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ADMINISTRATIVE COMPLAINT

COMPLAINANTS

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

COMPLAINANTS' COUNSEL

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RESPONDENT

Visalia Unified School District
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PRELIMINARY STATEMENT

1. This complaint is filed by the American Civil Liberties Union Foundation of Northern California (“ACLU”) on behalf of ten 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.¹
 - 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.²
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

¹ 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. The ACLU used the most recent data available on CRDC website when filing the complaint. Based on anecdotal evidence and the most recent data available to the ACLU, Black students are still disparately disciplined across the District.

² 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.

Black students as well as the disproportionate discipline rates for Black students and that 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.

PARTIES³

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. Complainant J.M. is a Black student in the District and, even as an elementary student, experiences constant and severe racial harassment by students in the District. Because District staff fail to intervene, he perceives the lack of advocacy and resources in navigating his hostile environment.
12. Complainant M.L. is a Black student in the District. He observes that he receives more disciplinary consequences than his white peers. As an elementary student with disabilities, this impacts his willingness and eagerness to participate in a classroom setting.
13. Complainant J.J. is a Black student who attends the District. As an elementary student, he perceives that he is disciplined for incidents where he was not at fault. He perceives that white students are not disciplined for similar or worse conduct, which leads him to feel discouraged in classroom participation.
14. Complainant N.B. is a Black student who attends the District and perceives that District officials overlook racial harassment towards Black students and that white students receive little to no discipline for racially harassing Black students.

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

15. Complainant J.O. is a Black student in the District and observes that she is disciplined severely, including involuntary transfers among classrooms. She notices that white students do not experience similar problems. The District's discipline decisions have dramatically impacted her grades and learning experience.
16. 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

17. Title VI prohibits recipients of federal financial assistance ("Recipients") from discriminating based on race, color, or national origin.⁴ 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.⁵
18. 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."⁶ To enforce Title VI, OCR may investigate and bring actions against a Recipient that discriminates on the basis of race and color.
19. 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.⁷
20. For claims that discipline or other school policies that are facially neutral nonetheless have an unlawful disparate impact on students in a protected class, OCR conducts a three-part inquiry:

⁴ 42 U.S.C. § 2000d (2013).

⁵ 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 intentionally treating students differently based on race or other protected classifications, as well as 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); *see also, e.g.*, Compliance Review of Oakland Unified School District, Oakland (Sept. 27, 2012), *available at* <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/09125001-a.html> (setting out the Department's framework for assessing disparate impact; emphasizing that "[f]acially neutral student discipline policies that result in an adverse impact on students of a particular race will be evaluated using the disparate impact standard to ensure that they are not discriminatory"; and setting out the Department's three-part disparate impact standard).

⁶ "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>.

⁷ 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.").

- (1) Does the discipline policy result in an adverse impact on students of a particular race as compared with students of other races?
- (2) Is the discipline policy necessary to meet an important educational goal?
- (3) Even in situations where a school can demonstrate that a policy is necessary to meet an important educational goal, are there comparably effective alternative discipline policies available that would meet the school's stated educational goal with less of a burden or adverse impact on the disproportionately affected racial group or is the school's proffered justification a pretext for discrimination.⁸

At the first step of the disparate-impact inquiry, OCR frequently relies on statistical evidence comparing a protected group's proportion in the total student enrollment to the group's proportion in the group of students that received the type of discipline at issue. For example, in its compliance review of Oakland Unified School District, OCR found that the percentage of African-American students who received various types of discipline interventions was greater than the percentage of African Americans in the overall student population.⁹

21. Under Title VI, courts analyze disparate treatment discrimination similarly to intentional discrimination under the Equal Protection Clause of the Fourteenth Amendment.¹⁰ Proving disparate treatment requires evidence that a Recipient was motivated, at least partially, by discriminatory intent.¹¹ Discriminatory intent can be proven through either direct or circumstantial evidence.¹²
22. Circumstantial evidence of discriminatory intent includes such factors as:¹³
 - 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;¹⁴ and

⁸ See, e.g., Compliance Review of Oakland Unified School District, Oakland (cited *supra* note 5).

⁹ *Id.*; see also, e.g., Compliance Review of Christian County Public Schools (Feb. 28, 2014) (summarizing similar statistical evidence as part of the disparate-impact analysis), available at <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/03115002-a.html>; Resolution Letter to Tupelo Public School District at 2-3, 11-16 (Sept. 25, 2014) (summarizing findings of disproportionate discipline rates based on race), available at <https://www2.ed.gov/documents/press-releases/tupelo-public-schools-letter.pdf>.

¹⁰ *Elston v. Talladega County Bd. of Educ.*, 997 F.2d 1394, 1405 n.11 (11th Cir. 1993).

¹¹ *Id.* at 1406.

¹² 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”).

¹³ 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).

¹⁴ *Williams v. City of Dothan, Ala.*, 745 F.2d 1406, 1414 (11th Cir. 1984); *Arlington Heights*, *supra* note 12.

- deliberate indifference to known discrimination.¹⁵
23. 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.¹⁶

FACTUAL ALLEGATIONS

General allegations

24. In violation of Title VI, the District discriminates against Black students by treating them differently based on their race.
25. The District has notice of disparate discipline and the racially hostile environment that is created for Black students across the District.
26. 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 Intent¹⁷

27. 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.”¹⁸ 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.
28. Though the board is required to annually assess disparate discipline under its policies, the District continues to disparately discipline Black students.¹⁹
29. Black students are regularly overly disciplined and funneled into continuation schools and expulsion schools. Some District teachers even regularly tell Black students they are “scum” and “worthless.” Moreover, some District staff use extreme physical force to

¹⁵ *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 Zeno v. Pine Plains Cent. Sch. Dist.*, 702 F.3d 655, 667 (2d Cir. 2012) (holding that evidence student was repeatedly called the “n” word by other students, along with other threats, over several years went beyond “simple acts of teasing and name-calling among school children” and showed a racially hostile environment, and that being subjected to consistent racial epithets could deprive a Black student of the benefit “of a supportive, scholastic environment free of racism and harassment” (internal quotation marks omitted)).

¹⁶ *Epileptic Found. v. City and County of Maui*, 300 F. Supp. 2d 1003, 1013-14 (D. Haw. 2004).

¹⁷ Additional graphs outline the disparate discipline rates are included as exhibits.

¹⁸ *See* Exh. A.

¹⁹ *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”).

reprimand Black students but not white students. According to a past employee, District staff have refused to discipline white students for egregious offenses.²⁰

30. 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. This led to the student having a general mistrust of the administration which impacted his eagerness to participate in classroom activities. 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 that Black student retaliated and disciplined the Black and white students as though they equally contributed to the racially hostile environment. B.S. believes this type of interaction is typical in 2018 regarding how Black students are overly disciplined.
31. 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. As late as spring 2018, 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 and impacted his eagerness to participate in classes. He feels uncomfortable because K.C.’s teacher and supposed advocate seems to allow racial hostility and he does not want the situation to escalate without a teacher advocate. 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.
32. Complainant J.M. is an 11-year-old sixth grade Black student who attends Linwood Elementary school. J.M. has been suspended in at least four occasions since 2016. At least one of the suspensions, in May 2016, was due to a white student spitting water in his

²⁰ See Exh. C.

face. J.M. often is forced to defend himself because students physically and verbally assault J.M. based on his race. He is suspended for self-defense, and to his knowledge the white students who target him are not disciplined.

33. Complainant M.L. is a ten-year-old fifth grade Black biracial student with disabilities who attends Linwood Elementary school. M.L.'s disability impacts his ability to engage the same way as other students in the classroom. Although M.L. has a behavioral plan that requires the District to ensure that M.L. gets additional attention from teachers, he is constantly suspended because he is a Black student with disabilities. M.L.'s mother perceives that other white students with disabilities receive the teacher support they need and are not similarly disciplined for behavior issues relating to their disabilities.²¹ In March 2017, M.L. came home distraught after being disciplined by his teacher for "needing attention." The teacher laughed at M.L. and said M.L. was mad because he could not get additional attention from the teacher. Despite M.L.'s Behavioral Plan outlining that M.L. should receive engagement and reinforcement in the classroom, the teacher confirmed that he did indeed ignore M.L. to M.L.'s mother when she asked the teacher about this incident.²² M.L.'s mom perceives that the teachers and their aides do not discipline white students or remove them from M.L.'s classroom on a regular basis, in contrast to how they discipline M.L.
34. Complainant J.O. is a Black eighth grade student at Green Acres Middle School. Because of the District's severe and mismatched discipline, J.O. fell from being an honor student to receiving much lower grades.
35. During the spring semester in 2018, when J.O. was in seventh grade, J.O. was switched from [REDACTED] science class to [REDACTED] class, because [REDACTED] claimed that she could "not handle" J.O. in her class. The District teacher refused to give any other explanation; nor did the school consult J.O.'s mother regarding this change. Prior to this change, J.O. had a grade point average of a 4.0 in the class. Shortly after J.O.'s class change, her grade point average fell to a 2.6 in the class. J.O. asked to be switched back to her old class because it was too much of a change. Administrators refused her request. To J.O.'s knowledge, white students were actually disruptive in class but were not switched to new classrooms.
36. In April 2018, J.O. was walking to class with three other non-Black students. Assistant Principal [REDACTED] told J.O. to run to class. J.O. replied, "but there's no running in the halls." Mr. [REDACTED] told J.O. to go to the office for insubordination. Out of the four students, J.O. was the only student disciplined and received a three-day suspension.²³ This incident led to J.O.'s parents requesting a meeting with the principal and urging that Mr. [REDACTED] not interact with J.O. The District stated that Mr. [REDACTED] would not handle discipline regarding J.O., but this promise did not last long. Additionally, J.O. was only

²¹ By refusing to allow M.L. to be in the classroom, the District continues to disregard 34 C.F.R. §104.34(a), which mandates that a student with a disability be educated with non-disabled students to the maximum extent appropriate to the needs of the disabled student. Moreover, the District must place disabled students in the regular educational environment unless it can be demonstrated that education in the regular setting with the use of supplementary aids and services cannot be achieved satisfactorily. In this instance, M.L.'s teacher continued to suspend M.L. and the District has apparently failed to conduct a proper behavior assessment to keep M.L. in the classroom. Noticeably missing from the District's online policies is the District's own policy as it relates to students with disabilities, which should be AR 5144.2 <http://www.visalia.k12.ca.us/boardpolicies/5000%20INDEX%20-%20STUDENTS.pdf>.

²² The District also failed to ensure that if M.L. needed modified work, he received that help.

²³ J.O. was cited for violating CA Education Code 48900.

given one day to make up a three-day suspension (for not running to class). Mr. [REDACTED] is still an assistant principal at J.O.'s school.

37. In September 2018, Mr. [REDACTED] threatened J.O. with another three-day suspension for asking why she was receiving an in-school detention.
38. 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. [REDACTED] 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; he does not know if F.P. was reprimanded. This remedy violated school policy, which required that J.H. be informed of a resolution regarding racial harassment and bullying under District policies.²⁴
39. In the District, Black students 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. Comparing discipline rates for Black and white students demonstrates severe disparities.
40. In 2015, according to the U.S. Department of Education Civil Rights Data Collection, Black students are disciplined at disproportionately higher rates than white students for suspensions and expulsions.²⁵
41. In-school suspensions: In 2015, Black students made up 1.6% of total enrollment in the District,²⁶ but received 3.9% of all In-School-Suspensions. White students made up 21.9% of total enrollment²⁷ and received 20.5% of In-School Suspensions. Black students were almost three times as likely as white students to receive an In-School Suspension.
42. Out-of-School Suspensions: The same 1.6% of Black students who comprise District enrollment were given Out-of-School Suspensions at a rate of 14.03%; white students were given Out-of-School Suspensions at much lower rates (3.36%). Black students are approximately four times more likely to receive an Out-of-School-Suspension than white students.
43. Expulsions: In 2015, Black students were expelled at a rate of 1.78%, but the number of expulsions for white students was even lower than white student out-of-school-suspension rates (.35%). Black students are approximately five times more likely to receive expulsions than white students.

