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By Electronic Mail

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Re: Notice of Findings of Race Discrimination by the Hawkins County School District

Dear Mr. Ward & Mr. McCarty:

The U.S. Department of Justice, through its Civil Rights Division and the United States Attorney's Office for the Eastern District of Tennessee (the "Department"), has reached findings in its investigation of Hawkins County Schools' (the "District") response to reports of race-based discrimination in District schools. The investigation focused on allegations of unchecked peer-on-peer harassment at two district schools during the 2021-22 and 2022-23 school years (the "Relevant Period"). In short, the Department has concluded that these allegations are substantiated: the District was deliberately indifferent to known race-based harassment in its schools, violating the equal protection rights of Black students. This letter describes the Department's findings in detail.

INVESTIGATION

On March 29, 2023, the Department notified the District that it had initiated an investigation into allegations of race-based harassment related to *Qualls v. Hawkins County Schools*, No. 2:22-cv-00058, (E.D. Tenn. 2022), based on our authority under Titles VI and IV of the Civil Rights Act, 42 U.S.C. §2000d, et seq. and 42 U.S.C. § 2000c, et seq.[1] We requested that the parties provide all documents produced through discovery, as well as any additional materials it wished for us to consider. To date, the Department has reviewed approximately 2,000 pages of responsive documents—including policies, incident files, witness notes, and emails—as well as audio and video recordings. In May and July 2023, the Department attended all seven depositions conducted by the parties. The parties have promptly complied with all Department requests for information. We greatly appreciate the parties' cooperation.

The Department has closely reviewed information related to 16 incidents of race-based harassment and/or violence at a District middle school ("Middle School") in the nine-month period from September 2021 to May 2022. In its Answer and in its discovery responses, the District admits actual knowledge of all but one of the incidents alleged in the Second Amended Complaint. These incidents, along with the notice provided to the District and its subsequent response, are described in detail in Section A below. For ease of reference, a shorthand list is provided here:

1. 9/8/21: Student 3 ("S3")[2] calls K.R. "monkey," uses n-word, slaps K.R.
2. 3/1/22: KKK drawing by Student 4 ("S4") & Student 5 ("S5")
3. 3/8/22: "Monkey chasing monkey" video by Student 2 ("S2") and Student 6 ("S6")
4. 3/9/22: Skin tones slide show and "light-skinned n[*****]" comment by Student 8 ("S8")
5. 3/14/22: "Monkey of the month" comment by Student 1 ("S1")
6. 3/15/22: "Slave auction" led by S1
7. 3/31/22: Swastika graffiti found by staff member
8. 4/8/22: "Retarded n[*****]" comment by Student 7 ("S7")
9. 4/12/22: "N[*****]" graffiti found by teacher
10. 4/18/22: "What's up my monkey" comment by S1
11. 4/18/22: "Dingle family" pictures posted by Student 9 ("S9"), Student 10 ("S10"), and Student 11 ("S11").
12. 4/19/22: "What's up my African American" comment by S1
13. 4/19/22: Racist 'joke' by S8
14. 4/20/22: S1 comment: "Doesn't your kind like basketball?"[3]
15. 5/11/22: "n[*****] n[*****]" Snapchat by S7
16. 5/16/22: "thanks for picking my [cotton] shirt this morning, n[*****]" by unidentified white student.[4]

[1] Title VI prohibits race-based discrimination by recipients of federal financial assistance. The District receives federal financial assistance from the Department's Office of Community Oriented Policing Services.
[2] To protect their privacy, students who were alleged perpetrators, participants, or witnesses are identified as "Student #" or "S#." Additional students subjected to race-based harassment are labeled as "Target #."
[3] This incident is not included in the Complaint but is mentioned in documents the District produced in discovery.
[4] The District denies having knowledge of this incident.

In her Proposed Third Amended Complaint, Plaintiff alleges that nine additional incidents of race-based harassment were reported to administrators at a District high school ("High School") from September 2022 to May 2023. Each was discussed during depositions. In many cases, deponents acknowledged familiarity with the incidents. These incidents, along with the notice provided to the District and its subsequent response, are described in detail in Section B below. For ease of reference, a shorthand list is provided here:

1. 9/22/21: Student 24 ("S24") uses n-word, threatens to fight K.R.
2. 10/24/22: KKK comments, students unidentified
3. Nov. 2022: "N[******]" Snapchats by Student 25 ("S25") & Student 26 ("S26")
4. Fall 2022: "Whip" and "slave" comments, students unidentified
5. Fall 2022: "Stupid n[*****]" comment by S2
6. Fall 2022: "N[*****]" yelled in class, student unidentified
7. Fall 2022: "Stupid n[*****]" yelled in hallway, students unidentified
8. Spring 2023: "Kill [K.R.]" threat by Student 27 ("S27")
9. Spring 2023: "[K.R.] is a n[*****]" graffiti found

A. Detailed Timeline of Eighth Grade Incidents (2021–2022)

On September 8, 2021, as K.R. and his classmates walked through the gym to after-school football practice, S3 called another student "n[*****]," called K.R. a "monkey," and slapped K.R. K.R. hit S3 in response. A school employee broke up the fight, brought S3 to the office, and reported the fight to a Middle School Administrator ("Admin 2"). Admin 2 sent S3 home on the bus. Admin 2 then interviewed K.R. in their office, at first declining to allow Ms. Qualls, K.R.'s mother, to accompany K.R. during the interview. The next day, Admin 2 reviewed video footage of the altercation[5] and interviewed several witnesses to the fight.[6] Admin 2 learned through these interviews that S3 made additional racialized comments to K.R. in the cafeteria (e.g., making a 'joking' comment about K.R. eating watermelon) and that K.R. called S3 "sped."[7] Admin 2 assigned K.R. and S3 the same discipline: two days of in-school suspension and fifty "points."[8]

On March 1, 2022, two students (S4 and S5) passed a drawing around the cafeteria that was entitled "Kool-Kid-Klub"; it depicted a Ku Klux Klansman surfing a tidal wave toward an island with a monkey figure.[9] A classmate showed this drawing to K.R., who reported it to Ms. Qualls. Later that evening, Ms. Qualls emailed another Middle School Administrator ("Admin 1") to report the KKK drawing and request an investigation.[10] The next day, Admin 1 and Admin 2

[5] Ms. Qualls requested to review this video footage via a September 13, 2021, email to Admin 1 and a District Official ("District Official 2"). District counsel Chris McCarty denied Ms. Qualls's request, citing FERPA. Ms. Qualls was eventually permitted to view the video on April 20, 2022.

[6] These witnesses were students S14, S17, S10, S18, S9, S19, and S16.

