

U.S. Department of Education  
Office for Civil Rights  
San Francisco Office  
50 Beale Street, Suite 7200  
December 18, 2017

**VIA EMAIL ([ocr@ed.gov](mailto:ocr@ed.gov))**

RE: Mira Loma High School, San Juan Unified School District's violations of Title VI of the Civil Rights Act of 1964

Dear San Francisco Office:

We write to complain about a high school that has unlawfully discriminated against African-American students. Staff at Mira Loma High School ("Mira Loma"), in the San Juan Unified School District of Sacramento, ignored multiple complaints by students and their family rather than respond to ongoing, vulgar race-based harassment. School staff left one of the students in the same classroom with a student who called her a "nigger" when she raised her hand to participate in class discussions. Mira Loma staff's acts and omissions led to one student transferring out of the school mid-year because she felt the school environment was intolerable. The complainants' experiences reflect Mira Loma's longstanding and pervasive maintenance of a hostile educational environment for African-American students evinced by disparate discipline rates, disparate access to educational opportunities for African-American students, and discriminatory remarks against African-American students made by school staff. Mira Loma's deliberate indifference to discrimination and maintenance of a hostile learning environment violate the students' rights under Title VI of the Civil Rights Act of 1964 ("Title VI"). Mira Loma's deliberate indifference continues to the present day and was most recently shown by its October 19, 2017 refusal to commit to additional training for staff or policy changes to address its hostile educational environment.

## **I. COMPLAINANTS**

The three complainants are part of a family with current and longstanding affiliations with Mira Loma High School: Sarah M. and Ashley M. are African-American students who attended Mira Loma. Ms. M. was their legal guardian at the time they attended Mira Loma.

Sarah M. was a junior and International Baccalaureate ("IB") student at Mira Loma during the 2016-2017 school year. She transferred into Mira Loma at the start of the year to take advantage of the education offered by the International Baccalaureate Program. Sarah has since transferred out of Mira Loma due to school staff's deliberate indifference to the hostile learning environment at the school.

Ashley M. was a sophomore and IB student at Mira Loma during the 2016-2017 school year. She moved to Sacramento to go to a better school and to take advantage of the IB program. Ashley remained enrolled at Mira Loma throughout the 2016-2017 school year. She decided to remain at Mira Loma during the 2016-2017 school-year because she did not want to disrupt her

education with a second transfer to an unfamiliar school in Sacramento. Ashley is no longer attending Mira Loma because Mira Loma has not addressed its discriminatory hostile learning environment. If Mira Loma was to remedy its hostile educational environment, Ashley would want to attend Mira Loma again.

Ms. M. is the legal guardian of Sarah M., and during the 2016-2017 school year was also Ashley M.'s legal guardian. She has been a very active parent in all her children's education and an advocate for under-resourced students.

## **II. FACTS**

### **A. Mira Loma has been deliberately indifferent to peer racial harassment, creating a hostile educational environment.**

The complainants—along with several other students—made multiple reports to Mira Loma staff about students who continuously targeted and harassed African-American students. Two students were the most aggressive in their harassment: siblings B.B. and V.B.<sup>1</sup> B.B. was a junior during the 2016-2017 school year and held an elected position in student government, a privilege that should have required that she abide by Mira Loma's Student Government Code of Conduct. V.B. was a freshman.

Starting in the beginning of the 2016-2017 school year, B.B. made public discriminatory comments about students with disabilities, sometimes during student government class. Sarah and others in student government reported B.B.'s comments to their teacher, Chad Posner, out of concern that a student-elected representative should show decency toward all her fellow students. They pointed out to Mr. Posner that B.B.'s comments violated the Student Government Code of Conduct, as well as District and school policies. Mr. Posner thanked them for bringing forth their concerns but did nothing to inhibit B.B.'s behavior, which continued throughout the school year.