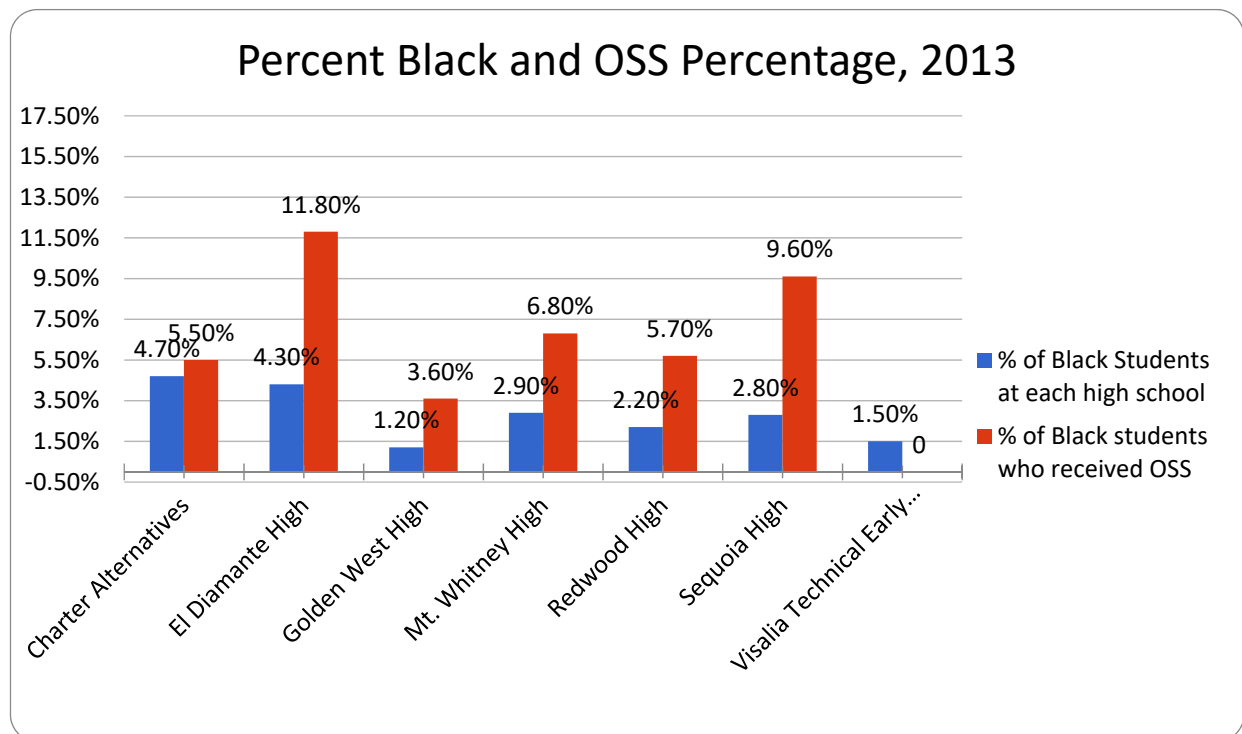
²⁴ See Exh. D. (Unlawful discrimination and/or harassment "shall be investigated and prompt action taken to stop the discrimination, prevent recurrence, and address any continuing effect on students").

²⁵ This data is from the Civil Rights Data Collection "OUTCOME RATE CALCULATOR" available at <https://ocrdata.ed.gov/DataAnalysisTools>.

²⁶ Visalia Unified School District "Enrollment by Ethnicity" 2013-2018 data, Ed-Data, available at <http://www.ed-data.org/district/Tulare/Visalia-Unified>.

²⁷ *Id.*

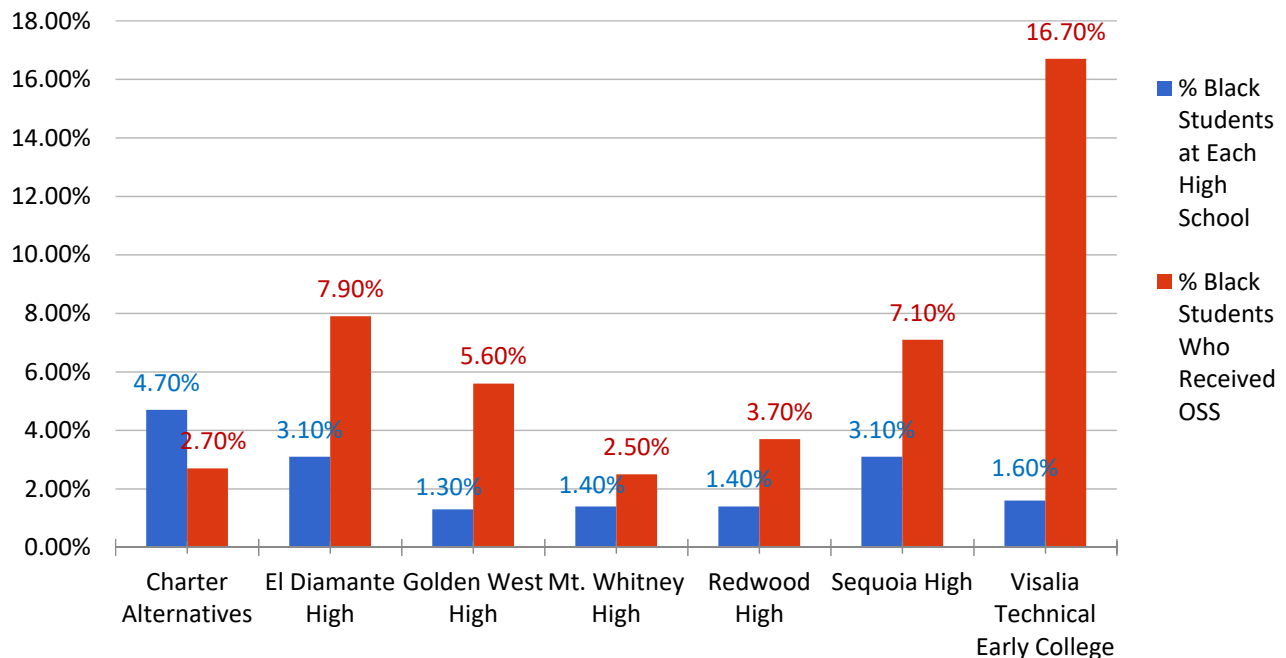
44. Thus, as discipline gets more stringent, the trend is for Black students to be increasingly overly targeted for discipline, while the discipline rate for white students decreases with the severity of discipline.
45. In sum, Black students received 5.6% of all Out-of-School-Suspensions, 6.6% of all 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.^{28 29}
46. For high school students, the data demonstrate even greater disparities. 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.
47. The following charts provide demographics and Out-of-School Suspension rates for Black students in District high schools:



²⁸ 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&cid=27777&syk=8&pid=2278>. Because CRDC data are current through 2015, the graphs reflect the most current data available via the website.

²⁹ See Exh. U.

Percent Black and OSS Percentage, 2015



48. In Charter Alternatives, **4.7%** of students were Black in 2013, but Black students received **5.5%** of Out of School Suspensions.³⁰
49. 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.
50. 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.
51. 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.
52. 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.
53. 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.
54. 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.

³⁰ 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.

55. The District's suspension data suggest that suspensions for Black students are still above the state average for suspensions in almost every high school.
56. Stark statistical disparities like these suffice to show discriminatory intent to target Black students for discipline,³¹ and even more so considered against the backdrop of anecdotal evidence of disparate discipline against Black students from individual Complainants stated above.
57. The 2015 data are the most recent available to Complainants, but based on anecdotal evidence including staff observations and Complainants' personal experiences continuing through 2018, Complainants and the ACLU believe similar disparities continue through the present time and urge OCR to require the District to provide more recent data for analysis.³²

B. The Statistical Disparities in Discipline Rates Demonstrate an Adverse Impact Based on Race

58. As shown above, across almost every high school, Black students are disciplined at rates that are significantly higher than the percentage of their enrollment. These data, even without a finding of discriminatory intent, demonstrate the overwhelming disproportionate impact of the District's discipline policies and practices, similar to the statistical data upon which OCR has relied in other compliance reviews when assessing the adverse impact of school discipline policies.
59. For example, in the Tupelo Public Schools Compliance Review, OCR relied on data showing that African-American and white students "each represented roughly half of the total enrollment" but that "the majority of disciplinary referrals were for the African-American students." OCR conducted a similar comparison for multiple types of discipline interventions and found that African Americans were over-represented in each category. OCR reached a finding of adverse impact based on its analysis of similar data in the Christian County Public Schools and Oakland Unified School District compliance reviews.³³

³¹ See, e.g., *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)); *Parker by Parker v. Trinity High Sch.*, 823 F. Supp. 511, 519 (N.D. Ill. 1993) ("Discriminatory intent or motive may, however be inferred from statistical or other evidence showing that minority students are disciplined more severely than white students for similar conduct.").

³² The continuing violations doctrine applies to Title VI, allowing a court to find violations based on events occurring before the statute of limitations, if similar acts continue into the limitations period. See *Comm. Concerning Cmty. Improvement v. City of Modesto*, 583 F.3d 690, 701 (9th Cir. 2009); *Doe v. Brown Univ.*, 327 F. Supp. 3d 397, 408 (D.R.I. 2018) (citing *Stanley v. Trs. of Cal. State Univ.*, 433 F.3d 1129, 1136-37 (9th Cir. 2006)); *T.V. v. Sacramento City Unified Sch. Dist.*, 2016 WL 397604, at *5 (E.D. Cal. Feb. 2, 2016) (applying continuing violations doctrine and holding that plaintiff alleged timely Title VI claim that school district "violated Title VI continuously and systematically" and "the alleged systemic violation operated in part within the two year statute of limitations period"). The continuing violations doctrine also allows a plaintiff to challenge events that would otherwise be time-barred by showing "the maintenance of a discriminatory system both before and during the limitations period." *Green v. Los Angeles County Superintendent of Schools*, 883 F.2d 1472, 1480 (9th Cir. 1989) (brackets omitted). Here, the District has continuously maintained a discriminatory discipline system through the present time.

³³ See Compliance Reviews cited *supra* notes 5, 8-9; *Larry P. by Lucille P. v. Riles*, 793 F.2d 969, 987 (9th Cir. 1984) (statistics can be used to prove discriminatory effect).

C. Anecdotal Evidence of Racially Hostile Environment

60. The District also creates a racially hostile environment which violates Title VI.
61. 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."³⁴
62. Specifically, District staff have a duty to "immediately report" instances of racial harassment, including verbal,³⁵ electronic (such as social media), and other forms of harassment to District administrators.³⁶
63. 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.³⁷
64. 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.³⁸
65. 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.
66. The Complainants, witnesses, and even some District staff acknowledge this racially hostile environment starts for Black students at an early age. For high school students, many of the Complainants have endured a racially hostile environment for over a decade, starting in elementary school continuing throughout their education. For Complainants, the racially hostile environment is ongoing, and many of them still have classes or see the students and teachers who have added to the racially hostile environment for the students until the present time. All Complainants allege the District has maintained a consistent, systematic, and continuing racially hostile environment through the present time.³⁹
67. 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.

68. 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 classes, she felt uncomfortable at her high school, El Diamante. In August 2014, B.S. was called a "black bitch" by a white student over a small relationship-based conflict at

³⁴ See Exh. E.

³⁵ See Exh. F. 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.

³⁶ See *id.*

³⁷ See *id.*

³⁸ See Exh. G.

³⁹ See *supra* footnote 31.

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 because she knew she would have to interact with students who despise her existence because she is Black. 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.

69. 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.
70. 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.⁴⁰ 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 [REDACTED] 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. It is uncomfortable because she feels unsafe with students who hold racial animus in her classroom, and the lack of advocacy for Black students makes her feel that standing up for herself will not result in change.
71. 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. She feels unsafe because she believes these actions are threatening and the District has demonstrated that they will not advocate on Black students' behalf in these situations. This makes the Black students hesitant to attend classes knowing that the environment is unsafe for them.
72. 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.
73. 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.
74. 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 [REDACTED]

⁴⁰ 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.

75. 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. [REDACTED] kept teaching and only retired very recently.
76. 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.
77. 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.
78. 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.
79. 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.
80. 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.