[7] In its Answer, the District admits that K.R.'s alleged comments factored into his discipline, noting that Admin 2 "warned [K.R.] against using derogatory comments toward any student with a disability since such comments are inappropriate just as racial epithets are inappropriate." Answer to 2d Am. Compl. ¶ 22.

[8] The school's disciplinary point system is used to assign students to the District's alternative education program. If a student accrues 150 points, an administrator may assign that student to alternative education for up to thirty days.

[9] Parties disagree on whether the drawing also included a noose. The original drawings are not part of the school's record.

[10] In their deposition, Admin 1 indicated that they learned about the KKK drawing from a school staff member who brought the drawing to their office.

interviewed K.R. about the drawing. During this interview, Admin 1 suggested to K.R. that the incident was a "teachable moment," comparing the KKK drawing to an earlier incident in which several students, including K.R., were verbally reprimanded for making obscene hand gestures in the cafeteria. In Admin 1's words,[11] the hand gestures were "as wrong as *this* [the KKK drawing] and [Admin 1] didn't make a big deal" out of the hand gestures incident. S4 and S5 admitted to creating the KKK drawing; they were each given one day of out-of-school suspension and seventy-five points.

On March 7, 2022, Ms. Qualls spoke with a Senior District Official ("Senior District Official 1") on the phone and memorialized the conversation in email. She expressed her concern about the Middle School's response to racialized incidents in the school, specifically describing S3's use of slurs and the KKK drawing. She also forwarded Senior District Official 1 her earlier correspondence with Admin 1.

On March 8, 2022, a student, S2, chased K.R. out of the bathroom with a stuffed monkey while S7 and S5 looked on. Another student, S6, recorded a video and sent it to several students, including S14 and Target 2 (one of the few other Black students at the Middle School). S2 sent the video to K.R. via Snapchat with the caption "monkey chasing monkey."

On March 9, 2022, a student[12] used a District-provided laptop to create a slide show comparing various skin tones of Black people and showed it to K.R., referring to him as "light-skinned" and using the word "n[*****]." This incident was reported to a teacher; no further action was taken.

On March 10, 2022, Senior District Official 1 met with Tavia Sillmon, a regional representative of the NAACP, about an allegation of race discrimination at another middle school in the District. Senior District Official 1 and Ms. Sillmon also discussed incidents involving K.R. Ms. Sillmon offered to help the District address issues of racial harassment and discrimination. The partnership never materialized.

On March 11, 2022, Ms. Qualls and K.R. met with Senior District Official 1. During that meeting, Ms. Qualls showed Senior District Official 1 the "monkey chasing monkey" Snapchat. K.R. described his experiences at the Middle School and indicated that he did not report several incidents of racial harassment because he felt uncomfortable with Admin 1 and other Middle School administrators.[13] When pressed, K.R. identified two 'trusted adults' to whom he did feel comfortable reporting. Senior District Official 1 also described a plan to enhance school-based

[11] K.R. recorded his March 2 interview with Admin 1 in which Admin 1 made this statement. During their deposition, Admin 1 again endorsed their "teachable moment" framing.

[12] Plaintiff's counsel indicates that this student was S8, but the perpetrator was not confirmed by deponents or the files produced by the District in discovery. The District denied that this incident was "reported at the time." Answer to 2d Am. Compl. ¶ 42. Further, there are two alleged racialized slide shows: a "monkey of the month" document and a later "skin tones" document. The District's discovery contains reference to both slide shows, and deponents acknowledged both in their testimony, but the timing and perpetrators of each are somewhat ambiguous.

[13] Senior District Official 1 also testified to this effect during their deposition.

mental health services and to engage with Eric Johnson of STARS of Nashville.[14] Senior District Official 1 emailed Admin 1 and Admin 2 that day to relay K.R. and Ms. Qualls's concerns.

On March 14, 2022, a student, S1, yelled to K.R. and Target 3 (another Black student), "Give it up for the monkey of the month." Other students, including S13, were present. Ms. Qualls notified Senior District Official 1 via email on March 16, 2022. Admin 2 and Admin 1 interviewed S1 and witnesses about this comment on April 21, 2022.

On March 15, 2022, S1 held a mock "slave auction" in the bathroom, purporting to "sell" K.R., Target 3, and Target 2 to a group of white students, including S13, S14, and S21. Ms. Qualls notified Senior District Official 1 via email on March 16, 2022. Admin 2 and Admin 1 interviewed S1 and witnesses about the "slave auction" on April 21, 2022.

On March 18, 2022,[15] the Middle School held an assembly and student-teacher basketball game. During the assembly, Admin 1 read a prepared statement about school climate and culture that emphasized mutual respect and kindness. The statement reminded students to "[b]e mindful of the language you use" and that "[a]cts of discrimination will be investigated and addressed according to Hawkins County School Board Policy." It further urged students to report concerns because "[i]n order for issues to be addressed, we must know about events." Finally, it described the school's response as its "partner[ship] with STARS of Nashville to address concern such as bullying, name calling and racial issues." This statement was posted on Facebook, distributed via email, and sent home in students' report cards.

On March 28, 2022,[16] Ms. Qualls emailed Senior District Official 1 and Admin 1 to inquire about the District's response to the "monkey chasing monkey" video. Senior District Official 1 in reply acknowledged that they had seen the video "and that is enough to move forward," while requesting Ms. Qualls to share a copy of the video with Admin 1 and Admin 2.

On March 31, 2022, a swastika was drawn in the bathroom[17] and was discovered by a janitor. In their depositions, Senior District Official 1 and Admin 1 acknowledged that they were notified; Admin 1 testified that they investigated the incident, identified the perpetrator, and assigned discipline. No record of this investigation or discipline appears in the District's discovery.

On April 8, 2022, a student, S7, called a Black student with a disability a "retarded n[*****]." K.R. told a teacher about the incident and how it upset him; on the same day, the teacher emailed Admin 2 about it. Ms. Qualls also reported the incident to Senior District Official 1, Admin 1, and another District Official ("District Official 2") via email on April 18, 2022. No further action was documented.

[14] STARS of Nashville is a regional nonprofit that provides, among other things, a bullying prevention and bystander intervention program called Move2Stand. Eric Johnson is the Director of Training at STARS of Nashville.
[15] The Friday before spring break.
[16] The Monday after spring break.
[17] Note: Several incidents of harassment took place in the bathroom. We have seen no evidence that the District recognized this "hot spot" or took targeted steps to ensure safety at this location.

On April 11, 2022, Admin 1 and Admin 2 interviewed S2, S6, and witnesses regarding the "monkey chasing monkey" video. S6 was given seventy-five points for using his phone during school hours to record the video; no further action was taken at this time.[18]

On April 12, 2022, a teacher reported finding "n[*****]" written in pen on a chair. No further action was documented.