Ashley experienced direct, targeted harassment throughout the 2016-2017 school year. In her first-period Spanish class, V.B. would call her a "nigger" and other racist and offensive comments about one to two times per week throughout the school year. When Ashley raised her hand to speak in class V.B. would say things like "you're wrong" and "niggers are dumb." Early in December, Ashley gave a class presentation on a musician. V.B. laughed throughout the presentation, and when Ashley began discussing African Americans' contributions to music, V.B. stated "Black people don't do anything." On a separate incident, students were encouraged to wear college sorority or fraternity shirts for sorority/fraternity day at school. Ashley's friend, who is also African American, wore a college sweatshirt that day and when V.B. saw her he commented that "Black people don't go to college."

Their Spanish teacher, Irina Yilmaz, heard V.B. use these racial slurs on several occasions. She only intervened once, early in the school year, after V.B. called Ashley a "nigger" during class by sending him to the office. V.B. had been arguing with another student in class and told her, "Yeah, but your friend is a nigger" and pointed at Ashley. When Ashley

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<sup>1</sup> This complaint does not use these students' true initials because they are minors.

looked up from her classwork V.B. repeated, “Yeah you’re a nigger.” The administration appeared to do little to address his harassment because V.B. returned to class after only five minutes and continued to harass Ashley throughout the rest of the school-year. Due to Mira Loma staff’s failure to address this severe harassment, Ashley felt degraded and unsafe. V.B.’s harassment prevented her from fully participating in class. She was normally an active contributor to class discussion, but stopped participating for fear that V.B. would make more racist comments.

The harassment also occurred online. On September 6, 2016, V.B. commented on Sarah’s friend’s Instagram account (a social media application for posting pictures) calling her a “crippled ass nigger.” A group of about four students replied to his post, asking V.B. to stop using racial slurs and explaining why his comments were harmful to African-American people and people with disabilities. V.B. and his friend, replied by calling those students “niggers.”

The next month, on October 25, 2016, B.B. posted a meme (a picture on the internet with captions meant to be jokes) on Instagram discriminating against mentally disabled people. Again, a student responded by explaining how the meme was offensive and asked that B.B. delete the post. V.B. responded by insulting the students and using racist and sexist language against Sarah and her friends. When Sarah replied in her friend’s defense, V.B. called her a “nigger, and referred to another student as a “crippled ass nigger.” V.B. refused to stop saying the racist remarks.

Other students, mostly friends of V.B., proceeded to comment on the post, calling Sarah and others sexual slurs such as “cunts.” These comments made Sarah and other African-American students feel unsafe. The students reported the comments to Instagram for violating its Terms of Use and Community Guidelines.<sup>2</sup> The argument escalated, making its way to other social media platforms such as Twitter, on which several students discussed the comments.

The following day, the online harassment had clearly impacted the school environment. Students continued commenting on the matter in class, at lunch, and on break. It seemed to Sarah as if the entire school knew about the situation. Despite this being such a large topic of conversation at the school, Mira Loma school staff took no actions to address this situation, even when students reported the issue to school officials.

On October 26, 2016, several students, including Sarah, took screenshots<sup>3</sup> of the Instagram comments described above and attempted to report the harassers to Mira Loma’s Vice Principal, Ms. Gina Jackson. Instead, the Vice Principal’s Secretary, Jennifer Devries, directed the students to report their concerns to their Counselor, Jeannine Hall. Ms. Hall instructed the students to use her as the “middle-man.” She assured them that she would explain the situation to the Vice Principal and that the administration would take the appropriate measures to address the students’ behavior. Sarah did not hear back from Ms. Hall or any other administrator.