81. 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.
82. Throughout high school, including in spring 2018, 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.
83. 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 38. The District’s policy is to always intervene, if safe, document, and investigate instances of racial hostility.⁴¹ Yet after the incident, J.H. was disciplined and

⁴¹ See Exh. F.

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.

84. 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 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.

85. 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.
86. In August 2016, his white chemistry teacher, [REDACTED] 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, [REDACTED]. Contrary to the District's policy BP 5145.3(b), the only consequence of this was that [REDACTED] was told to watch her language.⁴²
87. Other students have treated K.C. differently due to his race. As noted above in Paragraph 31, 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.
88. 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.
89. 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.

90. 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.
91. 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

⁴² See Exh. D.

this trend with staff, she does not feel comfortable entrusting the staff to solve school-related issues for her.

92. 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.
93. 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. This impacted J.C.'s attention level in classes after experiencing racial harassment from other students.
94. 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 [REDACTED] came and tried to get them to go to class because the bell had rung already. J.C. told [REDACTED] all the comments the other Black student told her about being depressed and suicidal. According to J.C., [REDACTED] acted very dismissive, saying that the Black student was okay because he was on medications for his condition. According to J.C., [REDACTED] 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. This made J.C. uncomfortable observing that a District staff member would be dismissive of a Black student's needs and confirmed that J.C. had few places to turn for adult advocates on campus.

5. Complainant K.B.

95. 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.
96. 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.
97. 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. This impacts K.B.'s morale to take leadership positions and participate in extracurricular activities as well.

6. Complainant J.M.

98. J.M. is a 11-year old Black student at Linwood Elementary who has constantly been harassed and abused by other students because of his race. Over the past six years, J.M. has attended District schools where students touch his skin to see if the "blackness" will wipe off in District classrooms and on the playground.
99. As an elementary student, District staff are often present during such incidents, and J.M. has reported these incidents to staff. To the knowledge of J.M. and his family, District staff do not respond or stop white students from harassing J.M. regarding his skin color. As a result, J.M. is being conditioned to have negative feelings about his skin color.
100. He has asked his mother why he has to have dark skin and has wished that his skin was a different color.
101. Other District students often call J.M. the "n" word and will not sit next to him because he is Black. For example, on April 25, 2018, J.M.'s teacher, [REDACTED] moved J.M. to another seat in his class because a white student racially harassed J.M. and said that she did not want to sit next to him and told J.M.'s teacher that she did not like Black people. Although his teacher took actions to remove J.M. from a source of harassment, to the knowledge of J.M. and his family, the other student was not disciplined and the teacher did not report the incident to District officials. The District consistently dismissed J.M.'s mother's urging to address this unacceptable conduct by J.M.'s classmate and disregarded the urgency by pushing the issue off until a later meeting time. That meeting time never happened.
102. On multiple occasions in 2017 and 2018, J.M.'s non-Black teacher made J.M. stand in front of the class while the teacher exclaimed to all of the students that J.M. would not amount to anything in life.
103. On September 28, 2018, a white student called J.M. the "n" word in class. In response, the vice principal, [REDACTED] wrote that the student said "black boy"—instead of the "n" word—in an incident report of the altercation and sent the student back to class.
104. This persistent and pervasive behavior by white students leads J.M. to be less engaged in the classroom as well as lowers his self-esteem as a young student.
105. J.M.'s mother has met with the District on multiple occasions due to the racial harassment and bullying of her son. For example, she requested that J.M. be transferred to a teacher who cares about her son's needs and will adequately respond when other students harass and bully him in the classroom. The District denied this request.
106. As a result, J.M. knows that he is in a classroom with a teacher who allows white students to harass him based on his race. He does not feel supported in the classroom because he perceives that white students are given preferential treatment by the teacher.

7. Complainant J.J.

107. Complainant J.J. is a nine-year-old fourth grade student at Linwood Elementary. On October 31, 2018, a teacher who was monitoring the playground wrote up J.J. after a white student got hurt. The teacher claimed that J.J. caused the injury, rejecting J.J.'s explanation that he had merely been touching the playground equipment after the white

student was injured on the equipment. J.J. was sent home with a note from [REDACTED], J.J.'s current teacher, asking J.J.'s mother to sign paperwork demonstrating J.J.'s fault in the incident. The teacher who initially observed the scenario did not put any identifying information regarding the teacher who decided that J.J. was at fault. J.J.'s mother called [REDACTED] the vice principal, to gain clarity on the situation and to inquire why J.J. was deemed responsible without any corroborating evidence. J.J. also told his mother and District staff that he did not know why he was getting in trouble. This leads to J.J. feeling that he is being treated differently than white students, which impacts his trusts in District teachers. His trust, however, is key for him to ask District teachers questions on assignments and for other classroom information.

8. Complainant N.B.

108. Complainant N.B. is currently in tenth grade at El Diamante High School. He is one of the only Black team members in the school's varsity basketball team which is predominantly white and Hispanic. On October 8, 2018, N.B. was playing basketball in the gym when a non-Black student, named STUDENT A, yelled at N.B. and said "[n' word], stop fouling me." They were playing one-on-one, but at least three other students heard this, at least one of whom was Black biracial. N.B. immediately told STUDENT A to never call him that again and proceeded to walk out of the gym. The District's remedy was for STUDENT A to apologize and do research on what the "n" word meant. The student did not miss any basketball games. Approximately one week later, the coach asked STUDENT A to report to the team about his research. The student stated to the full team at the beginning of practice that the "n" word was a term of endearment. N.B. was clearly upset and said to STUDENT A that he already knew that it was a hate term, and that he always knew it was a term of hate. STUDENT A acknowledged N.B.'s response by rolling his eyes at N.B. and did not verbally respond. Neither the coach nor any other District staff required STUDENT A to apologize or imposed any further discipline for his unapologetic adherence to racially offensive language. This led N.B. to feel that some District staff will not advocate for Black students in these settings and impacts how he performs as a varsity basketball team member. His athletic skill could lead to college scholarships and other educational opportunities.

9. Witness M.A.

109. M.A. is a student in the District at El Diamante 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, [REDACTED] the story, Mr. [REDACTED] 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.

10. Witness M.L.

110. 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.

11. Witness Y.S.

111. 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.

12. Witness B.L.

112. 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.

13. Witness L.C.

113. 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.
114. 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, “STUDENT 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.

D. The District Has Continuously Heard from Students and Community Groups that It Needs to Address Racial Hostility

115. 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.⁴³
116. Teachers also outlined their concerns that the District was not properly handling claims of racial hostility and that it was negatively impacting student morale.
117. 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.⁴⁴
118. 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 engage with the District to help it address these problems (*see infra* Part E), the District declined to take those steps. The suggested steps were

⁴³ See Exh. H – J.

⁴⁴ See Exh. K.

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.⁴⁵

119. Indeed, the District was sued in 2006 for creating a racially hostile environment for two Black students at Golden West High School.⁴⁶ The lawsuit put the District on notice that Black students regularly endured a hostile environment based on students and teachers calling Black students racial epithets and bullying Black students due to their race. Yet twelve years after the filing of that lawsuit the District has not addressed the ongoing pattern of racial hostility across its campuses that are now outlined in this complaint.
120. The pervasive, severe, racially hostile environment for Black students in the District has persisted unabated through the present time.⁴⁷

E. The ACLU-NC Has Intervened in the Past Due to the District's Racially Hostile Environment for Black Students

121. 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."⁴⁸ 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."⁴⁹
122. 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.⁵⁰ 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.'"
123. Nine years after its first effort to alert the District to the pervasive racial discrimination in its schools, 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.

⁴⁵ 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. Q, 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.

⁴⁶ See Exh. L and M.

⁴⁷ See *supra* footnote 31.

⁴⁸ See Exh G.

⁴⁹ See *id.*

⁵⁰ See *id.*

124. 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 having over a decade notice that Black students face a racially hostile environment and that their administrators refuse to address the hostile environment.
125. 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 2018.⁵¹
126. Despite the District's statements that all students were notified about a taskforce, the ACLU has received reports that many students had not received any invitations or information regarding a taskforce.

F. The District's Policies and Practices Demonstrate that the District Does Not Enforce Its Non-Discrimination Policies and Procedures Equally for Black Students.⁵²

127. 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."⁵³ 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.⁵⁴ Employees who permit or engage in prohibited discrimination shall be subject to disciplinary action.⁵⁵
128. Moreover, the administration is required to maintain a record of all reported cases of unlawful discrimination to prevent repetitive prohibited behavior.⁵⁶
129. 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.
130. Black students regularly express that because the administrators consistently ignore bullying and harassment towards Black students they do not feel comfortable on District property.
131. As late as October 2018, the District received complaints from District staff regarding its racially hostile environment. On at least one occasion this school year, the District also received supporting written evidence by way of a note that had the "n" word written numerous times from top to bottom on the paper left for a campus advisor.⁵⁷
132. District staff are aware that Black students are called "jungle bunnies" and other racially derogatory terms at the expulsion school in the District. And for the few District staff who try to report incidents of racial harassment, they are reprimanded by District

⁵¹ See Exh. N.

⁵² This complaint references policies and procedures that were current as of October 2018.

⁵³ See Exh. E.

⁵⁴ See Exh. D.

⁵⁵ See *id.*

⁵⁶ See *id.*

⁵⁷ See Exh. O-P.

administrators with higher authority.⁵⁸ District staff are aware that Black students are treated as a small minority of the District and are not given resources to help them navigate their educational experience.

133. In contrast, according to at least one former District staff, white students are generally given the resources they need to be successful in the District.⁵⁹
134. The District has not addressed these complaints, forcing some Black staff to evaluate whether they can continue employment in the District.⁶⁰
135. 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.
136. 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.
137. 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.
138. 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.
139. 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.⁶¹
140. 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.
141. 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.
142. Black students are regularly ignored by District staff when they report instances of racial harassment, a clear departure of District board policies.

⁵⁸ See Exh. C.

⁵⁹ See *id.*

⁶⁰ See Exh O.

⁶¹ 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.

143. 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.⁶²
144. 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

145. Complainants respectfully request that OCR require the District to develop and implement plans to accomplish the remedies described below, 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.⁶³

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:

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.

⁶² 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.

⁶³ See Exh. Q.

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”⁶⁴ 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:

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.

⁶⁴ 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.

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:

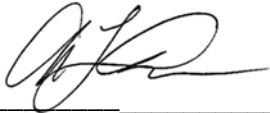
1. The District shall hire an independent expert consultant or consultants with approval from Complainants. The consultant(s) will assist in the design and implementation of a plan, which includes goals, objectives, timelines, and measurable outcomes, for the remedies listed above.
2. The consultant(s) 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.



EXHIBIT L

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ATTORNEY FOR Plaintiffs [REDACTED] and [REDACTED]

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

[REDACTED] AND [REDACTED], minors,)	No. 1:06-CV-00355-AWI-DLB
by and through their Guardian Ad Litem)	FIRST AMENDED
[REDACTED],)	COMPLAINT FOR DECLARATORY
)	AND INJUNCTIVE RELIEF AND FOR
Plaintiffs,)	COMPENSATORY AND PUNITIVE
)	DAMAGES
vs.)	
)	DEMAND FOR JURY
VISALIA UNIFIED SCHOOL DISTRICT, by)	
and through its Board of Education; STAN)	
CARRIZOSA, Superintendent; BOB CESENA,)	
Assistant Principal; DIANE BIEHLE, Assistant)	
Principal; ANDY THORNBURG, Teacher;)	
ALFONZO GUZMAN, Assistant Principal;)	
NACHO LAIRMA, Assistant Principal, and)	
Does 1-25, inclusive,)	
)	
Defendants.)	
)	
)	

INTRODUCTION

1. Plaintiffs [REDACTED] and [REDACTED] ([REDACTED]) began attending Golden West High School ("GWHS") in Visalia, California in August, 2003. During the entire period of their attendance at GWHS, until they were pulled out of GWHS by their parents on April 22, 2005, the [REDACTED] were discriminated against due to their race. The [REDACTED] are African

American. The discrimination included, but was not limited to, constant racial name calling by white students through the use of words such as “nigger,” “coon,” “monkey” and “jigaboo.” This racial name-calling took place on a daily basis, openly on the campus in public areas, in classes and at athletic practices. The [REDACTED] were also subjected to physical threats and threats of lynching by fellow GWHS students.