On April 18, 2022, S1 said to K.R., "What's up my monkey?" The next day, S1 said to K.R., "What's up my African American?" K.R. and Ms. Qualls notified Admin 1, Admin 2, and District Official 2 during their meeting at the Middle School on April 20, 2022. Admin 2 and Admin 1 interviewed S1 on April 21, 2022. For the "monkey of the month" campaign (March 14), "slave auction" (March 15) and these racialized comments, S1 was given three days of out-of-school suspension and seventy-five points.

On April 18, 2022, three students—S10, S11, and S9—inflated latex gloves to create the "Dingles": three caricatures with exaggerated stereotypical Black names and facial features. They created these racialized "glove people" at school and posted a picture taken in the school on Instagram; a Middle School teacher, Teacher 1, "liked" the post. S9, S10, and S11 created an Instagram profile for the "Dingles" with the bio: "A family of 3 that loves monkeys." The students posted additional photos and videos in which they shot and stabbed the "Dingles." Ms. Qualls notified Admin 2 about this Instagram, including Teacher 1's engagement, on May 12, 2022. Admin 2 emailed several teachers to ask them to "make meaning" of the post later that day.[19] Admin 2 interviewed Teacher 1 but could not recall the substance of their conversation. On June 2, 2022, Admin 2 and Admin 1 interviewed S10, S11, S9, and their parents; no discipline was administered.

On April 19, 2022, a student, S8, made a racialized 'joke' to K.R. that was overheard by S13, S19, and S1.[20] K.R. and Ms. Qualls notified Admin 1, Admin 2, and District Official 2 during their meeting at the Middle School on April 20, 2022. Admin 2 and Admin 1 interviewed S8 and witnesses on April 21, 2022. During these interviews, Target 2 told the administrators that Student 28 made a similar racialized 'joke,' and that S1 and Student 29 told him to "get back to pickin'." No further action was taken.

On April 20, 2022, Ms. Qualls and K.R. met with Admin 1, Admin 2, and District Official 2. In addition to the incident reports noted above, Ms. Qualls shared the "monkey chasing monkey" video with the administrators and viewed video footage of the September 8 altercation with S3.

On May 11, 2022, S7 sent several students, including S8, S20, and S6, a photo via Snapchat of the words "n[*****] n[*****]" written in black ink on his hand. A student showed it to K.R.

[18] Nearly a month later, on May 6, administrators assigned S2 three days of OSS and seventy-five points, reflecting both the incident and S2's lying to administrators about it.

[19] Teachers described the photograph as "nothing . . . problematic" and just "for fun"; one observed, "Those boys like to be silly." Another teacher wrote, cryptically, "[W]ith this group, who knows?!"

[20] K.R. avers that S8 said, "Humidy boo, put that n[*****] in a zoo," while S8 maintains that he said, "Put that monkey in the zoo." S8 conceded that he understood "monkey" could be a racially derogatory term.

Ms. Qualls shared the picture with Admin 2 on May 12, 2022. The District avers that it could not determine whether this photo was taken or shared at school. No further action was taken.

On May 16, 2022, a student allegedly gave K.R. the tag from his cotton shirt and said, "Thanks for picking my shirt this morning, n[*****]." The District denies knowledge of this incident.

B. Detailed Timeline of Ninth Grade Incidents (2022–2023)

On September 22, 2022, K.R. reported to a High School Administrator ("Admin 3") that another student, S24, threatened to fight him and had repeatedly used the n-word over Snapchat. Admin 3 had a "corrective conversation" with S24 but took no disciplinary action.

On or about October 24, 2022, two white students allegedly taunted K.R. with KKK-related comments. K.R. reported the comments to High School Employee 1 that day. Ms. Qualls also notified Admin 3 during phone and in-person meetings on November 4 and 7, 2022, respectively. No further action was taken.

In November 2022, K.R. received a group Snapchat that included several students writing "n[*****]," including S26 and S25. In that thread, S26 also appears to disparage "Mexican[s]" and "Asians." The Snapchat was sent during school hours. On November 7, 2022, Ms. Qualls reported this Snapchat to Admin 3; Admin 3 forwarded a screenshot of the Snapchat to District Official 2 and another High School Administrator ("Admin 4"). Admin 3 interviewed S26 and S25 and provided a "corrective conversation" but took no disciplinary action.

In Fall 2022, several students allegedly harassed K.R. by making loud whipping noises—using a smartphone App like "Pocket Whip" designed to make a "woosh" and "crack" sound—while making comments about "picking cotton" and calling K.R. a "slave." K.R. reported this harassment to a teacher ("Teacher 2"). No further action is documented.[21]

In Fall 2022, S2 allegedly called K.R. a "stupid n[*****]" in the cafeteria. K.R. reported the incident to High School Employee 2. No further action is documented.

In Fall 2022, a student allegedly yelled out "n[*****]" in class; K.R. reported the incident to Teacher 2. No further action is documented.

In Fall 2022, one white student allegedly called another student "stupid n[*****]" before looking and laughing at K.R. K.R. reported to the incident to Teacher 2, who indicated they would report it to an administrator only after K.R. insisted they do so. No further action is documented.

In Spring 2023, a student, S27, sent a "kill [K.R.]" Snapchat message. Around the same time, S27 threatened to bring a gun to the school; the student was arrested in response to the threat against the school. No action was taken in response to the threat against K.R.[22]

[21] In depositions, District Official 2 said they remembered the whip incident and that the High School administrators investigated it; Admin 3 said they did not remember the incident at all.

[22] The Proposed Third Amended Complaint maintains that this Snapchat was reported to Admin 3; Admin 3 denied awareness of this threat.

In Spring 2023, a student wrote "[K.R.] is a n[*****]" on a bathroom wall. The incident was reported to Admin 3, who in turn reported it to Admin 4. The administration did not determine who drew the slur; no further action was taken.

LEGAL ANALYSIS

A. The District Has Been Deliberately Indifferent to Race-Based Harassment

"The equal protection right to be free from student-on-student discrimination is well-established." *Shively v. Green Loc. Sch. Dist. Bd. of Educ*., 579 F. App'x 348, 358 (6th Cir. 2014). A school district may violate students' equal protection rights by intentionally discriminating against them as members of an identifiable class or by "consciously acquiesc[ing]" to known harassment by other students or staff. *Murrell v. Sch. Dist. No. 1, Denver, Colo*., 186 F.3d 1238, 1250 (10th Cir. 1999) (equal protection claim for sex-based harassment). A school district acquiesces to harassment based on a protected class when it knows of the harassment but responds in a "clearly unreasonable" manner—in other words, when it is deliberately indifferent. *Id*.; *Vance v. Spencer Cty. Pub. Sch. Dist*., 231 F.3d 253, 260 (6th Cir. 2000) (a plaintiff may demonstrate defendant's deliberate indifference to discrimination "only where the recipient's response to the harassment or lack thereof is clearly unreasonable in light of known circumstances") (citing *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629, 648 (1999) (internal quotation marks and alterations omitted);[23] *Zeno v. Pine Plains Cent. Sch. Dist*., 702 F.3d 655, 666 (2d Cir. 2012) ("A finding of deliberate indifference depends on the adequacy of a school district's response to the [racial] harassment."). A school district that is deliberately indifferent to known student harassment *itself* discriminates in violation of the Equal Protection Clause. *See Murrell*, 186 F.3d at 1250.