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<sup>2</sup> *Terms of Use*, INSTAGRAM.COM, [https://help.instagram.com/478745558852511/?helpref=hc\\_fnav&bc\[0\]=Instagram%20Help&bc\[1\]=Privacy%20and%20Safety%20Center](https://help.instagram.com/478745558852511/?helpref=hc_fnav&bc[0]=Instagram%20Help&bc[1]=Privacy%20and%20Safety%20Center) (Jan. 19, 2013); *Community Guidelines*, INSTAGRAM.COM [https://help.instagram.com/477434105621119?helpref=page\\_content](https://help.instagram.com/477434105621119?helpref=page_content) (last visited Dec. 18 2017).

<sup>3</sup> App. p. 2–9.

When Sarah and Ms. M. attempted to follow up with Ms. Hall in December 2016, Ms. Hall replied that she had not forwarded the information to the Vice Principal because she thought the situation had resolved itself. Students continued to harass Sarah and her friends online as well as at school. These students' behavior was extremely abusive, harmful, and began to affect her emotionally which, in turn, negatively impacted her academics as well.

The school also ignored Ms. M's multiple attempts to schedule a meeting with administrators. Ms. M. sought the advice of her eldest daughter, Ms. C. M., a Mira Loma alumna who coordinated advocacy efforts of other Mira Loma alumni familiar with the school's racially hostile environment from their own experiences. After several alumni phoned her administration, Ms. Jackson finally agreed to a meeting with Ms. M. in December 2016.

At this meeting, Ms. Jackson made several promises of specific action steps she and her administration would take to address the complaints. She explained that she would immediately lead an investigation because Ms. Devries and Ms. Hall had mishandled the case. Ms. Jackson said this investigation would include: (1) speaking to Ms. Yilmaz and Mr. Posner about compliance with school and District policies regarding addressing and preventing situations of racism, sexism, and ableism; (2) identifying which administrator spoke with V.B. when Ms. Yilmaz sent him out of the classroom; (3) intervening in the harassment by V.B. towards Ashley; (4) developing better policies and procedures to address student referrals for serious offenses of harassment; and (5) sharing with the family the disciplinary sanctions the harassers would receive, even though District policies did not require her to share such information. She even said that the harassing students' punishments would "definitely be recorded on their transcripts."

Upon information and belief, Ms. Jackson failed to conduct an investigation and took no further steps toward addressing the complaint. When the family did not hear back from Ms. Jackson, they requested a follow-up meeting which took place on February 6, 2017. In that meeting, Ms. Jackson's tone and approach shifted entirely; she was hostile, demeaning, and callous towards the family. For example, Ms. Jackson laughed when C. M. described Mira Loma as being in violation of Title VI and Title IX of the Education Amendments of 1972, and rolled her eyes several times throughout the meeting. Ms. Jackson said that she had not conducted any investigation and expressed ignorance of what Title IX and Title VI required of the school. At one point, Ms. Jackson became frustrated, threw her hands up and yelled: "He [V.B.] admitted it! What do you want us to do?" She stated that she had not, and would not, speak to Ms. Yilmaz, administrators, nor any other teacher about the complaints. Ms. Jackson also said that, if she were to intervene in the harassment by V.B. towards Ashley by changing their schedules, the action would not be immediate. Ms. M and C.M. pleaded with her to intervene, explaining that Ashley's safety, education, and mental health were at great risk since V.B. continued to harass Ashley with impunity. Ms. M expressed her fear that the school's failure to address the harassment could lead either Sarah or Ashley to harm themselves.<sup>4</sup>

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<sup>4</sup> Ms. M.'s fear was reasonable, given her knowledge of another student who took his life in 2008 after Mira Loma failed to intervene with students who were harassing him. Sam Shane, Local Mom Whose Bullied Son Committed Suicide Says Schools Not Doing Enough, CBS, December 5, 2014, <http://sacramento.cbslocal.com/2014/12/05/local-mom-whose-bullied-son-committed-suicide-says-schools-not-doing-enough/> (last accessed August 7, 2017).