2. The racial name-calling and physical threats were open and pervasive on the GWHS campus, at times done in the presence of teachers and administration. The [REDACTED] and other African American students reported said discrimination to the administration at GWHS repeatedly, to no avail. The administration at (GWHS), including teachers, coaches, assistant principals and the principal, and the administration at the Visalia Unified School District (VUSD) knew or should have known of said discrimination, and took no action to prevent it or remedy the intolerable situation. As a result of the administration’s (GWHS and VUSD) failure to take corrective action, the [REDACTED] parents, [REDACTED] were forced to remove their sons from GWHS and transfer them to a different high school. The [REDACTED] suffered severe emotional distress as a result of the racial discrimination that they were subjected to.

PARTIES

3. Plaintiffs [REDACTED] and [REDACTED] ([REDACTED]) were at all relevant times and are students enrolled within VISALIA UNIFIED SCHOOL DISTRICT (“VUSD”). The [REDACTED] attended Golden West High School (“GWHS”) from on or about August 2003 through on or about April 22, 2005. They are presently students at Mt. Whitney High School.

4. Defendant VUSD is a public school district organized and operating under the laws of the State of California. VUSD controls and operates Golden West High School and other public schools in the Visalia area. A portion of the funding for each of these schools comes from the state and federal governments.

5. Defendants STAN CARRIZOSA, VUSD Superintendent of Schools; BOB CESENA, Principal, Golden West High School; DIANE BIEHL, Assistant Principal, Golden West High School; ANDY THORNBURG, Teacher, Golden West High School; ALFONSO GUZMAN, Assistant Principal, Golden West High School; and NACHO

LAIRMA, Assistant Principal, Golden West High School, are or were, at all relevant times, individuals working as employees, teachers, agents and/or administrators of the VUSD.

6. The VUSD by and through its Board of Education and the Defendants sued individually in this lawsuit, were and are responsible for creating and maintaining an educational environment that is free from discrimination and harassment. These Defendants were and are also responsible for making policy and/or implementing disciplinary, anti-harassment, and anti-discrimination policies. Further, these Defendants were and are responsible for enforcing and ensuring that their subordinates, agents, and employees were and are enforcing such laws and policies by taking prompt remedial action in response to incidents of inappropriate behavior, harassment and/or discrimination against students.

7. Plaintiffs allege upon information and belief that each of the Defendants, including Defendants Does 1 through 25 inclusive, performed, participated in, aided and/or abetted, or were deliberately indifferent to the acts averred herein, proximately caused the damages averred below, and are liable to Plaintiffs for the damages and other relief sought herein. The true names and official capacities of Defendants designated as Does 1 through 25, inclusive, are unknown to Plaintiffs, who therefore sue these Defendants by such fictitious names. Plaintiffs will seek leave to amend their complaint to show the true names and capacities of these Defendants when they have been ascertained.

8. Plaintiffs allege upon information and belief that at all relevant times, each and every Defendant was the agent and employee of each and every other Defendant, was acting within the scope of such agency or employment, and was acting with the consent, permission and authorization of the remaining Defendants. All actions of each Defendant were ratified and approved by every other Defendant. Plaintiffs further allege on information and belief that all of the actions alleged in this Complaint were taken pursuant to the customs, policies, and practices of the VUSD and that Defendants have been, are presently and will be acting under the color of authority of the laws of the United States and the laws of the State of California.

JURISDICTION

9. Plaintiffs' claims for monetary relief are brought pursuant to the Fourteenth Amendment to the Constitution of the United States; 42 U.S.C. section 1983; Article 1,

1 Section 1, 7(a) and 13 of the California Constitution; California Civil Code sections 51, et
2 seq., 52.1; and California common law.

3 10. Jurisdiction is conferred upon this Court pursuant to 28 U.S.C sections 1331
4 and 1343 because matters in controversy arise under the Constitution and laws of the United
5 States. Declaratory Relief is authorized under 28 U.S.C. sections 2201 and 2202. This Court
6 has supplemental jurisdiction to hear Plaintiffs' state claims under 28 U.S.C. section
7 1367(a).

8 11. Plaintiffs are exempt from the California Tort Claims Act because
9 Defendants have failed to comply substantially with Sections 946.4 and 53051 of the
10 California Government Code. Further, Plaintiffs provided Notice of their claims by filing
11 Administrative Claims for Damages on August 17, 2005, and those claims have been
12 denied.

13 VENUE

14 12. Venue is proper in this Court under U.S.C. sections 1391(b) and 1392
15 because in the COMPLAINT the events which give rise to Plaintiffs' claims took place
16 within the Eastern District of California in Visalia, California.

17 COMMON FACTS

18 13. The racial discrimination that the [REDACTED] were subjected to took place
19 between August, 2003 up to and including April 22, 2005, and included, but was not limited to
20 the following:

21 A. Other students at GWHS directed towards the [REDACTED] and other African
22 American students racial slurs such as "nigger", "jigaboo" "coon" and "monkey" on a
23 daily basis. These slurs were regularly shouted loudly in public on campus, in classes and
24 at school assemblies.

25 B. Other students at GWHS directed threats of physical violence directed
26 towards the [REDACTED] while at school. These threats arose because of the [REDACTED]
27 race.

1 C. Regularly, during weight training classes, other white students would chant
2 “nigger, nigger, nigger” when [REDACTED] would lift weights. In addition, in those
3 same weight-training classes, white students would say to other white students “look at
4 this monkey trying to lift weights,” referring to [REDACTED]. These racial taunts
5 were done openly in the class in the presence of the weight-training teacher, Defendant
6 Andy Thornburg (“THORNBURG”).

7 D. On at least one occasion, a white student yelled “Hey, nigger” at [REDACTED]
8 [REDACTED] in the presence of Defendant Assistant Principal Diane Biehle (“BIEHLE”).
9 Defendant BIEHLE heard the statement and responded by saying, “excuse me?” The
10 white student then said “monkey,” and defendant BIEHLE said “O.K” and took no
11 action.

12 E. On at least one occasion, two white students approached [REDACTED]
13 pointed to a confederate flag on one of the student’s hat and said “Hey, nigger.”

14 F. On a regular basis at football practice, racial slurs such as “nigger” were openly
15 shouted at the [REDACTED]. This was reported to GWHS coaches and administration, who
16 took no action.

17 G. On at least one occasion, [REDACTED] was approached by a group of white
18 students on campus, and one of the white students aggressively displayed a rope towards
19 [REDACTED] that was tied in a noose like a lynching noose. [REDACTED] took this
20 as a form of physical threat and intimidation, representing a ‘lynching’ noose. There had
21 been at least one other similar incident directed at another African American student
22 where a lynching noose was displayed and words to the effect of “I can get the noose
23 anytime I want” were directed towards the African American student.

24 H. White students at GWHS wore hats with Nazi symbolism on campus at
25 GWHS, did the Nazi salute towards African American students, and shouted “White
26 Power” at school assemblies.

27 I. On at least one occasion at a rehearsal for a GWHS graduation ceremony, a
28 white student shouted “nigger” at an African American student in the presence of
Defendant BIEHLE, who took no action.

1 J. On at least one occasion, [REDACTED] was outside the student store at
2 GWHS when a white student began shouting racial slurs. Defendant Assistant
3 Principal Nacho Lairma ("LAIRMA") was nearby, so [REDACTED] immediately
4 reported the incident. Defendant LAIRMA took no action.

5 K. The [REDACTED] and other African American students reported the racial
6 taunts and harassment directly to Defendants LAIRMA and Defendant Assistant
7 Principal Alfonso Guzman ("GUZMAN"). On at least one occasion, Defendant
8 LAIRMA had [REDACTED] write down a list of specifics regarding the racial
9 harassment. [REDACTED] did so and met with LAIRMA and gave LAIRMA the list.
10 LAIRMA told [REDACTED] that no action would be taken. [REDACTED] also gave
11 Defendant GUZMAN a written list of specific harassment on at least two occasions.
12 Guzman took no action.

13 14. The aforementioned incidents of racial discrimination and harassment took
14 place openly on the GWHS campus, often in the presence of Golden West teachers and
15 administrative staff. Complaints regarding the racial discrimination and harassment were
16 made directly to GWHS administration by the [REDACTED] students and other African
17 American students. [REDACTED] and [REDACTED] the [REDACTED] parents complained to
18 teachers, administrative staff at GWHS, including Defendant GWHS Principal Bob Cessna,
19 ("CESENA") and to VUSD administrative staff, including Defendant VUSD Superintendent
20 Stan Carrizozo ("CARRIZOSA") from late 2004 through April 13, 2005. No action was
21 taken. When continued threats of physical violence continued on or about April 18, 2005,
22 The [REDACTED] were forced to remove the [REDACTED] students from GWHS. The atmosphere
23 at GWHS of racial hostility, physical threats and intimidation due to race that was allowed
24 by the GWHS administration and the VUSD to fester and flourish resulted in severe
25 emotional distress to the [REDACTED] and was a violation of the [REDACTED] civil rights.
26
27
28

FIRST CLAIM FOR RELIEF

(42 U.S.C. sec. 1983: Equal Protection Under U.S. Constitution Amend. XIV;

Discrimination on Account of Race, Ancestry, and National Origin)

[Against Defendants VUSD and STAN CARRIZOSA, BOB CESENA, DIANE BIEHLE, ANDY THORNBURG, ALFONZO GUZMAN and NACHO LAIRMA in their individual and official capacities]

15. Plaintiffs reallege and replead all allegations of paragraphs 1-14 of this Complaint and incorporate them herein by reference.

16. Plaintiffs the [REDACTED] began attending Golden West High School in Visalia, California in August, 2003. During the entire period of their attendance at GWHS, until they were pulled out of GWHS by their parents on April 22, 2005, the [REDACTED] were discriminated against due to their race. The [REDACTED] are African American. The discrimination included, but was not limited to, constant racial name calling by white students through the use of words such as "nigger," "coon," "monkey" and "jigaboo." This racial name-calling took place on a daily basis, openly on the campus in public areas, in classes and at athletic practices. The [REDACTED] were also subjected to physical threats and threats of lynching by fellow GWHS students.

17. The racial name-calling and physical threats were open and pervasive on the GWHS campus, at times done in the presence of teachers and administration. The [REDACTED] and other African American students reported said discrimination to the administration at GWHS repeatedly, to no avail. The administration at (GWHS), including teachers, coaches, assistant principals and the principal, and the administration at the Visalia Unified School District (VUSD) knew or should have known of said discrimination, and took no action to prevent it or remedy the intolerable situation.

18. As a result of Defendants' actions, failure to act, and/or deliberate indifference, the [REDACTED] were forced to transfer from GWHS to another high school.

1 The [REDACTED] have been damaged emotionally and physically by the racial discrimination
2 and harassment described above.

3 19. Defendants' actions, failure to act, and/or deliberate indifference towards the
4 discrimination the [REDACTED] suffered was carried out because of the [REDACTED] race and
5 ancestry in violation of the Equal Protection Clause of the Fourteenth Amendment to the
6 United States Constitution and 42 U.S.C. sec. 1983. At all times, Defendants have been, are
7 presently and will be acting under the color and authority of the laws of the United States
8 and the State of California. As a result of this discrimination and harassment, the [REDACTED]
9 suffered economic and non-economic damages in an amount to be proven at trial.

10 **SECOND CLAIM FOR RELIEF**

11 (42 U.S.C. sec. 1983; Procedural and Substantive Due Process

12 Under U.S. Constitution Amend. XIV)

13 [Against Defendants VUSD and STAN CARRIZOSA, BOB CESENA, DIANE
14 BIEHLE, ANDY THORNBURG, ALFONZO GUZMAN and NACHO LAIRMA in
15 their individual and official capacities]

16 20. Plaintiffs reallege and replead all allegations of paragraphs 1-19 of this
17 Complaint and incorporate them herein by reference.