[23] Although *Davis* addressed sexual harassment under Title IX of the Education Amendments of 1972 ("Title IX"), circuit courts, including the Sixth Circuit, have applied the same analysis to find a violation of the Equal Protection Clause when a school district is deliberately indifferent to known harassment based on protected class status. *See, e.g.*, *Foster v. Bd. of Regents of Univ. of Michigan*, 982 F.3d 960, 965 (6th Cir. 2020) (citing *Davis* as "the key case" in the area of the deliberate indifference standard); *Shively v. Green Loc. Sch. Dist. Bd. of Educ.*, 579 F. App'x 348, 357 n.2 (6th Cir. 2014) (stating that the deliberate indifference standard used in Equal Protection Clause cases is "substantially the same as the deliberate indifference standard applied by the Sixth Circuit in Title IX cases"); *S.S. v. E. Kentucky Univ*., 532 F.3d 445, 454 (6th Cir. 2008) (applying the deliberate indifference standard in *Davis* to an equal protection claim based on a student's disability status); *Williams ex rel. Hart v. Paint Valley Loc. Sch. Dist*., 400 F.3d 360, 369 (6th Cir. 2005) (stating that "deliberate indifference" has substantially the same meaning in Title IX and Section 1983 claims). Because the Sixth Circuit applies the *Davis* deliberate indifference standard to Equal Protection claims, we cite generally to cases applying the *Davis* standard. While the Sixth Circuit has not explicitly considered whether the "deliberate indifference" test from *Davis* applies in a Title VI claim, the Supreme Court has noted that the standards under the two statutes are the same. *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 286 (1998); the Court has also held that race-based discrimination in violation of the Equal Protection Clause also violates Title VI. *See Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, No. 20-1199, and *Students for Fair Admissions, Inc. v. University of North Carolina et al.*, No. 21-707, 600 U.S. __ (2023) (slip op. at fn.2). The Sixth Circuit has taken notice of rulings by other appellate courts that a school can be liable for deliberate indifference to racial harassment under Title VI, *see Thompson v. Ohio State Univ*., 639 F. App'x 333, 342 (6th Cir. 2016) (citing *Zeno v. Pine Plains Cent. Sch. Dist*., 702 F.3d 655, 665 n.10 (2d Cir. 2012) and *Bryant v. Indep. Sch. Dist. No. I-38*, 334 F.3d 928, 934 (10th Cir. 2003)), and a number of district courts within the circuit have also presumed that the appellate court would so rule as well, if given the opportunity. *Doe v. Herman*, No. 3:20-cv-00947, 2021 U.S. Dist. LEXIS 93317, at *11-12 (M.D. Tenn. May 17, 2021) (citing *Est. of Olsen v. Fairfield City Sch. Dist. Bd. of Educ*., 341 F. Supp. 3d 793, 803 (S.D. Ohio 2018)); *Maislin v. Tenn. State Univ.*, 665 F. Supp. 2d 922, 929 (M.D. Tenn. 2009).

The Sixth Circuit has held that student-on-student harassment results in denial of equal protection where the plaintiff can demonstrate that:

(1) the harassment was so severe, pervasive, and objectively offensive that it could be said to deprive the plaintiff of access to the educational opportunities or benefits provided by the school district;
(2) the school district had actual knowledge of the harassment; and
(3) the school district was deliberately indifferent to the harassment.

Vance, 231 F.3d at 258-59 (citing *Soper v. Hoben*, 195 F.3d 845, 854 (6th Cir. 1999) and *Davis*, 526 U.S. at 633); *Williams v. Port Huron Area Sch. Dist. Bd. of Educ*., No. 06-14556, 2010 U.S. Dist. LEXIS 30472, at *22-23 (E.D. Mich. Mar. 30, 2010) (applying this three-part test to student-on-student racial harassment) (citing *Patterson v. Hudson Area Schs.*, 551 F.3d 438, 445 (6th Cir. 2009)).

1. The Harassment that K.R. Experienced was So Severe, Pervasive, and Objectively Offensive that It Deprived K.R. of Access to Educational Opportunities or Benefits

To determine whether the alleged harassment was severe, pervasive, and objectively offensive, courts look to the nature, frequency, and duration of the harassment, as well as its effect on the victim. *Brooks v. Skinner*, 139 F. Supp. 3d 869, 882 (S.D. Ohio 2015); *see also Fulton v. W. Brown Local Sch. Dist. Bd. of Educ.*, No. 1:15-cv-53, 2016 U.S. Dist. LEXIS 162510, at *16-19 (S.D. Ohio Nov. 23, 2016). Courts do not review instances of harassment in isolation, but in the aggregate. "[T]he issue is not whether each incident of harassment *standing alone* is sufficient to sustain the cause of action in a hostile environment case, but whether—taken together—the reported incidents make out such a case." *Brooks*, 139 F. Supp. 3d at 884 (quoting *Williams v. Gen. Motors Corp*., 187 F.3d 553, 562 (6th Cir. 1999) (emphasis in original) (analyzing a hostile environment claim under Title VII)).

Repeated racial harassment in the form of racial slurs can establish harassment that is severe, pervasive, and objectively offensive. *E.g., Brooks*, 139 F. Supp. at 882 (recognizing that "the frequent use of racial slurs constitutes more than 'simple acts of name-calling'") (quoting *Davis*, 526 U.S. at 652); *Estate of Olsen v. Fairfield City Sch. Dist. Bd. of Educ.*, 341 F. Supp. 3d 793, 805 (S.D. Ohio 2018); *see also DiStiso v. Cook*, 691 F.3d 226, 242-43 (2nd Cir. 2012) ("Defendants do not—and cannot—dispute that . . . use of the reviled epithet 'n*****,' raises a question of severe harassment going beyond simple teasing and name-calling."). Racist imagery, such as a noose, can also contribute to a finding that harassment is severe, pervasive, and objectively offensive. *Fennell v. Marion Ind. Sch. Dist.*, 804 F.3d 398, 409 (5th Cir. 2015) (finding that a noose "accompanied by a vitriolic and epithet-laden note only underscores the severe, pervasive, and objectively offensive nature of the harassment"). Furthermore, "racist attacks need not be directed at the complainant in order to create a hostile educational environment." *Monteiro*, 158 F.3d at 1033 (citing *Waltman v. Int'l Paper Co.*, 875 F.2d 468, 477 (5th Cir. 1989) and *Walker v. Ford Motor Co.*, 684 F.2d 1355 (11th Cir. 1982)).