On February 10, 2017, Ms. Jackson visited Ashley's first-period class. During her entire visit, Ms. Jackson focused her attention on Ashley, hovering over Ashley's desk. This signaled to Ashley that Ms. Jackson was investigating her, not V.B.. Ashley reports that this made her feel targeted and intimidated for having reported V.B.. After about thirty minutes, Ms. Jackson left the class and sent an email to Ms. M. stating that she would not remove V.B. from Ashley's class. V.B. continued to harass Ashley over the course of the entire school-year, and, at one point, his desk was directly in front of hers. Ms. Jackson's blatant disregard for Ashley's academic and emotional well-being and safety instilled within Ashley a deep sense of distrust and made her feel that she had no support from the school. Thus, Ms. Jackson's behavior chilled any further effort by Ashley to report continued harassment and bullying.

Ms. M. wrote to Ms. Jackson on June 1, 2017 requesting she disclose what, if any, steps were taken to address the harassment.<sup>5</sup>

On June 22, 2017, Ms. Jackson responded in writing by confirming B.B.'s use of racial slurs, but asserted that because the bullying occurred off campus during non-school hours, Mira Loma did not have the power to address B.B. and V.B.'s actions.<sup>6</sup>

On June 23, 2017, the National Center for Youth Law ("NCYL") sent a letter to Principal Tracy on behalf of Ms. M.<sup>7</sup> This letter requested that the Mira Loma administration reform its harassment and reporting policies, and meet with Ms. M to discuss how the school could remedy the racist environment at Mira Loma.

On June 26, 2017, the District responded through its General Counsel with a letter stating that Principal Tracy was unavailable for a meeting with the family but that Kate Hazarian, the Director of the Family and Community Engagement Office, could schedule a meeting with them once Ashley returned for the 2017-2018 school year.<sup>8</sup>

After an additional request, the District eventually agreed to a meeting on August 25, 2017 between Ms. M., NCYL, Principal Tracy, the District's counsel, and other school administrators. At this meeting, Ms. M. again expressed her pain and frustration with the school's lack of response to the harassment against Ashley and Sarah. The District invited Ms. M. and NCYL to offer suggestions on how the District could improve its complaint procedures and create a safe and welcoming environment for all students. NCYL sent the District's counsel a letter detailing these suggestions on September 21, 2017.<sup>9</sup>

Although the District responded on October 19, 2017, its response failed to commit to any changes that would remedy the hostile educational environment.<sup>10</sup> The District did not commit to make any changes to its policies, refused to implement additional staff training on discriminatory harassment, and failed to further investigate the harassment against Ashley and

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<sup>5</sup> App. p. 10-11.

<sup>6</sup> App. p. 12.

<sup>7</sup> App. p. 13-15.

<sup>8</sup> App. p. 16.

<sup>9</sup> App. p. 37-41

<sup>10</sup> App. p. 42-43.

Sarah. Instead, the District reiterated its response of June 22, 2017, essentially refusing to conduct a proper investigation. The District’s continued refusal to remedy Mira Loma’s racially hostile educational environment again showed its deliberate indifference.

**B. Mira Loma has denied African American students access to educational opportunities**

**1. African-American students have significantly less access to educational resources and supports through Mira Loma’s IB Program.**

African-American students are significantly underrepresented within the IB program at Mira Loma. Although there is no recent data publicly available that shows Mira Loma’s IB enrollment disaggregated by race, Ashley reports that she was often the only African-American student in her IB classes. Sarah estimates that she was one of four African-American students in the IB program in the junior class. These observations are consistent with the Office for Civil Right’s data collection from prior school years:

**Table 1: IB Enrollment by Ethnicity<sup>11</sup>**

School Year	Race/ Ethnicity	School Enrollment	IB Enrollment
2013-2014	African-American	7.4% (121)	1.7% (7)
	Asian	29.7% (487)	47.8% (196)
	White	42.2% (691)	40.5% (166)
2011-2012	African-American	9.6 % (151)	2.9 % (10)
	Asian	23.7 % (373)	39.0 % (136)
	White	46.9 % (739)	45.0 % (157)
2009-2010	African-American	10.6% (170)	3.8% (10)
	Asian	23.1% (370)	47.2% (125)
	White	51.3% (820)	43.4 % (115)