18 21. Plaintiffs [REDACTED] had a protected liberty interest in a high school
19 education, conferred by the California State Constitution and Education Code. Article I,
20 Section 28(c) recognizes that students in California schools have an "inalienable right to
21 attend campuses which are safe, secure and peaceful," and Article 9, Section 1 recognizes
22 that "[a] general diffusion of knowledge and intelligence [is] essential to the preservation of
23 the rights and liberties of the people." The California Education Code, Sections 48200 et
24 seq., recognizes the importance of education to children through the age of eighteen.
25 Further, the Education Code specifically prohibits discrimination based upon race, and
26 California regulations require the VUSD to implement policies to prevent and/or respond to
27 acts of discrimination and harassment in schools.

22. VUSD and/or Defendants had a custom, policy and/or they tolerated a custom or policy that resulted in intentional discrimination and/or deliberate indifference to Plaintiffs' legal rights. Plaintiffs [REDACTED] were deprived of their liberty interest in a safe, secure and peaceful education without due process of law.

23. Plaintiffs the [REDACTED] began attending Golden West High School in Visalia, California in August, 2003. During the entire period of their attendance at GWHS, until they were pulled out of GWHS by their parents on April 22, 2005, the [REDACTED] were discriminated against due to their race. The [REDACTED] are African American. The discrimination included, but was not limited to, constant racial name calling by white students through the use of words such as "nigger," "coon," "monkey" and "jigaboo." This racial name-calling took place on a daily basis, openly on the campus in public areas, in classes and at athletic practices. The [REDACTED] were also subjected to physical threats and threats of lynching by fellow GWHS students.

24. The racial name-calling and physical threats were open and pervasive on the GWHS campus, at times done in the presence of teachers and administration. The [REDACTED] and other African American students reported said discrimination to the administration at GWHS repeatedly, to no avail. The administration at (GWHS), including teachers, coaches, assistant principals and the principal, and the administration at the Visalia Unified School District (VUSD) knew or should have known of said discrimination, were deliberately indifferent to the [REDACTED] safety and took no action to prevent the discrimination and harassment or remedy the intolerable situation.

25. Defendants did not follow VUSD procedures or the minimum procedures required by the Constitution and California State law in response to the [REDACTED] complaints of discrimination and harassment.

26. Defendants' actions, failure to act, and/or deliberate indifference towards the discrimination the [REDACTED] suffered was carried out because of the [REDACTED] race and ancestry in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. sec. 1983. At all times, Defendants have been, are presently and will be acting under the color and authority of the laws of the United States

1 and the State of California. As a result of this discrimination and harassment, the [REDACTED]
2 suffered economic and non-economic damages in an amount to be proven at trial.

3
4
5
6 **THIRD CLAIM FOR RELIEF**

7 (California Education Code Sections 200, 220, 233.5, 262.4; Student Discrimination)

8 [Against Defendants VUSD and STAN CARRIZOSA, BOB CESENA, DIANE
9 BIEHLE, ANDY THORNBURG, ALFONZO GUZMAN and NACHO LAIRMA in
10 their individual and official capacities]

11 27. Plaintiffs reallege and replead all allegations of paragraphs 1-26 of this
12 Complaint and incorporate them herein by reference.

13 28. Plaintiffs the [REDACTED] began attending Golden West High School in Visalia,
14 California in August, 2003. During the entire period of their attendance at GWHS, until they
15 were pulled out of GWHS by their parents on April 22, 2005, the [REDACTED] were discriminated
16 against due to their race. The [REDACTED] are African American. The discrimination included,
17 but was not limited to, constant racial name calling by white students through the use of words
18 such as "nigger," "coon," "monkey" and "jigaboo." This racial name-calling took place on a
19 daily basis, openly on the campus in public areas, in classes and at athletic practices. The
20 [REDACTED] were also subjected to physical threats and threats of lynching by fellow GWHS
21 students.

22 29. The racial name-calling and physical threats were open and pervasive on the
23 GWHS campus, at times done in the presence of teachers and administration. The
24 [REDACTED] and other African American students reported said discrimination to the
25 administration at GWHS repeatedly, to no avail. The administration at (GWHS), including
26 teachers, coaches, assistant principals and the principal, and the administration at the Visalia
27 Unified School District (VUSD) knew or should have known of said discrimination, were

1 deliberately indifferent to the [REDACTED] safety and took no action to prevent the
2 discrimination and harassment or remedy the intolerable situation.

3 30. Defendants' actions, failure to act, and/or deliberate indifference towards the
4 discrimination the [REDACTED] suffered was carried out because of the [REDACTED] race and
5 ancestry. Through these intentional acts and the acts of deliberate indifference, the
6 [REDACTED] were deprived of the equal rights and opportunities in a public educational
7 institution as guaranteed under the California Education Code Sections 200, 220, 233.5, and
8 262.4. As a result of this discrimination and harassment, the [REDACTED] suffered economic
9 and non-economic damages in an amount to be proven at trial.

10 **FOURTH CLAIM FOR RELIEF**

11 (California Civil Code Sections 51& 52(a) et seq., Unruh Civil Rights Act;

12 Article 1, Section 7, of the California Constitution,

13 Discrimination on Account of Race, Ancestry, and National Origin)

14 [Against Defendants VUSD and STAN CARRIZOSA, BOB CESENA, DIANE
15 BIEHLE, ANDY THORNBURG, ALFONZO GUZMAN and NACHO LAIRMA in
16 their individual and official capacities]

17 31. Plaintiffs reallege and replead all allegations of paragraphs 1-30 of this
18 Complaint and incorporate them herein by reference.

19 32. Defendants are engaged in the business of operating schools, which are a
20 business and public accommodation as defined by Civil Code Section 51.

21 33. Plaintiffs the [REDACTED] began attending Golden West High School in Visalia,
22 California in August, 2003. During the entire period of their attendance at GWHS, until they
23 were pulled out of GWHS by their parents on April 22, 2005, the [REDACTED] were discriminated
24 against due to their race. The [REDACTED] are African American. The discrimination included,
25 but was not limited to, constant racial name calling by white students through the use of words
26 such as "nigger," "coon," "monkey" and "jigaboo." This racial name-calling took place on a
27 daily basis, openly on the campus in public areas, in classes and at athletic practices. The
28

1 [REDACTED] were also subjected to physical threats and threats of lynching by fellow GWHS
2 students.

3 34. The racial name-calling and physical threats were open and pervasive on the
4 GWHS campus, at times done in the presence of teachers and administration. The
5 [REDACTED] and other African American students reported said discrimination to the
6 administration at GWHS repeatedly, to no avail. The administration at (GWHS), including
7 teachers, coaches, assistant principals and the principal, and the administration at the Visalia
8 Unified School District (VUSD) knew or should have known of said discrimination, were
9 deliberately indifferent to the [REDACTED] safety and took no action to prevent the
discrimination and harassment or remedy the intolerable situation.

10 35. Defendants' actions, failure to act, and/or deliberate indifference towards the
11 discrimination the [REDACTED] suffered was carried out because of the [REDACTED] race and
12 ancestry. Through these intentional acts and the acts of deliberate indifference, the
13 [REDACTED] were denied the full and equal accommodations, advantages, facilities,
14 privileges, and services in a business and public accommodation under Civil Code Sections
15 51 - 52(a), et seq. Defendants have also violated Plaintiffs [REDACTED] right to be free of
16 discrimination on account of race, ancestry and national origin as guaranteed by Article 1,
17 Section 7(a) of the California Constitution. As a result of this discrimination and
18 harassment, the [REDACTED] suffered economic and non-economic damages in an amount to
be proven at trial.

19 **FIFTH CLAIM FOR RELIEF**

20 (42 U.S.C. sec. 1983: Equal Protection Under U.S. Constitution Amend. XIV;

21 Discrimination on Account of Race, Ancestry, and National Origin)

22 [Against Defendants VUSD and STAN CARRIZOSA, BOB CESENA, DIANE
23 BIEHLE, ANDY THORNBURG, ALFONZO GUZMAN and NACHO LAIRMA in
their individual and official capacities]

24 36. Plaintiffs reallege and replead all allegations of paragraphs 1-35 of this
25 Complaint and incorporate them herein by reference.

26 37. Plaintiffs the [REDACTED] began attending Golden West High School in Visalia,
27 California in August, 2003. During the entire period of their attendance at GWHS, until they

1 were pulled out of GWHS by their parents on April 22, 2005, the [REDACTED] were discriminated
2 against due to their race. The [REDACTED] are African American. The discrimination included,
3 but was not limited to, constant racial name calling by white students through the use of words
4 such as “nigger,” “coon,” “monkey” and “jigaboo.” This racial name-calling took place on a
5 daily basis, openly on the campus in public areas, in classes and at athletic practices, and was
6 also directed towards other African American students at GWHS. The [REDACTED] were also
7 subjected to physical threats and threats of lynching by fellow GWHS students.

8 38. The racial name-calling and physical threats were open and pervasive on the
9 GWHS campus, at times done in the presence of teachers and administration. The
10 [REDACTED] and other African American students reported said discrimination to the
11 administration at GWHS repeatedly, to no avail. The administration at (GWHS), including
12 teachers, coaches, assistant principals and the principal, and the administration at the Visalia
13 Unified School District (VUSD) knew or should have known of said discrimination, and
14 took no action to prevent it or remedy the intolerable situation.

15 39. VUSD promotes and fosters this hostile environment. Defendants and other
16 VUSD officials do not fund, sponsor, endorse, or promote any organization within the
17 district to provide support to students who are victims of racial harassment and
18 discrimination. VUSD has no adequate formal or informal policy to ensure its schools are
19 safe for students who are African American. Teachers, counselors, and administrators are
20 not trained how to assist student victims of racial harassment and discrimination. Further,
21 VUSD has no adequate formal or informal policy for preventing or responding to such
22 harassment. The absence of an adequate policy has the effect of promoting and perpetuating
23 the harassment.

24 40. Students who are African American, including the [REDACTED], have
25 complained repeatedly to VUSD teachers and administrators about the hostile climate for
26 them on VUSD campuses. Defendants and other teachers and administrators have ignored
27 their complaints, have taken no effective actions, and have not attempted to enact adequate
28 formal or informal policies for how to prevent such harassment.

41. The intentional discrimination, hostile environment, and deliberate
indifference towards VUSD students who are African American, including but not limited to

1 students at GWHS, causes substantial injury to the [REDACTED], GWHS students and their
2 parents, and violates the Fourteenth Amendment to the United States Constitution and 42
3 U.S.C. sec. 1983. At all times, defendants have been, are presently and will be acting under
4 the color of authority of the laws of the United States and the State of California.

5 42. Plaintiffs seek a judgment declaring that the intentional acts and the acts of
6 deliberate indifference described above perpetuated by VUSD and the Defendants are
7 prohibited by the Equal Protection Clause of the Fourteenth Amendment to the United
8 States Constitution and 42 U.S.C. sec. 1983 and seek the injunctive relief set forth in the
9 prayer for relief.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiffs pray for judgment as stated below:

12 1. For compensatory and general damages to Plaintiffs in an amount to be
13 proven at trial;

14 2. For exemplary and punitive damages to Plaintiffs in an amount to be
15 proven at trial;

16 3. For statutory damages and penalties pursuant to California Civil Code
17 sections 52, et seq.;

18 4. For costs of suit, expenses and reasonable attorneys' fees pursuant to
19 U.S.C. sec. 1988, California Civil Codes sections 52(b) and 52.1(h) and California
20 Code of Civil Procedure sec. 1021.5; and,

21 5. For such other relief as the Court may deem just, proper, and appropriate.

22 6. Issue a judgment declaring that the acts of defendants described herein
23 violate the Fourteenth Amendment to the United States Constitution and 42 U.S.C.
24 sec. 1983, and that said constitutional rights so violated are present rights of
25 Plaintiffs which must be immediately respected and protected.

26 7. Issue an injunction ordering Defendants to stop engaging in such
27 unconstitutional and unlawful acts, and to develop adequate policies and procedures
28 for ending any such unconstitutional and unlawful acts and the hostile and intolerant
environment, including but not limited to the following:

1 a. Require Defendants to implement mandatory training programs for
2 VUSD faculty and staff on issues related to racial diversity and
3 methods to intervene to stop students from harassing other students
4 because of their race.