Under Sixth Circuit caselaw, to be considered pervasive, the harassment must have occurred more than once. *Kollaritsch v. Mich. State Univ. Bd. of Trs.*, 944 F.3d 613, 620 (6th Cir.

2019) ("Pervasive means systemic or widespread, but for our purposes, it also means multiple incidents of harassment; one incident of harassment is not enough.") (quoting *Davis*, 526 U.S. at 652-53) (internal quotation marks and citations omitted). *See e.g., Davis*, 526 U.S. at 653–54 (vulgar comments and sexually harassing conduct over five months was sufficient to state a deliberate indifference claim); *C.S. v. Couch*, 843 F. Supp. 2d 894, 908 (N.D. Ind. 2011) (ten instances of racial slurs and violence over four-and-a-half years could be perceived as sufficient to state a deliberate indifference claim); *Doe v. E. Haven Bd. of Educ*., 430 F. Supp. 2d 54, 59–61 (D. Conn. 2006) (affirming jury verdict against school district where victim was sexually harassed by peers for three months after a sexual assault); *but see Donaldson v. Maury Cnty. Bd. of Educ.*, No. 1:14-0088, 2016 WL 5376345, at *5 (M.D. Tenn. Aug. 22, 2016) (dismissing case, finding that "a single student's use of the racial slur [n*****] on two occasions" over a period of two weeks was not "'pervasive' for purposes of sustaining a student-on-student harassment claim under Title VI.").

To be objectively offensive, the harassment must be "behavior that would be offensive to a reasonable child under the circumstances, not merely offensive to the victim, personally or subjectively." *Kollaritsch*, 944 F.3d at 621 (citing *Davis*, 526 U.S. at 651) (internal quotation marks omitted).

Finally, in addition to being severe, pervasive, and objectively offensive, the harassment must also "deprive the plaintiff of access to the educational opportunities or benefits provided by the school district." *Vance*, 231 F.3d at 258-59. Harassment can "effectively den[y] equal access to an institution's resources and opportunities" when it "so undermines and detracts from the student's educational experience;" in other words, when the harassment has a "concrete, negative effect" on the student's access to education. *Davis*, 526 U.S. at 651, 654.

Persistent racial harassment improperly denies students the educational benefits to which they are entitled, inasmuch as it deprives them of "a supportive, scholastic environment free of racism and harassment." *Zeno*, 702 F.3d at 667 (2d Cir. 2012); *see also*, *Bryant v. Indep. Sch. Dist. No. I-38 of Garvin Cnty., Okla.*, 334 F.3d 928, 932 (10th Cir. 2003) (noting that a school which allows the unchecked use of racial slurs is "'utterly failing in its mandate to provide a nondiscriminatory educational environment'") (quoting *Monteiro v. Tempe Union High Sch. Dist*., 158 F.3d 1022, 1034 (9th Cir. 1998)). As the Ninth Circuit has explained:

> It does not take an educational psychologist to conclude that being referred to by one's peers by the most noxious racial epithet in the contemporary American lexicon, being shamed and humiliated on the basis of one's race, and having the school authorities ignore or reject one's complaints would adversely affect a Black child's ability to *obtain the same benefit from schooling as her white counterparts.*

Monteiro, 158 F.3d at 1034 (emphasis added).

A student can also demonstrate that harassment deprived him of educational opportunity by showing that he missed class and other school activities because of the harassment, even if he continued to attend school. *Doe v. Forest Hills Sch. Dist.*, No. 1:13-cv-428, 2015 WL 9906260 (W.D. Mich. Mar. 31, 2015) (harassment was likely severe and pervasive when it caused a student to spend a large portion of the school day in the counselor's office to avoid her harassers); *see also*

Gabrielle M. v. Park Forest-Chi. Heights, IL. Sch. Dist. 163, 315 F.3d 817, 823 (7th Cir. 2003) (increased absenteeism could be evidence of a denial of educational opportunity); *Zeno*, 702 F.3d at 667 ("Where . . . the decision to withdraw was motivated by a racially hostile educational environment, a strong nexus between the harassment and the deprivation of educational benefits is evident."); *Brooks*, 139 F. Supp. 3d at 886 (jury could reasonably conclude that a student's family moving out of the school district was motivated by the racial harassment student experienced).

Our investigation found that K.R. was subjected to severe, pervasive, and objectively offensive racial harassment throughout the Relevant Period. As alleged in the Complaint and corroborated in discovery, in the nine months between September 2021 and May 2022, K.R. experienced 12 incidents of direct racial harassment. These events often involved public humiliation in the common areas of his school. At the lunch table, white students handed K.R. racist imagery with violent overtones—a drawing of a Klansman riding towards a monkey. In the classroom, a student ridiculed K.R. over his skin tone. In the bathroom, a white student held a mock slave auction for his white peers in which he "sold" K.R. to the highest bidder. A "monkey of the month" contest was announced in the hallways. Throughout the building, K.R. was called slurs, such as "n*****" and "monkey," and subjected to jokes about zoos and picking cotton. These taunts extended onto social media. A group of white students chased K.R. out of the bathroom while holding a stuffed monkey, filmed it, and then circulated that video on Snapchat with the caption "Monkey Chasing Monkey."

During the same time period, K.R. also experienced four indirect incidents of racial harassment, which further contributed to the hostile environment to which he was subjected at school. K.R. heard his Black peers called "n*****" and "monkey" by white students. He entered bathrooms that had swastikas painted on the walls. K.R. learned that his white peers created a social media account that depicted shooting and stabbing caricatures of Black people. K.R. called his mother one day, in tears, because white students were calling a Black student with disabilities a "retarded n*****."

In high school, K.R. alleges nine additional incidents of racial harassment, in some cases by the same students who perpetrated similar racial harassment in middle school. His peers added him to a group chat filled with racist slurs. K.R. alleges being called "n*****" and "slave," being mockingly whipped and told to pick cotton in school hallways, and being threatened with violence.

Given the frequency of the harassment aimed directly at K.R., it was plainly pervasive. Given the content of the harassment, there is no question regarding its severity. This is conduct that would be offensive to a reasonable child under these circumstances.

