlighting the importance of the District addressing racial hostility towards Black students and how it impacted their classroom and overall experience as a student in the District.

89. The District met with the ACLU and heard additional concerns that Black students outlined regarding disparate discipline and racial hostility in December 2017. The ACLU sent suggestions to the District based on this conversation. As outlined above, the District refused to take steps to address blatant and pervasive evidence of racial hostility despite

---

<sup>33</sup> After months of negotiating with the District regarding how they could create a safe environment for Black students, the District decided it did not want to move forward with addressing ACLU and community feedback regarding ways to help Black students feel safe. As outlined in Exh. L, the ACLU and community feedback was centered in Black student voices, which the District ignored by deciding not to change its policies or procedures as recommended in 2017 and early 2018.

<sup>34</sup> See Exh F.

<sup>35</sup> See *id.*

<sup>36</sup> See *id.*

having over a decade notice that Black students face a racially hostile environment and that their administrators refuse to address the hostile environment.

90. Even though the District claimed it would start a student taskforce at the beginning of the second semester of Spring 2018, the District had not even set a date for the first student taskforce meeting near the end of April 2018.<sup>37</sup>
91. Despite the District's statements that all students were notified about a taskforce, we received reports that many students had not received any invitations or information regarding a taskforce.

***E. The District's policies and practices demonstrate that the District does not enforce its non-discrimination policies and procedures equally for Black students.***

92. The District has a policy to create a "caring and nondiscriminatory learning environment in which all students can feel comfortable and take pride in their school and their achievements."<sup>38</sup> Moreover, the District has a policy that prohibits any school or school activity to target discriminatory harassment, intimidation, and bullying based on a student's actual or perceived race and color.<sup>39</sup> Employees who permit or engage in prohibited discrimination shall be subject to disciplinary action.<sup>40</sup>
93. Moreover, the administration is required to maintain a record of all reported cases of unlawful discrimination to prevent repetitive prohibited behavior.<sup>41</sup>
94. Black students continuously express that the constant harassment by white students makes them feel unsafe and unwelcome on the campus. The District regularly departs from the policy to ensure that students feel comfortable and take pride in their school and achievements as it relates to Black students.
95. Black students regularly express that because the administrators consistently ignore bullying and harassment towards Black students they do not feel comfortable on District property.
96. A tangible way the District could create a safer environment would be to have Black Student Unions and other safe spaces for Black students, yet the District does not even ensure that there is a Black Student Union at each high school.
97. The District administrators hear bullying and discrimination that is based on a student's actual or perceived race, but the District takes no corrective measure which departs from District policies.
98. The District administrators witness and/or on notice of specific targeting of intimidation towards Black students. For example, the District knows that white students have taken pictures of a Black student and used the social media hashtag "Flex white power" and the District knows that the Black student perceived this action as unsafe. The District has not taken corrective measures as outlined in the District policies.
99. District teachers have told at least several Black students to report instances of racial harassment to another administrator, even though the policy is for District staff, including teachers, to document instances of racial harassment.

---

<sup>37</sup> See Exh. K.

<sup>38</sup> See Exh. D.

<sup>39</sup> See Exh. C.

<sup>40</sup> See *id.*

<sup>41</sup> See *id.*

100. All of these departures prevent Black parents and students from receiving appropriate and fair treatment regarding situations that arise and asserting procedural protections regarding racial hostility and discrimination. Without documentation, District staff cannot appropriately identify Black students who continue to face hostile environments created by administrators and other students.<sup>42</sup>
101. White students are not disciplined for making racially-motivated comments, such as calling Black students the “n” word, telling Black students they smell funny or look like apes, and stating to Black students to “shut [their] Black a\*\* up,” which departs from the District board policies. Yet, Black students are disciplined for defending themselves when faced with the same racially hostile environment.
102. Black students regularly have to endure a racially hostile environment without safe spaces on campuses, despite the board policies mandating the District create a welcoming environment for them.
103. Black students are regularly ignored by District staff when they report instances of racial harassment, a clear departure of District board policies.
104. The District cannot possibly document instances of racial harassment since teachers regularly ignore Black students who report racial hostility, another blatant departure from District board policies.<sup>43</sup>
105. Absent action by this office or another agency, there appears to be nothing standing in the way of the District continuing to make empty promises to adequately address racial hostility against Black students, in particular. Indeed, this has been at issue for many years in Visalia.