5 b. Require Defendants to adopt policies with specific guidelines for
6 instructing teachers and administrators about how to address
7 complaints by students who have been taunted, harassed or
8 discriminated against because of their race.

9 c. Require Defendants to maintain statistical data concerning each
10 complaint of racial harassment made by a student, as well as the
11 specific action VUSD teachers and administrators took to resolve the
12 complaint.

DEMAND FOR JURY

13 Pursuant to Rule 38(b), Federal Rules of Civil Procedure, and Rule 38-201, Local
14 Rules, United States District Court for the Eastern District of California, Plaintiffs demand
15 trial by jury for all issues pleaded herein so triable.

16 DATED: _____

LAW OFFICES OF DOUGLAS L. HURT

17
18 /s/ Douglas L. Hurt

19 By: Douglas L. Hurt, Attorney for Plaintiffs
20
21
22
23
24
25
26
27
28

EXHIBIT M

DOUGLAS L. HURT #124116
LAW OFFICES OF DOUGLAS L. HURT
2534 W. Main Street
Visalia, CA 93291
Telephone: (559) 635-3333
Facsimile: (559) 733-0558

Attorney for Petitioner, [REDACTED]
as Guardian ad Litem for [REDACTED]
[REDACTED] and [REDACTED]

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

[REDACTED] AND [REDACTED] BY AND)
THROUGH THEIR GUARDIAN AD LITEM, [REDACTED])
[REDACTED],)
Plaintiffs,)
vs.)
VISALIA UNIFIED SCHOOL DISTRICT, ET. AL.,)
Defendants)

Case No.: 1:06-CV-00355-AWI-SMS

**STIPULATION RE: SETTLEMENT OF
MINORS' CLAIMS, DECLARATION OF
DOUGLAS L. HURT IN SUPPORT OF
DISPUTED CLAIMS OF MINORS, AND**

**ORDER APPROVING COMPROMISE OF
DISPUTED CLAIMS OF MINORS
(CCP §372)**

IT IS HEREBY STIPULATED by and between plaintiffs [REDACTED] and [REDACTED] BY
AND THROUGH THEIR GUARDIAN AD LITEM, [REDACTED] and defendants, through their
respective counsel that minors [REDACTED] and [REDACTED] claims be settled for \$20,000.00
each. The full terms of the settlement are stated at Exhibit A.

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Stipulation Re: Settlement of Minors' Claims, Declaration of
Douglas L. Hurt in Support of Disputed Claims of Minors, and
[Proposed] Order Approving Disputed Claims of Minors
(CCP §372)

LAW OFFICES OF DOUGLAS L. HURT
2534 W. Main Street
Visalia, CA 93291

1 DATED: 5/10/07

NELSON, ROZIER & BETTENCOURT

2 /s/John Rozier

3 By: John Rozier, Attorney for
Defendants

4 DATED: 5/10/07

LAW OFFICES OF DOUGLAS L. HURT

5 /s/Douglas L. Hurt

6 By: Douglas L. Hurt, Attorney for
Plaintiffs

7
8 **DECLARATION OF DOUGLAS L. HURT**

9 I, Douglas L. Hurt, declare:

10 1. I am an attorney licensed to practice in the State of California. I make the following
11 statements based upon my personal knowledge, and if called to testify, could and would testify
12 competently to the facts stated herein.

13 2. I represent the minors in this matter, [REDACTED] and [REDACTED] in their
14 claims against defendant VISALIA UNIFIED SCHOOL DISTRICT, et. al., for injuries and damages
15 resulting from alleged racial discrimination at Golden West High School as more particularly described in
16 their civil Complaint. I prepared the Petition for Compromise of Disputed Claims of Minors filed with this
17 declaration. I have advised the minors' mother, [REDACTED] that the offer of \$20,000.00 for
18 each minor by defendant VISALIA UNIFIED SCHOOL DISTRICT to settle this matter is reasonable under
the circumstances, for the reasons explicated below.

19 3. The primary reason for settlement is to avoid unnecessary litigation on this claim. This
20 claim arises from allegations of racial discrimination against minors [REDACTED] and [REDACTED]
21 while attending Golden West High School ("GWHS") in Visalia, California beginning in August, 2003. The
22 minors are African American.

23 I declare under penalty of perjury, under the laws of the State of California, that the foregoing is
24 true and correct of my own personal knowledge, except as to matters stated upon information and belief,
25

and as to such matters I am informed and believe that they are true and correct. Executed this 10th day of May, 2007 at Visalia, California.

/s/Douglas L. Hurt
Douglas L. Hurt

Upon the evidence introduced the court finds that it is in the best interests of the minors that said claims be compromised and settled for the amount hereinafter stated and that the proceeds of such settlement be paid and used in the manner hereinafter specifically provided:

IT IS THEREFORE ORDERED:

A. That said compromise be and it is hereby approved and that upon payment of the sum of \$20,000.00 for each minor being the total settlement sum herein approved in the manner herein provided, the Payor shall be fully and forever released and discharged of and from all claims, charges and demands of said minor arising from the accident mentioned in said petition.

B. The full terms of settlement are stated at Exhibit A.

C. Petitioner shall disburse the proceeds of the settlement hereby approved in the following manner:

(a)	Attorney's fees to Douglas L. Hurt	\$10,000.00
(b)	Costs expended by Douglas L. Hurt	\$ 3,524.65
	TOTAL ALLOWANCES FOR FEES & EXPENSES	\$13,524.65

1. That the balances of the settlement sum, to wit, \$13,237.67 to each minor, shall be deposited into a blocked account, payable upon minors' 18th birthday, 6/12/07.

D. Upon receipt of the full amount of the settlement sum herein approved and the deposit of the funds, Petitioner is hereby authorized and directed to execute and deliver to said Payor a full, complete, and final release and discharge of any and all claims and demands of said minor by reason of the accident described in said petition and the resultant injuries and damages to said minor.

DATED: 5/11/2007

/s/ Sandra M. Snyder
SANDRA M. SNYDER
U.S. Magistrate Judge

EXHIBIT "A"

SETTLEMENT AGREEMENT AND RELEASE

Plaintiffs, [REDACTED] and [REDACTED] minors, by and through their Guardian ad Litem, [REDACTED] (collectively "Plaintiffs"), and Defendants, Visalia Unified School District ("VUSD"), Stan Carrizosa, Bob Cesena, Diane Biehle, Andy Thornberg, Alfonzo Guzman and Nacho Lerma (collectively "Defendants"), enter into this SETTLEMENT AGREEMENT AND RELEASE (the "Settlement Agreement") effective as of the Effective Date (as defined below).

Plaintiffs and Defendant (collectively "the Parties" and each a "Party") enter into this Settlement Agreement with reference to the following facts:

A. On or about June 9, 2006, Plaintiffs filed a First Amended Complaint in the United States District Court for the Eastern District of California (No. 1:06-CV-00355-AWI-DLB) asserting federal equal protection and due process claims as well as statutory claims under the California Education and Civil Codes (the "Action").

B. Defendants deny the allegations in the First Amended Complaint.

C. The parties to this Settlement Agreement wish to resolve all disputes between them without admission of liability or wrongdoing, as provided herein.

NOW, THEREFORE, IT HEREBY IS AGREED BY AND BETWEEN THE PARTIES TO THIS SETTLEMENT AGREEMENT AS FOLLOWS:

1. Effective Date. The "Effective Date" of this Settlement Agreement shall be the date upon which a fully executed dismissal has been filed with the Court.
2. Authority and Approvals. Each party to this Settlement Agreement understands and agrees that this agreement is subject to the following approvals:
 - a. The monetary commitment of VUSD is subject to approval by the Board of the JPA to which they belong;
 - b. The non-monetary commitment of VUSD is subject to approval by the VUSD School Board;
 - c. This entire agreement may be subject to Court approval as it involved claims of minors, or for other reasons. The Parties shall each use their best efforts and cooperate in good faith to obtain the necessary approvals.
3. Payment by VUSD to Plaintiffs. In consideration for this Settlement Agreement, VUSD will pay Plaintiffs the total sum of \$40,000.00 to be divided amongst [REDACTED] and their attorney as they see fit and as the Court may approve.
4. Releases and Covenants Not to Sue. In consideration for this Settlement Agreement and the terms and conditions hereof, the plaintiffs agree as follows:

- 1 a. Releases of Defendants by Plaintiffs. Plaintiffs [REDACTED] and [REDACTED]
[REDACTED] for themselves, their successors, and their assigns hereby fully
2 and forever release, waive, discharge and covenant not to sue
3 Defendants VUSD, Stan Carrizosa, Bob Cesena, Diane Biehle, Andy
4 Thornberg, Alfonzo Guzman, Nacho Lerma, individually and/or
collectively, and any of their respective Board Members, employees,
predecessors, successors, attorneys, and assigns, from and for any and
all Released Claims, as defined in the subparagraph 4(b) below.
- 5 b. Released Claims. "Released Claims" means any and all claims, demands,
6 causes of action, rights of appeal, costs, expenses, damages, judgments,
7 orders and liabilities of whatever kind or nature, in law, equity or
8 otherwise, including but not limited to claims for attorneys' fees or costs
(all of the foregoing collectively referred to herein as "Claims"), whether
9 now known or unknown, vested or contingent, suspected or
10 unsuspected, that have existed or may have existed, or that do exist as
of the Effective Date, as a result of transactions, occurrences, acts or
omissions that have occurred as of the Effective Date, which Claims arise
11 out of or in any way related to (i) [REDACTED] and [REDACTED]
enrollment in VUSD schools, attendance at VUSD schools, and status as
students in the VUSD, including but not limited to claims for physical and
emotional injuries; (ii) any and all claims made by [REDACTED] and
12 [REDACTED] in the First Amended Complaint. For purposes of
determining whether Claims arose prior to the Effective Date of this
Settlement Agreement, no tolling or other extensions of accrual that
might be legally applicable to statutes of limitation will be considered.
13 Nothing contained herein is intended to prevent any Party from enforcing
the Settlement Agreement.
- 14 c. Waiver of Unknown Claims. Plaintiffs hereby knowingly and voluntarily
15 waive any and all rights and benefits otherwise conferred by the
provisions of Section 1542 of the California Civil Code, which reads in full
as follows:

17 "A GENERAL RELEASE DOES NOT EXTEND
18 TO CLAIMS WHICH THE CREDITOR DOES
NOT KNOW OR SUSPECT TO EXIST IN HIS
FAVOR AT THE TIME OF EXECUTING THE
RELEASE, WHICH IF KNOWN BY HIM MUST
19 HAVE MATERIALLY AFFECTED HIS SETTLEMENT
20 WITH THE DEBTOR.

21 Plaintiffs expressly consent that, notwithstanding Section 1542 of the
California Civil Code, or any other statute or rule of law of similar import
22 whether enacted or in force in California or in any other State of the
United States or any other nation of the world, this general release shall
23 be given full force and effect according to each and all of its express
terms and provisions, including those relating to unknown or
24 unsuspected Claims that exist as of the Effective Date. This waiver is a
material term of this release and the settlement of which it is a part.

- 25 5. Non-monetary Commitments by VUSD. Subject to applicable law, VUSD agrees
to use its best efforts and cooperate in good faith to accomplish the non-

monetary commitments specified in Attachment "A" through the 2008-2009 school year.