These incidents contributed to a hostile environment that deprived K.R. of the educational opportunities and benefits the District provides. Ms. Qualls and K.R. stated in depositions that K.R. has lost interest in being engaged in school activities. He has trouble sleeping and his grades have dropped. Ms. Qualls and K.R. have spent hours engaging with the District to attempt to address the many incidents of harassment. K.R. missed two weeks of school in the 2022-23 school year as a direct result of a race-based death threat directed at him. Ms. Qualls states that she would move K.R. out of the District if that were financially feasible for their family, but has stated that this is currently not an option. K.R. testified he sometimes cries about the harassment. While the

District deposed K.R. about whether he had to "change classes or anything" as a result of the harassment, nothing in the record indicates that the District ever offered him this or any other proactive remedy during the Relevant Period. Per his mother, he has "turned inward" because of the harassment; he is socially isolated and has lost friends.

2. The District had Actual Knowledge of the Harassment

To be liable for damages, an "appropriate person" in the school district must have actual notice of the harassment and an opportunity to rectify any violation. *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 290 (1998). An "appropriate person" is an official "who at a minimum has authority to address the alleged discrimination and to institute corrective measures on the [school district's] behalf[.]" *Id*. Appellate courts applying *Gebser* have required actual knowledge by the school board itself, the school superintendent, or a school principal. *See, e.g., Vance*, 231 F.3d at 258; *Davis v. DeKalb Cty. Sch. Dist*., 233 F.3d 1367, 1371 (11th Cir. 2000); *Doe v. Dall. Indep. Sch. Dist*., 220 F.3d 380, 384 (5th Cir. 2000).

Here, Ms. Qualls, K.R., and, in some cases, school staff, reported the ongoing racial harassment to school administrators (Admins 1, 2, 3, & 4), as well as Senior District Official 1, all of whom are "appropriate person[s] under *Gebser*."[24] Our review of emails, meeting notes, and recordings confirmed that Ms. Qualls reached out to district leaders to report race-based discrimination, or follow up on reports, at least ten times in the 2020-21 school year. The District admits having knowledge of almost every instance of race-based harassment alleged by Ms. Qualls. Moreover, the District also admits it received the communications Ms. Qualls made about these incidents, and her communications were close in time to their occurrence. Thus, several appropriate persons at both the school and district level had actual knowledge of the ongoing harassment that K.R. was experiencing and had ample opportunity to remedy the violations.

3. The District was Deliberately Indifferent to the Harassment

i. Legal Standard

A district can be liable for damages when its deliberate indifference subjects students to harassment, "*i.e.*, at a minimum, causes students to undergo harassment or makes them liable or vulnerable to it." *Davis*, 526 at 630. A student can demonstrate a district's deliberate indifference to discrimination "only where the [District's] response to the harassment or lack thereof is clearly unreasonable in light of the known circumstances." *Davis*, 526 U.S. at 648; *Williams*, 455 Fed. App'x at 618. Clearly, taking no corrective action at all constitutes deliberate indifference. *Stiles v. Grainger Cnty. Sch*., No. 3:13-CV-7-PLR-HBG, 2015 WL 1294168, at *9 (E.D. Tenn. Mar. 23, 2015), aff'd sub nom. *Stiles ex rel. D.S. v. Grainger Cnty., Tenn.*, 819 F.3d 834 (6th Cir. 2016) (quoting *McCoy v. Bd. of Educ., Columbus City Sch.*, 515 F. App'x 387, 391 (6th Cir. 2013)).[25] The Sixth Circuit has explicitly rejected the premise that, as long as a school does *something* in response to harassment, it has not been deliberately indifferent. *Vance*, 231 F.3d at 260. Continuing to use the same ineffective methods, such as merely "talking to the offenders," is a failure to act

[24] In its Answer to the Amended Complaint, the District disputes some of the assertions about communication with K.R. and/or Ms. Qualls.

[25] The District Court in *Stiles* mistakenly attributes these quotes to *Davis*, 526 U.S. 629 (1999); however, the source of the quote is *McCoy*, citing *Davis.*

reasonably. *Id*. at 261-62. When a school district has knowledge that its remedial actions are inadequate and ineffective, it is "required to take further reasonable action in light of the circumstances to avoid new liability." *Id*. at 261-62. Conversely, promptly adopting a series of escalating measures proportionate to each instance of misconduct is not clearly unreasonable. *Foster v. Bd. of Regents of Univ. of Michigan*, 982 F.3d 960, 966 (6th Cir. 2020). "In less obvious cases, the proportionality of the school's response in light of available information lies at the heart of the indifference analysis." *Stiles*, 2015 WL 1294168 at *9 (quoting *McCoy,* 515 F. App'x at 391).

The proportionality of the district's response can be fact-dependent. Courts have found that a district's response was not *clearly* unreasonable, as a matter of law, when the district took numerous timely[26] and escalating actions immediately following a report—such as reporting to appropriate authorities, promptly and thoroughly investigating each reported incident, disciplining the offenders, and implementing a variety of remedial measures designed to protect the victim from future incidents. *See Stiles ex rel. D.S. v. Grainger Cnty., Tenn.*, 819 F.3d 834, 849 (6th Cir. 2016); *Soper v. Hoben*, 195 F.3d 845, 855 (6th Cir. 1999). For example, in *Hill v. Blount County Board of Education*, the District promptly and thoroughly responsed to all allegations of race-based harassment raised by the student or his parent. 203 F. Supp. 3d 871, 883 (E.D. Tenn. 2016). Even when the allegations were not substantiated, the assistant principals "reviewed the harassment policy with each of the [alleged perpetrators], discussed the consequences of engaging in this behavior, and notified each student's parents." *Id*. They also "immediately alerted all [ ] teachers by email to increase their supervision of students, and to monitor the hallways and lunchroom in an effort to prevent and address these issues[, and] met with [the alleged victim's] teaching team." *Id*. Moreover, the District also took proactive steps to reduce opportunities for future incidents of harassment. When the alleged victim matriculated into high school the following academic year, the District notified his new assistant principals and guidance counselor about the past harassment. *Id*. at 884. Additionally, the school board developed a transition plan to assist the student with reporting and documenting any further incidents at the high school, and to offer him specific times to meet with staff to discuss how things were going. *Id*.