The underrepresentation of African-American students in the IB program at Mira Loma can be traced back to the program’s inception in 1989, when school decision-makers created the IB program in an attempt to shift the school’s demographics by attracting wealthier families from the surrounding suburbs. Implementing the IB program created a two-tiered system where the school’s resources were concentrated in an elite, world-class program specifically intended to attract non-local, higher-income families who were predominantly White and Asian. The underrepresentation of African-American students in the IB program remains prominent.

This *de facto* system of segregation within a single school promoted a racially discriminatory environment. For example, Sarah and Ms. M. report that teachers would often complain to their IB students about how difficult it was to teach non-IB students. Moreover,

<sup>11</sup> U.S. DEP’T OF EDUC., OFFICE FOR CIVIL RIGHTS, *Civil Rights, Data Collection, Mira Loma High School* (years 2009, 2011, and 2013), <https://ocrdata.ed.gov/Page?t=s&eid=254896&syk=5&pid=1>. Data from 2013-2014 is the most recent publicly available data.

teachers would praise IB students for being the future change-makers of society, destined for Ivy League universities, but would openly doubt whether the non-IB students would make it to a four-year college. Given that most of Mira Loma's African-American students have historically not been in the IB program, these statements promoted a racially hostile educational environment for African-American students. Other comments by Mira Loma teachers additionally added to the racially hostile educational environment. One teacher, for example, was known for identifying "favorite" students who were not students of color and making comments such as insulting students who listened to hip-hop music. She also intimidated students of color who wished to transfer out of her class by threatening to give them a failing grade.

The hostile attitudes of school staff were apparent to Ms. M. and C. M., who noticed that the school's support, dedication, and resources mostly went to the IB students and non-IB students were largely ignored. For example, the Parent Teacher Association's ("PTA") efforts support all Mira Loma students whereas the IB Parent Teacher Student Organization's ("PTSO") efforts are directed towards and intended solely for IB students. Ms. M. began to take on responsibilities as PTA Vice President, then President for four years, to ensure that non-IB as well as IB students were given the appropriate resources and support. The PTA provided outside enrichment and mentorship opportunities, as well as scholarships, for all Mira Loma students. For example, while Ms. M. was involved with the PTA, the PTA noticed that Mira Loma had a parent group for parents of students in the IB program and other specialized programs, but it did not have a parent group for students in the Passport Program. The Passport Program was designed for students who needed additional academic supports due to multiple transitions in housing or schooling. When the PTA started trying to organize a family night for the Passport Program, some teachers were dismissive of the parents' interest, expressed that it was a "waste of time" and that they did not expect any parents to show up. However, the PTA persisted and a standing-room-only crowd came to the family night. Given this success, Ms. M. was very surprised that Mira Loma did not make continued efforts to engage parents of students in the Passport Program. Ms. M. made such a great difference at the school that she was continuously asked to remain as PTA president, years after C.M. had graduated and she did not have a child on campus. Ms. M. continued to act as President for an additional year, but assisted the PTA for many years afterwards. The PTA disbanded this past year, leaving non-IB students without resources and support once again.

## **2. African-American students are excluded from school at far greater rates than their peers.**

In comparison to their peers, African-American students at Mira Loma are excluded from school at far greater rates, limiting their access to educational opportunities and reinforcing the hostile educational environment. Data from the 2016-17 school year, which is the most recent year for which data is available and which became public in November 2017, shows that African-American students received over a third of all suspensions in Mira Loma although they constituted less than a tenth of the overall student population. This disparity has persisted over time. In fact, since 2011, African-American students received just under a third of all suspensions in Mira Loma, despite never constituting more than nine percent of the student body. African-American students received forty percent of all suspensions for defiance, a highly subjective offense, in Mira Loma since 2011.