## **REMEDIES**

106. Complainants respectfully request that OCR require the District to develop and implement plans to accomplish the remedies described below, in order to ensure that all students, regardless of their race, feel safe and welcome in the District’s public schools:

### ***A. Collaboration of Stakeholders***

The District will work to create a welcoming and collaborative environment for all stakeholders, but in particular for Black students and their parents, to facilitate participation in the development and implementation of meaningful solutions to educational challenges faced by Black students. To accomplish this goal, the District should fully implement the recommendations in the November 11, 2017 letter including the taskforce for Black students.<sup>44</sup>

### ***B. Complaint Process***

The District will create a comprehensive and meaningful process to handle complaints by students, families, and community members about harassment, discrimination, disparate discipline, provision of services to students with disabilities, and misconduct by District staff. To accomplish this goal:

---

<sup>42</sup> According to our review of the District’s public records that the ACLU requested regarding the District’s policies, procedures, and mitigating steps for Black students who face racial discrimination, there were no responsive documents to actual forms that the District completes for instances of racial hostility.

<sup>43</sup> In addition, the ACLU filed a Public Records Act request asking for documents that would be responsive to racial hostility on campuses. The District did not produce any redacted examples of a recorded instance of racial hostility. Indeed, the District did not even produce a form for how administrators document racial hostility.

<sup>44</sup> See Exh. L.

1. The District will solicit and employ the feedback of Black students, families, and community members, in the process of revising the complaint process, Student Handbook, and Student Code of Conduct. The Student Handbook shall explain the complaint procedures in language understandable to elementary school students.
2. The District will utilize the Uniform Complaint Procedure, published in the Student Handbooks and all parents' rights handbooks, and posted at District schools and on the school websites. The publication of the complaint process will also include:
  - i. a summary of state and federal laws related to discrimination, discipline, special education services, and staff misconduct; and
  - ii. a clear statement that retaliation based on complaints is prohibited under District policy, state and federal law, and an assurance that the District will promptly investigate and address any allegations of retaliation.
3. The District will ensure that every teacher, school administrator, and school board member has reviewed, and is knowledgeable about, the complaint policies and procedures described in this section. Such persons shall facilitate the complaint process and assist students, families, and community members seeking to file complaints under this process.

### ***C. Professional Development***

The District will foster a community of teachers and administrators that are knowledgeable about child development and are culturally competent and sensitive. To accomplish this goal:

1. The District shall provide educators at all levels within the District with training about the unique historical and cultural experiences of Black students, and effective methods for engaging Black students in the educational process.
2. The District shall provide professional development for teachers, staff and administrators in: childhood brain development; trauma-informed responses and interventions; implicit bias; mental health issues and symptoms in children; developmental and learning disabilities; and special education procedural requirements. According to the National Child Traumatic Stress Network, when examining culturally responsive responses for Black students the District must “work towards ending the cycle of trauma and violence, [and] it is necessary to acknowledge both how racism and oppression are embedded in American society, and to understand how the massive historical trauma of slavery continues to shape the lives of individual children, families, communities, and the systems with which they interact. Such acknowledgement requires self-examination, self-awareness, overcoming the challenges of open communication on these issues, and ongoing dialogue . . . .”<sup>45</sup> At this point, it does not seem that the District has engaged in any of the above practices.

### ***D. School Climate***

The District will implement evidence-based practices, such as Restorative Justice and School-Wide Positive Behavior Supports (“SWPBIS”), with fidelity and with an emphasis on reducing racial and ethnic disparities in discipline and educational achievement. To accomplish this goal:

---

<sup>45</sup> National Child Traumatic Stress Network Position Statement Racial Injustice and Trauma: African Americans in the U.S. (2016), available at [https://www.nctsn.org/sites/default/files/resources//racial\\_injustice\\_and\\_trauma\\_african\\_americans\\_in\\_the\\_us.pdf](https://www.nctsn.org/sites/default/files/resources//racial_injustice_and_trauma_african_americans_in_the_us.pdf).