6. Other Facts. The parties to this Settlement Agreement acknowledge and understand that it is possible that they, or their agents or attorneys, may discover Claims facts different from or additional to the ones they presently believe to exist concerning this Settlement Agreement or the Claims compromised or released hereby. Each of the Parties to this Settlement Agreement expressly accepts and assumes the risk of any such different or additional Claims or facts, and agrees that this Settlement Agreement, and the compromises, releases and other provisions hereof, shall remain effective notwithstanding the discovery of any such different or additional Claims or facts.
7. No Admissions. This Settlement Agreement is entered into in compromise of disputed claims. Neither this Settlement Agreement, nor the releases provided for herein, nor the consideration provided hereunder, nor any other act or agreement in furtherance of this settlement, shall be construed in any way as an admission of wrongdoing or liability on the part of any Party to this Settlement Agreement. Each of the Parties to this Settlement Agreement completely denies any such liability or wrongdoing.
8. Confidentiality of Agreement. Each of the parties hereto agrees to refrain from any public comment the terms of this Settlement Agreement and Release and to keep these terms confidential to the extent permitted by law.
9. Further Acts. Each of the Parties hereto agrees promptly to execute all other documents and take all other actions reasonably necessary to effectuate all of this Settlement Agreement's terms and conditions.
10. Enforcement. If there is any disagreement that cannot be resolved between the Parties to this Settlement Agreement arising out of or relating to this Settlement Agreement, the Parties to this Settlement Agreement agree that any legal action or proceeding relating to this agreement will be instituted exclusively in the United States District Court for the Eastern District of California. Plaintiffs and Defendants agree to submit to the exclusive jurisdiction of, and agree that venue is proper in, this Court in any such legal action or proceeding.
11. Successors. This Settlement Agreement shall bind the successors, assigns, heirs and personal representatives of each of the Parties to this Settlement Agreement.
12. Parties Represented. Each Party to this Settlement Agreement has been advised and represented by Counsel in connection with the negotiation and preparation hereof; each Party enters into this Settlement Agreement voluntarily; and each Party to this Settlement Agreement shall be deemed its co-author for purposes of the Settlement Agreement's construction. Each party further acknowledges that this Settlement Agreement has been reviewed in detail with them and that its language and intended effect have been explained, and that they have had the opportunity to review the Settlement Agreement with an attorney of their choice.
13. Integrated Writing. Other than the warranties, covenants, and representations expressly stated as such in this Settlement Agreement, there are no warranties, covenants, and representations of any kind, express or implied, upon which

1 either Party to this Settlement Agreement has relied in entering into this
2 Settlement Agreement, or as to the future relations or dealings of the Parties to
3 this Settlement Agreement.

4 Dated: _____, 2007

VISALIA UNIFIED SCHOOL DISTRICT

5 By _____
6 Superintendent Stan Carrizosa

7 Dated: _____, 2007

8 By _____, as
9 Guardian ad Litem for _____
10 _____ and _____

11 Dated: _____, 2007

12 By _____
13 Douglas L. Hurt, Counsel for
14 Plaintiffs _____ by and
15 through their Guardian ad Litem,
16 _____

17 Dated: _____, 2007

18 By _____
19 John Rozier
20 Nelson, Rozier & Bettencourt
21 Counsel for Visalia Unified School
22 District

ATTACHMENT "A"

(Non-Monetary Commitments by VUSD)

1. Staff Development. To continue the District's practice of providing diversity training at the beginning of each school year to all new staff with a particular emphasis on reducing racial discrimination and harassment; to periodically provide updated training to existing staff.

2. Student Training Program. To more specifically focus the ongoing "Breaking Down the Walls" student training program on issues of race, including color, ethnic group, national origin and race ancestry. This student training program will be conducted on a rotational basis among the four high schools every other year and will include activities to address the above topics.

3. Policies. To continue to enforce the District's current policies on the topic of levels of discipline for racial harassment; to continue to code racial incidents into the District's computer system as a separate category to allow for closer monitoring of incidents, of offenders and of students subjected to racial harassment; and to communicate to the parents of the offended students when steps have been taken to prevent or discipline for an incident of racial harassment. These policies and procedures will be discussed with the principals at least annually for the duration of this agreement.

4. Curriculum. To create additional classroom activities, such as discussions, writing and speakers and on the topic of racial discrimination in our community in order to move from theory to practical application as topics of racism are presented in the high school courses listed below; to meet with the site curriculum leaders throughout the District before the middle of the next semester in order to inject these items into the curriculum for the semester beginning Fall 2007.

- a. Health. Continue required course for graduation (typically a 9th grade course). 2 to 3 week section on Human Development, Personal Differences and Relationships, including racial and ethnic harassment.
- b. World History and Geography. Continue required course for graduation (typically a 10th grade course). Sections on unresolved problems of the modern world (1-2 weeks); United Nations Declaration of Human Rights; differing beliefs between Hindu and Muslim cultures; Nazism and Stalinism; Slave trade; Imperialism.
- c. United States History and Geography. Continue required course for graduation (typically an 11th grade course). Sections on the Civil War and Reconstruction; the Civil Rights Movement (2-3 weeks); the struggle for racial equality; respect and effective problem solving.
- d. Civics. Continue required course for graduation (typically a 12th grade course). Section on the fundamental principles and moral values of American Democracy; relationships among citizens; and landmark U.S. Supreme Court decisions affecting Civil Rights.

Note: New textbooks and course materials for items (b), (c) and (d) above, were adopted for the 2006/2007 school year and will remain in place for 7 years.

EXHIBIT P

EXHIBIT Q



November 7, 2017

Lucia D. Vazquez, Board President
Visalia Unified School District
5000 W. Cypress Ave
Visalia, California 93277
lvazquez@vusd.org

Re: **Public comments** to proposed changes to dress code banning “hate group” clothing

Dear Board President Vazquez,

We submit these public comments on behalf of [REDACTED] (a Visalia student activist), ACT for Women and Girls based in Visalia, CA, and the American Civil Liberties Union of Northern California (“ACLU”), regarding the proposed change to the dress code (AR 5132) being considered by the District at this evening’s school board meeting. It is our understanding that the proposed change will subject students to disciplinary measures if they wear “clothing, jewelry and personal items” that “promote . . . hate group activity” (hereinafter, “proposed policy”). It is also our understanding that this proposal is an attempt to help students feel safe on campus and in part in reaction to a student wearing a Confederate flag sweatshirt to school.¹

As discussed in more detail below, we appreciate the stated intent behind the proposed policy. We share the view that the Confederate flag is a symbol of hate and intolerance that celebrates a war fought to keep Black people in bondage and terrorizes the descendants of the enslaved. Moreover, we applaud any efforts by the District to maintain an inclusive, safe, and nurturing environment for all students. Indeed, the Education Code makes clear that all school districts have a mandatory obligation to create a safe and inclusive environment for students. *See* Cal. Ed. Code §§ 201, 220, 32261(a). The Education Code further mandates that the District investigate reported instances of bullying by students and teachers. *See id.* at §§ 234.1(b), 32261(a), 32280.

Notwithstanding, we believe that the change in the dress code is misguided because among other reasons: i) it doesn’t address the root causes of racism and bigotry in the District; ii)

¹ *See* <http://www.fresnobee.com/news/local/education/article181397876.html>.

it gives administrators and teachers even more discretion to impose discipline on students, discretion that often leads to selective enforcement against students of color—the very students that the proposed policy is intended to protect; and iii) a blanket ban on “hate group” symbols and the Confederate flag violates the Education Code and the constitutional guarantee of free speech.² Instead of banning protected speech, we urge that the District engage in meaningful efforts to combat racial and other biases on campus—including the steps we outline at the conclusion of this letter.

As an initial matter, we understand the deep concerns in the community over the display of a Confederate flag at school. For most Black people, the Confederate flag symbolizes a time when the law allowed individuals to treat Black people as less than human because of the color of their skin. For Black Southerners, this type of idolization never left the region. Black people often walk down streets and see Confederate flags waiving from backs of trucks or worn on clothes. It does not stop there. The KKK actively recruits in the South and Confederate monuments are proudly on display. These reminders of slavery, lynching, and Jim Crow are present and entrenched in daily life.

Similarly, in the Central Valley, Black students are regularly reminded that racists, bigots, and individuals who abhor their existence live among them as well. Recently, students were reminded of that reality when some of their classmates proudly displayed confederacy messages. For Black students, this was not a gentle reminder of “good old days” but a reminder of blatant racism and hatred. Seeing symbols of white supremacy reminds Black people and other people of color that racism is so embedded in the threads of this country, that it often just shifts forms while remaining ever present.

That said, we believe that the proposed change to the dress code is misguided. We appreciate that the District has a legal and moral duty to affirmatively combat racism and other forms of bigotry at school. But dress codes that purport to ban “hate group” or “offensive” or “demeaning” apparel, however well-intentioned, do not address the underlying source of racism, bigotry, and discrimination that happens at school. Certainly, racial bias in the District is not confined to displays of Confederate symbols.³ As [REDACTED], one of the authors of this letter, has previously explained to school officials, racial hostility within the District in her experience is getting increasingly worse. Black students are called the n-word, Mexican students are told to “go back to Mexico”, and white students regularly say, “white power” to students of color.⁴ As [REDACTED] a Visalia Unified high school student stated to us, “[banning hate speech in a

² The District’s existing policy banning clothing that “advocate[s] racial, ethnic, religious, or sexual orientation prejudice” suffers from similar infirmities as the proposed policy.

³ For example, in 2015, a fourth grader at Shannon Ranch Elementary School in Visalia refused to sing a song that had derogatory messages towards Native Americans. As a member of the Wukchumni tribe, he had to explain to administrators that a racist song should not be part of the curriculum. See <https://nativenewsonline.net/currents/ten-year-old-wukchumni-boys-refusal-to-sing-derogatory-song-leads-to-its-removal-from-school/>.

⁴ [REDACTED] May 31, 2017 email to Superintendent Oto and El Diamante Principal and Senior Learning Director.

dress code] is ineffective. . . . [The school district] needs to have genuine discussions about what these symbols mean. While it is important for individuals to embrace their heritage, it is far more important for a school to create a positive learning environment.”

Second, we believe the proposed policy is misguided for the additional reason that giving school officials *more power* to punish students through the dress code is likely to result in *more discipline against students of color*—the very students that the policy is intended to protect. As [REDACTED], a Visalia high school student, stated to us, she already “feels targeted through the dress code.” She believes this is rooted in the biased, discretionary practices that administrators and teachers have regarding what is “acceptable” clothing. That the proposed policy vaguely refers to “hate groups”⁵ will only exacerbate this problem. As concerned students, community members, and advocates, we strongly encourage Visalia Unified to explore the root cause for the insidious behavior that happens in the school district before potentially creating a situation that may harm students of color in unintended ways.

Finally, we believe that the District would face legal liability if it adopted the proposed policy. Under the Education Code, students have the same free speech rights on campus as adults have in any public space. Cal. Ed. Code § 48950; *see also Smith v. Novato*, 150 Cal. App. 4th 1439, 1453 (2007). The courts have been clear that adults have the right generally to display the Confederate flag and other hateful symbols. *Virginia v. Black*, 538 U.S. 343, 366-67 (2003). Moreover, a prohibition against clothing that promotes “hate groups” is unconstitutional because it is void-for-vagueness. *See Hunt v. City of Los Angeles*, 638 F.3d 703, 712 (9th Cir. 2011). As you are aware, the term “hate group” is not a legal term and there is no common understanding of what qualifies a group as a “hate group.” Accordingly, it is our position that the proposed policy “fails to give a [student] of ordinary intelligence a reasonable opportunity to know what is prohibited.” *Id.* The proposed policy also gives too much discretion to school officials to decide in an *ad hoc* and subjective basis what is prohibited speech and what is not. *See id.* Accordingly, the proposed policy is unconstitutionally vague.⁶

Instead of banning protected speech, we strongly urge the District to take affirmative steps to address the actual harm caused by the racially harmful environment that has been building over many years. This includes ensuring that classrooms directly address the foundational harm of erasing or separating people of color history, discussing the confederacy while including its root in slavery, and ensuring that students and teachers understand that protecting one students’ free speech does not mean creating a hostile environment for others. It

⁵ As discussed elsewhere in this letter, there is no common definition of “hate group.” For example, some politicians have called for the Black Lives Matter movement, a movement meant to uplift Black people, to be designated as a “hate group.” *See, e.g.,* <http://www.politifact.com/wisconsin/statements/2017/apr/17/sheriff-david-clarke-us-senate/pro-sheriff-david-clarke-group-says-clarke-called-/>.

⁶ To be clear, the constitutional right to display hateful symbols is not absolute. The District may properly ban such speech when it is expressed with the intent to intimidate specific individuals. *Virginia*, 538 U.S. at 363.

also means resisting calls for stricter disciplinary practices,⁷ and instead adopting a restorative justice framework.