Courts have allowed deliberate indifference claims to survive a motion for summary judgment when school officials were aware of "severe, explicit racial conduct." *Maislin v. Tennessee State University*, 665 F. Supp. 2d 922, 933 (M.D. Tenn. 2009). A district's actions may be clearly unreasonable where it relied primarily on verbal reprimands, was aware that the discipline it issued was failing to deter additional harassment, and reversed its offer of a remedial measure that was successful at keeping the victim from experiencing additional incidents of harassment. *See Patterson v. Hudson Area Schs.*, 551 F.3d 438, 448-49 (6th Cir. 2009). Here, "the school district's failure to employ more effective methods in light of increasing degrees of harassment and its own awareness that its measures were ineffective […] provided a genuine issue of material fact as to the school district's deliberate indifference." *McCoy v. Bd. of Educ., Columbus City Sch.*, 515 F. App'x 387, 391–92 (6th Cir. 2013) (discussing *Patterson*).

[26] The Sixth Circuit has favorably cited cases from the First Circuit that have held that the response must be both *timely* and reasonable. *See Vance* at 261, 262 (quoting *Wills v. Brown University*, 184 F.3d 20, 25 (1st Cir. 1999) and *Canty v. Old Rochester Regional School District*, 66 F.Supp.2d 114, 115 (D.Mass. 1999)).

Additionally, where a district has evidence of continuing and widespread racial harassment over a period of years, its efforts to address individual harassers may not be enough if it does not respond to the general hostile environment. *See Brooks*, 139 F. Supp. 3d at 889 (citing *Vance*, 231 F.3d at 262); *Bryant v. Indep. Sch. Dist.*, 334 F.3d 928, 933 (10th Cir. 2003) (a district made aware of egregious forms of intentional discrimination that makes the intentional choice to sit by and do nothing can be held liable for facilitating or permitting the hostile environment). "[T]he question of intent in a hostile environment case is necessarily fact specific." *Bryant* at 933. Where a district has knowledge that racial incidents are continuing to escalate, courts have found that there are genuine issues of material fact that require these issues to proceed past summary judgment. *Id*.; *see also*, *Cleveland v. Blount Cnty. Sch. Dist.* 00050, No. CIV.A. 3:05-CV-380, 2008 WL 250403, at *11 (E.D. Tenn. Jan. 28, 2008).

ii. Analysis of the District's Actions

Our review found that the District's response to known incidents of racial harassment during the Relevant Period was sporadic, untimely, and anemic. In particular, we found that District administrators (1) failed to promptly investigate allegations of harassment, as per District policy; (2) failed to appropriately respond to allegations of harassment; (3) failed to modify its response when that response proved ineffective at changing individual behavior; (4) discouraged reporting and engaged in retaliatory behavior; and (5) failed to follow through on broader remedies to address the racially hostile climate. The District's response was a far cry from the type of response found adequate in *Hill v. Blount County Board of Education.*

1. The District Failed to Promptly Investigate Allegations of Harassment and Comply with Its Policy

During the Relevant Period, the District's policies required employees to report to administrators any allegations of race-based harassment and administrators to investigate and resolve those allegations within 20 school days. Yet, the District failed, at critical moments, to follow its own policy.

A glaring example of this failure is the District's handling of the March 8, 2022, "Monkey Chasing Monkey" incident. Ms. Qualls reported the incident and showed the video to Senior District Official 1 on March 11. She followed up by email on March 28. The District, however, did not begin interviewing students in the video until April 11, a full month after the incident. Even then, administrators did not appear to believe the allegations and appear to have fostered suspicion that K.R. had added the racist caption himself for sympathy. It was not until May 6, nearly two months after the incident, that the District would assign discipline to S2. When questioned about these delays in their depositions, District officials did not provide any clear justification for their failure to comport with the timelines in the District's policy.

Beyond violating policy, the District's unreasonable delay in holding students accountable had tangible consequences. The frequency of race-based harassment against K.R. increased in the vacuum left by the District's inaction in March 2022. Moreover, students who were present in the bathroom for the chasing incident (S7, S14, and S5), but had yet to face consequences for their participation, were also present for the bathroom "slave auction" on March 15. Here again, the District waited more than one month from notice of the incident, until April 21, to interview the

alleged leader of the auction, S1, and assign discipline. And again, the District's unreasonable delay was not harmless. During the intervening weeks, left undeterred, S1 had at least two more racist encounters with K.R., calling him a "monkey" in one; Ms. Qualls reported each of these.

Additionally, through our review of the District's documentation, we are aware of at least one instance where the District learned that another student—in addition to K.R.—was the target of race-based harassment. We found nothing in District records, however, to indicate it made a meaningful effort to separately investigate the allegations or address any hostile environment created by the harassment.

Finally, we are troubled by the alleged reluctance of teachers, who are mandated reporters under the District policy, to report race-based harassment that they witness or that is reported to them (e.g., fall 2022 reported use of racial slurs at the High School, described above).

2. The District Failed to Appropriately Respond to Allegations of Harassment

Our investigation also found that on numerous occasions during the Relevant Period the District failed to appropriately respond to allegations of harassment. Our review identified at least 12 instances where it appears that a perpetrator of overtly racist harassment received no consequence whatsoever.[27] This includes the balloon caricatures, the "retarded n*****" comment, racist jokes, comments about picking cotton, and a slide show that labeled K.R. a "light skinned n*****." Two of these students, S7 and S8, left undeterred, were alleged perpetrators in a second incident of racial harassment later in the spring of 2022. More still, both students were participants in a third incident.

Our review also identified at least 11 instances where a participant in harassing conduct received no consequence, be it discipline or counseling, for their role. This includes, for example, the four students who were present, as buyers, for the slave auction, and two students who were present for the monkey chasing incident.

Finally, it appears that, to date, the High School has administered no discipline in response to K.R.'s reports of repeated racial harassment.[28] In at least two instances Admin 3 administered only "corrective conversations" in response to racial harassment, explaining in her deposition that "the discipline is the conversation." In one instance, a teacher was notified that a student called K.R. a "stupid n*****," but Admin 3 testified that she was not alerted to this incident. Several investigations ended when administrators reported that they could not identify the alleged perpetrator.

[27] Discovery requests covered the full investigation records of these incidents. No discipline was noted in the records that were produced, nor could administrators identify any specific discipline related to these incidents when asked in depositions. The Department has not, however, interviewed these students directly or requested their individual student files.

[28] During their deposition, Admin 3 acknowledged awareness of many of the incidents, but the only form of discipline that they administered was "corrective conversations."