1. The District shall hire a consultant, approved by the Complainants, with expertise in implementing evidence-based educational practices and, specifically, with expertise in reducing racial and ethnic disparities in discipline, to assist in planning and implement Restorative Justice and SWPBIS programming.
2. The District shall create and uniformly and consistently enforce a comprehensive discipline policy that clearly sets out the expected behavior and appropriate responses to student misconduct. The policy should:
  - a. be developed with input and guidance from Black students, families, and community members; and
  - b. include clear guidelines for what discipline should be handled by teachers, and what discipline should be addressed by the Principal; and
  - c. make all District, school, and classroom attendance and discipline policies and procedures accessible to students and parents through publication in the Student Handbook, any parents' rights handbooks, and posting at District schools and on the school website. District policies must be drafted to be understandable to high school students.

#### ***E. Data Collection and Recordkeeping***

The District will collect and maintain accurate data regarding school enrollment, discipline, and special education, which is disaggregated by race, disability, gender, grade, type of offense, discipline imposed, and referring teacher and school. To accomplish this goal:

1. The District shall create and maintain clear written guidelines on data-keeping protocols, including those on the retention, destruction and confidentiality of student cumulative files.
2. The District shall accurately maintain its computerized data collection system.
3. The District shall provide professional development to staff on how to use the data collection system.
4. The District shall make data available to parents via the District and school websites, along with being printed and placed in school administrative offices. The District will replace student names with unique identification numbers to facilitate data analysis, including whether discipline statistics reflect repeated disciplinary actions against a few students or discrete disciplinary actions against many students.
5. The District shall inform families in the parents' rights handbook about their rights to complain about violations of confidentiality of student information, access and obtain copies of their child's records, and contest information in their child's cumulative files.

#### ***F. Monitoring***

The District will develop and implement a plan that contains strategies, objectives, and timelines to accomplish the remedies described above, and to ensure that the District complies with applicable federal and state law. The plan will be regularly monitored by a consultant, for at least five years, who will provide regular reports to Complainants and to OCR. To accomplish this goal:

1. The District shall hire an independent expert consultant or consultants with approval from Complainants. The consultant(s) will assist in the design and implementation of a plan,

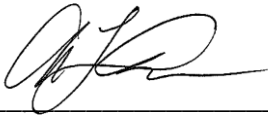
which includes goals, objectives, timelines, and measurable outcomes, for the remedies listed above.

2. The consultant(s) engaged for this purpose shall also participate in the design and implementation of a revised discipline policy, complaint process, and Restorative Justice and SWPBIS based programs, as described above, that will be explicitly designed to reduce racial and ethnic disparities in discipline and other treatment. The consultant(s) will also participate in the restructuring of discipline and special education services to prevent discrimination against students with disabilities.
3. The District will provide the consultants with bi-annual updates on its progress in implementing these remedies described above. Each update will take the form of a memorandum setting forth:
  - a. efforts undertaken by the District during the previous six months;
  - b. the results of those efforts; and
  - c. the District's plans for the following six months.
4. No more than 30 days after the consultant receives each update, the consultant, a representative from the District, and a representative for the Complainants will have a conference in which a District representative will be prepared to answer questions about the information in the update and the District's implementation of this plan. During the conference, the parties will discuss whether the efforts undertaken by the District have produced the intended goals, and if either or both parties conclude that the District is not meeting such goals, the parties shall meet and confer in a good faith effort to reach an agreement on whether and, if so, how to amend or supplement the District's efforts in an effort to achieve the mutually desired results.

## **CONCLUSION**

The District's current system of racially discriminatory discipline, harassment, and hostile environment has resulted in the ongoing, improper, and harmful exclusion of Black students from access to a fair and equal public school education. As alleged in this complaint, the actions of District staff and administrators prevent Black students from obtaining a safe learning environment in which all students can thrive. For the foregoing reasons, there is an urgent need for OCR to review Complainants' allegations of racial discrimination and harassment, disparate disciplinary policies, and the hostile environment created towards Black students in the District. Likewise, Complainants request that OCR assist in correcting the District's violations of Title VI by ensuring the District implement the remedies requested above.

Respectfully submitted,



---

Abre' Conner  
Staff Attorney

AMERICAN CIVIL LIBERTIES UNION FOUNDATION  
OF NORTHERN CALIFORNIA, INC.