**Table 2: Comparison of Student Body Enrollment to Total Number of Suspensions by Race/Ethnicity<sup>12</sup>**

School Year		African-American	Hispanic	White	Asian	All Other Students	Total
2016-2017	Enrollment <sup>13</sup>	157 (8.8%)	355 (20%)	684 (38.4%)	433 (24.3%)	150 (8.4%)	1779
	Suspensions	132 (37.6%)	77 (21.9%)	100 (28.4%)	9 (2.6%)	33 (9.4%)	351
	Defiance Suspensions	80 (42.1%)	37 (19.5%)	53 (27.9%)	5 (2.6%)	15 (7.9%)	110
2015-2016	Enrollment	150 (8.9%)	313 (18.6%)	688 (40.9%)	435 (25.9%)	95 (5.7%)	1681
	Suspensions	67 (31.9%)	39 (18.6%)	86 (41.0%)	8 (3.8%)	10 (4.8%)	210
	Defiance Suspensions	56 (40.0%)	27 (19.3%)	48 (34.3%)	3 (2.1%)	6 (4.3%)	140
2014-2015	Enrollment	125 (7.5%)	298 (17.9%)	673 (40.4%)	436 (26.2%)	135 (8.1%)	1667
	Suspensions	50 (23.0%)	59 (27.2%)	82 (37.8%)	5 (2.3%)	21 (9.7%)	217
	Defiance Suspensions	19 (19.2%)	29 (29.3%)	41 (41.4%)	2 (2.0%)	8 (8.1%)	99
2013-2014	Enrollment	119 (7.2%)	275 (16.6%)	703 (42.5%)	442 (26.7%)	117 (7.1%)	1656
	Suspensions	100 (25.6%)	126 (32.3%)	118 (30.3%)	18 (4.6%)	28 (7.2%)	390
	Defiance Suspensions	66 (27.7%)	73 (30.7%)	74 (31.1%)	7 (2.9%)	18 (7.6%)	238
2012-2013	Enrollment	130 (8.1%)	231 (14.4%)	743 (46.4%)	409 (25.5%)	90 (5.6%)	1603
	Suspensions	191 (37.1%)	122 (23.7%)	176 (34.2%)	9 (1.7%)	17 (3.3%)	515
	Defiance Suspensions	156 (39.5%)	93 (23.5%)	131 (33.2%)	2 (0.5%)	13 (3.3%)	239
2011-2012	Enrollment	150 (8.8%)	238 (14.9%)	745 (46.7%)	377 (23.6%)	85 (5.3%)	1595
	Suspensions	193 (32.3%)	117 (19.6%)	264 (44.2%)	7 (1.2%)	16 (2.7%)	597
	Defiance Suspensions	152 (32.3%)	100 (21.2%)	200 (42.5%)	6 (1.3%)	13 (2.8%)	471

<sup>12</sup> THE CALIFORNIA DEPARTMENT OF EDUCATION, *DataQuest, Mira Loma High School Report*, <https://dq.cde.ca.gov/dataquest/dqcensus/EnrEthLevels.aspx?cds=34674473435930&agglevel=school&year=2016-17>. Enrollment numbers are from the Enrollment by Ethnicity Report and Suspension Numbers are from the Suspension Rate Disaggregated by Ethnicity Report. The 2016-2017 Suspension Data was first made available in November 2017.