3. The District Failed to Modify Its Response When That Response Proved Ineffective at Changing Individual Behavior

The District did investigate and respond to certain incidents of racial harassment with discipline during the Relevant Period. Our review identified some form of discipline (out-of-school suspension, in-school suspension, or points) against six students. The District's intervention, however, was not sufficient. Three of these six students later perpetrated a second incident of racial harassment. One student continued on to perpetrate a third incident and was present as a participant in two more incidents after that. Instead of escalating responses to ongoing behavior, the District appears to have abandoned discipline altogether. No discipline for these additional acts is noted in the District's records.[29]

4. The District Discouraged Reporting and Engaged in Retaliatory Behavior

Our investigation found the District at times minimized the racial harassment K.R. had reported. In at least one instance, school officials discouraged further reporting and engaged in retaliatory behavior. On March 2, 2022, K.R. met with Admin 1 to report that students had circulated the KKK drawing at lunch. During that conversation, a partial audio recording of which we reviewed, Admin 1 brought up earlier immature behavior by K.R.—specifically, a crude sexual hand gesture. Admin 1 stated of K.R.'s behavior, "that's as wrong as this" (the KKK drawing), and went on to say "and I didn't make a big deal…" By focusing on K.R.'s behavior instead of the behavior of his harassers and by announcing this false equivalency to the prior misconduct, the District diminished K.R.'s complaints of racial harassment. Moreover, when Admin 1 noted that they "didn't make a big deal" out of the prior incident, they conveyed to K.R. that reporting the KKK drawing was making a "big deal" out of the incident and that K.R. was also incorrect for doing so. In other words, Admin 1 advised K.R. that merely reporting incidents of race-based harassment to an administrator was an overreaction. Admin 1 testified during their deposition that the conduct they raised with K.R. had no connection (in time or in the students involved) to the KKK drawing incident, and that, at Admin 1's request, a teacher had already spoken to K.R. and two other students about it at time. So, K.R. understood from the March 2 conversation that if he reported racist behavior, he risked punishment on unrelated conduct in retaliation. And when Admin 1 ended that meeting by implying K.R. should not "make a big deal" about it, Admin 1 discouraged K.R. from further reporting.

5. The District Failed to Follow Through on Broader Remedies to Address the Racially Hostile Climate

Our review found that the District failed to follow through on broader remedies to address the racially hostile climate. Senior District Official 1 offered Ms. Qualls and K.R. three solutions during their initial conversations in March 2022. First, K.R. would identify two 'trusted adults' to whom he could report racial harassment instead of Admin 1 and Admin 2. Second, the District would partner with Eric Johnson from STARS of Nashville. Senior District Official 1 wanted Johnson to meet with K.R. and Ms. Qualls, to host a school-wide antibullying and bystander

[29] The District purportedly issued S1 three days of OSS and seventy-five points once in late April in response to several incidents spanning March and April (including the slave auction and several slurs directed at multiple Black students). But this is the same punishment that the District imposed on S2 for a single incident (chasing).

intervention program (Move2Stand), and to intervene with specific groups of students that repeatedly harassed Black students. Third, Senior District Official 1 would seek third-party advice and support; they planned to consult with the local NAACP chapter and to ask the state to review the District's response.[30]

None of these solutions materialized in full. There is no indication that Middle School administrators responded to complaints K.R. made to his trusted adults. At his deposition, Senior District Official 1 unequivocally stated that they agreed with the way Admin 1 handled the incidents K.R. and his mother had reported. Although STARS of Nashville did host one Move2Stand event for the eighth-grade class, the Middle School did not conduct targeted interventions in the 2021-2022 school year focused on racial harassment, despite Eric Johnson's recommendation that they do so. Ms. Qualls and K.R. were not willing to meet with Eric Johnson; rather than reformulate the District's approach, Senior District Official 1 focused on pressing Ms. Qualls to meet with Eric Johnson and ultimately took no further actions with STARS. Beyond an initial meeting, Senior District Official 1 did not bring in the NAACP chapter for advice or support. And the state declined to issue a report on the incidents involving K.R. because of the pending litigation.

The Middle School took one other school-wide action ostensibly designed to address racial harassment. Admin 1 addressed students and employees during a March 18 school assembly and circulated a statement to parents via email and student report cards. This statement included a reminder about the District's harassment policy and made oblique reference to "racial issues." Racial harassment did not cease or slow after this assembly. Admin 1 acknowledged in their deposition that the school did not measure the assembly's impact and that they received no responses to the letter. Admin 2 maintained that it "started [the school] on a path to squelch this" and increased students' "awareness of words" but could provide no specific examples.

Finally, the District never put any measures in place to safeguard K.R. There were no schedule or class changes away from his harassers at the Middle School and, when K.R. transitioned from the Middle School to the High School, the District took no proactive steps to plan for K.R.'s safety from racial harassment. High School administrators were not directly told by the Middle School or District administrators about the harassment to which K.R. had been subjected in the prior year. The school did not identify trusted adults in the high school building. They took no steps to ensure K.R.'s class schedule was free from his harassers.

iii. Conclusion: The District was Deliberately Indifferent

The key inquiry under the case law is whether the District's response, which included *some* actions to address individual incidents, was proportional in light of the available information. It was not. As described above, the District either ignored or was apathetic to the totality of the racial harassment reported, and did not take steps to address it. The five areas of deficiency, detailed above, convey to students that the District is indifferent to the harassment and racial hostility experienced by K.R. and other Black students.

[30] In March 2022, the District made a self-referral to the Tennessee Department of Education (TN DOE) regarding the allegations in K.R.'s litigation; TN DOE declined to issue a report on the District's response to K.R.'s allegations after the lawsuit was filed.

District administrators perpetuate this hostile environment, and embolden students to continue harassing, each time they fail to respond adequately to allegations. Take, for example, the report that a white student called a Black student with disabilities a "retarded n*****" in April 2022; the District notes no punishment. Moreover, our review identified at least six incidents of racial harassment against another Black middle school student, Target 2, during the Relevant Period. Target 2 was forced to be a "slave" in the "slave auction," targeted with racial slurs and comments on four occasions, and was sent the monkey chasing video.

The District's response was clearly ineffectual, and disproportionate to the severity and pervasiveness of the racial harassment occurring in its schools. The District's failure to take further reasonable actions in light of the circumstances means that it was deliberately indifferent.

NEXT STEPS

In light of these findings and because of the current procedural posture of the parties' litigation, the Department is examining all available enforcement actions, authorized by federal statute, to prevent further violations by the District of the equal protection rights of its students. The Department believes that a global settlement encompassing the current litigation is in the best interest of the parties and would be open to participating in settlement discussions, whether informal or ordered by the Court. In any event, the Department is eager to work with the parties to help facilitate an expeditious resolution that includes District-wide remedial measures which bring the District voluntarily into compliance with its federal obligations. To that end, the Department will contact the parties to schedule a meeting in the coming days.

Please do not hesitate to contact us by email or phone to discuss this matter: Aziz.Ahmad@usdoj.gov / 202-353-5482; LeighAnn.Rosenberg@usdoj.gov / 202-598-5977; Ben.Cunningham@usdoj.gov / 865-225-1662; Spencer.Fair@usdoj.gov / 865-225-1607.

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