In sum, while we applaud any efforts by the District to combat racism and affirmatively stand against discrimination, the proposed policy is misguided as well as being unlawful. We urge the District to instead directly address racial tension on campus by, among other measures, creating a space for small group dialogue regarding racial tensions at school; ensuring proper and authentic history lessons regarding the confederacy and historical racism; and creating a safe space for student conversations in Black Student Unions and other groups core to student identities that are authentic and encouraged by supportive faculty.

Thank you for the opportunity to comment. Please do not hesitate to contact Abre' Conner at [REDACTED] if you have any questions or concerns regarding these points.

Sincerely,



Abre' Conner
Staff Attorney, ACLU of Northern California



Student Activist



Gina Rodriguez
Program Director, ACT for Women and Girls

⁷ Visalia teachers demand student discipline, USA Today, May 11, 2017, <https://www.usatoday.com/story/news/local/2017/05/11/visalia-teachers-demand-student-discipline/101573094/>.

cc: William Fulmer, Board Clerk
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Dr. Todd Oto, Visalia Unified Superintendent
toto@vusd.org

EXHIBIT R



December 13, 2017

Joshua Whiteside, Esq.
Lozano Smith
7404 North Spalding Avenue
Fresno, CA 93720
Jwhiteside@lozanosmith.com

Re: Follow-up to meeting re District's next steps to address racial hostility

Dear Mr. Whiteside,

We write on behalf of the ACLU of Northern California and ACT for Women and Girls. First, thank you for meeting with Abre' Conner on November 27, 2017, to discuss Visalia Unified's commitment to addressing and affirmatively combatting the racial bias on campus that we raised with you. We appreciate that the District is amenable to entering a written agreement that would outline the steps that the District would take to ensure students are learning in a welcoming environment. We expect the components of such an agreement to include: training for District staff, guidance regarding how to address instances of racial hostility on District campuses, procedures and protocols for tracking instances of racial hostility, and guidance regarding the taskforce and peer leadership opportunities. We look forward to working with you on the terms of that agreement.

It is our understanding that the District would like to start working with students immediately on a taskforce to address racial bias on campus. We believe that a taskforce is an important aspect of the District's efforts, and after talking with a number of District students who have experienced racism with VUSD, we offer the following suggestions:

Selection Criteria:

We strongly believe that it is essential that the District prioritize the voices of students who are part of historically oppressed and marginalized communities at the District. These groups may include: students of color, students with various religious affiliations/non-affiliations, students from different gender identities and expressions, sexual orientation, and abilities and disabilities. We hope that the District will not include academic standing and/or existing involvement in student government as criteria for the taskforce, as these factors may exclude the students who do not feel welcome at school.

In terms of identifying students, we suggest an open application process where students can explain their reasons for wanting to be on the taskforce and what they will contribute. We further suggest that the application process be “blind,” so that the persons selecting the taskforce would not know the students’ names. The District should clearly state selection criteria to ensure students are not discouraged from applying based on traditional standards for leadership opportunities.

Meeting times:

In selecting meeting times, the District must be cognizant that students will have different schedules, including after-school responsibilities like work and care of family members. The meeting times should prioritize the times when students will be available, not District administrators or the facilitators. Because some students may have to miss a few meetings, the District should also ensure that someone take detailed notes of taskforce meetings that can be circulated.

Term of Taskforce membership:

To ensure continuity as well as institutional knowledge, the students would like the minimum time to sit on the taskforce to be one year, and a maximum of two years. This would allow students to sit on the taskforce a second year if they would like to continue sharing ways the District can address racial hostility. Selecting new students each year may seem like a way to gain various perspectives, but in our experience, it is generally not helpful in terms of continuity and long-term change.

Facilitator/Moderator:

Although students appreciate the District choosing an in-district facilitator for the taskforce, to ensure robust conversation and heighten the comfort level, we strongly believe that it should engage an outside, experienced person to co-facilitate the meetings. It should go without saying the impact that having a teacher or administrator as a facilitator may have on a student, but this power dynamic may increase tension when discussing topics that may implicate that school official directly.

It should also go without saying that any person leading a difficult conversation should strive to recognize their implicit and sometimes explicit biases against groups of people. While the District has identified a facilitator, it hasn’t stated whether this person received any additional training regarding implicit bias, current and historical information regarding bias and discrimination in the District as well as across the country, students’ rights, or how to conduct these meeting in compliance with the Brown Act while also protecting student privacy. Without careful attention to each of these topics, we fear the District may not fully address racial tension. Indeed, the facilitator may unintentionally exacerbate the problem.

For these reasons, we request that the District identify the trainings the facilitator will undergo prior to starting taskforce meetings as well as identify an outside co-facilitator.

Scope of the taskforce:

The scope of the taskforce should allow students to discuss, and put the school board on notice of, current race relations while ensuring that the District is accountable to whether campus life is more inclusive. At the same time, the school board should be working to ensure a more inclusive school environment through a more comprehensive written agreement, which we look forward to working with you on.

The students feel it is important to address various issues that lead to an unsafe and hostile environment. The dress code is an important portion of that discussion. However, students have expressed that addressing other specific incidents of racial tension should be within the purview of the taskforce. Indeed, students are the best gauge of their lived experiences within the District. Thus, the taskforce and students should decide the topics of discussion.

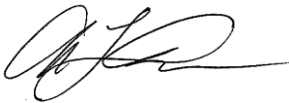
As it stands, the District has not explained the mechanism to ensure the taskforce can help create meaningful change. To ensure transparency and accountability, students would like the school board to report on findings from the taskforce at school board meetings. These reports should also include any tangible next steps the school board is considering to address the student taskforce discussion.

In addition to these steps and recommendations regarding the student taskforce, it is our understanding that the District is interested in starting a community taskforce. Given the various steps needed to ensure that the student taskforce meets the requirements listed above, we would recommend the District wait before adding more taskforces. This will give the District the vital time necessary to consider any role for a community taskforce. And, this will likely help the District maintain the student voice as a priority.

In conclusion, we appreciate the opportunity to work with you in bringing about meaningful change in the District. To that end, we would appreciate a meeting in early to mid-January to discuss the taskforce and other components of the District's plan to address racial bias on campus. Could you please let us know your availability for the following dates: January 10, 11, or 18th?

As always, please do not hesitate to reach out if you have any questions.

Sincerely,



Abre' Conner
Staff Attorney, ACLU of Northern California



Gina Rodriguez
Program Director, ACT for Women and Girls

cc: Dr. Todd Oto, Visalia Unified Superintendent
toto@vusd.org
Mike Smith, Lozano Smith
msmith@lozanosmith.com

EXHIBIT S

Tue 3/6/2018 9:04 AM

From: Abre' Conner

To: Joshua Whiteside

CC: Todd Oto

RE: Visalia Unified

Dear Joshua,

We are in receipt of your February 21, 2018 response on behalf of the District. We are disappointed that the District has decided after almost three months of conversation with the ACLU, letters from students and community groups, and public comments regarding the importance of addressing racial hostility, to stop negotiating an agreement that would hold the District accountable for addressing racial hostility on campus. The District's decision is particularly disappointing given that just one day earlier, at the February 20, 2018 school board meeting, board members heard from students in the District that racial hostility is an ongoing issue and current VUSD students do not believe the District is adequately addressing the unsafe environment on campus.

We believe that the District's decision shows its indifference to the issues raised by the students. This letter serves as notice that we are continuing to closely monitor this situation and reserve our right to pursue legal remedies on behalf of students who are experiencing racial and other forms of unlawful harassment at Visalia Unified School District.

Abre'

EXHIBIT T

Percent of Black Students in District high schools, 2013 + 2015

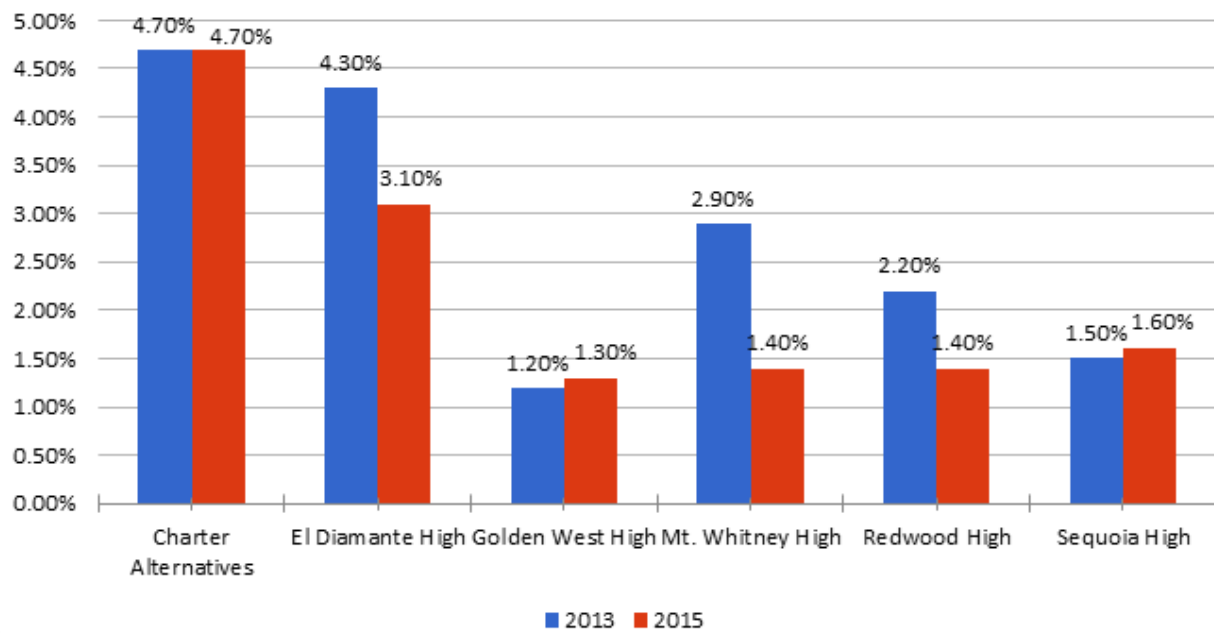
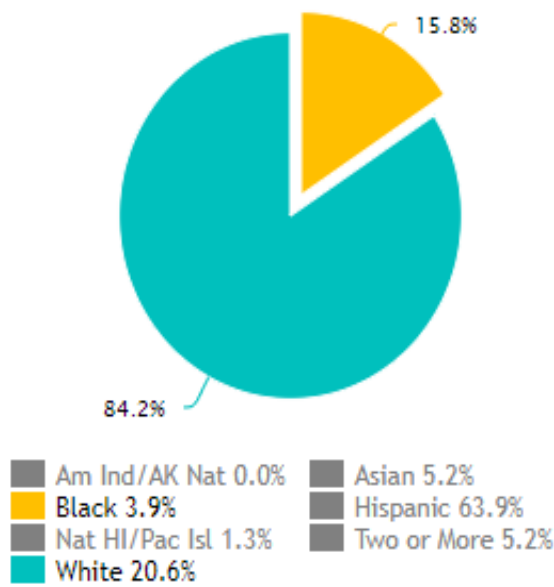


EXHIBIT U

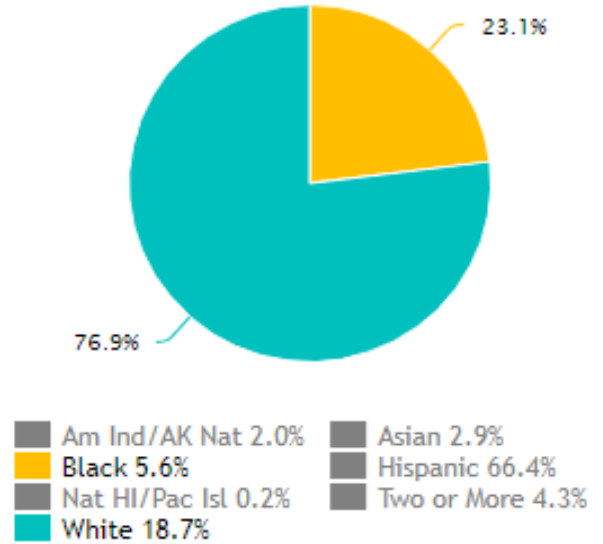
In-School Suspensions

n=155



Out-of-School Suspensions

n=1,126



Expulsions

n=121