The racial disparity can also be understood by considering the “risk ratio,” a technique that allows one to compare the risk of receiving a suspension faced by one group of students to the risk faced by all other students.<sup>14</sup> A risk ratio of 1.0 indicates that the risk between the two groups is equal, whereas a risk ratio of *greater than one* indicates that the risk for the comparison group is higher than the risk for all other students.<sup>15</sup> Conversely, a risk ratio of *less than one* indicates that the risk for the comparison group is lower than the risk for all other students.<sup>16</sup>

The risk ratios for suspensions and suspensions for defiance show that significant racial disparities result from Mira Loma’s hostile educational environment. For example, as reflected in Table 2 below, from 2011 to 2017, the risk ratio for African-American students receiving suspensions ranged from 3.69 to 6.68. This means that the likelihood that a Mira Loma African-American student would receive a suspension has been as much as six times greater than the risk faced by all other students.

Most years, African-American students in Mira Loma have been at an even greater risk for defiance suspensions. For example, in 2016-2017, a African-American Mira Loma student was seven-and-a-half times more likely to receive a suspension for defiance than any other Mira Loma student. Mira Loma’s increased suspension of African-American students for defiance reflects research showing that students of color are disproportionately suspended and expelled for subjective offenses like willful defiance.<sup>17</sup> Research shows that ambiguous behavior is interpreted more negatively when the actor is African American rather than white<sup>18</sup> and “[a]mbiguously hostile behaviors were rated as more hostile when performed by a Black rather than White actor.”<sup>19</sup> Research shows that educators weigh the same subjective factors in favor of white and against African-American students.<sup>20</sup> Thus, highly discretionary offenses such as “defiance” can be expected to result in disparate outcomes for African-American students.

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<sup>14</sup> See Julie Bollmer, *Using Risk Ratio to Assess Racial/Ethnic Disproportionality in Special Education at the School-District Level*, 41 J. Special Educ. 186, 187 (2007), available at <http://www.eric.ed.gov/PDFS/EJ785951.pdf>.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> This research caught the attention of the California state legislature, and both the Los Angeles Unified School District and the San Francisco Unified School District have banned suspensions and expulsions for § 48900(k) offenses due to the disparate impact on African-American students and students with disabilities. CHILDREN NOW, AB 420 FACT SHEET (February 15, 2013), available at [http://www.childrennow.org/uploads/documents/AB\\_420\\_Fact\\_Sheet.pdf](http://www.childrennow.org/uploads/documents/AB_420_Fact_Sheet.pdf) (last visited December 13, 2013). LOS ANGELES UNIFIED SCHOOL DIST., LAUSD 2013 SCHOOL DISCIPLINE POLICY AND SCHOOL CLIMATE BILL OF RIGHTS, available at <http://www.publiccounsel.org/tools/assets/files/2013-School-Climate-Bill-of-Rights-Policy-FINAL.pdf> (last visited December 13, 2013); SAN FRANCISCO UNIFIED SCHOOL DISTRICT, SFUSD 2014 SAFE AND SUPPORTIVE SCHOOLS RESOLUTION, available at <http://www.fixschooldiscipline.org/download/2809/> (last visited April 3, 2014).

<sup>18</sup> Duncan, B.L., *Differential social perception and attribution of intergroup violence: Testing the lower limits of stereotyping of blacks*, J. of Personality and Soc. Psych., 34, 590–598 (1976).

<sup>19</sup> Kurt Hugenberg & Galen V. Bodenhausen, *Facing Prejudice: Implicit Prejudice and the Perception of Racial Threat*, 14 Psychol. Science 640, 643 (Nov. 2003), available at <http://faculty.wcas.northwestern.edu/bodenhausen/PS03.pdf>; see Anthony Page, *Batson’s Blind-Spot: Unconscious Stereotyping and the Peremptory Challenge*, 85 B.U. L. Rev. 155, 222-24 & n.337 (2005) (collecting studies showing that “that people will assign different significance to identical actions depending on the actors’ race”).

<sup>20</sup> *Id.* at 224.

**Table 2: Risk Ratios for African-American Students for Suspensions  
in Comparison to their Peers**

School Year	Suspension	Defiance Suspension
2016-2017	6.22	7.51
2015-2016	4.78	6.80
2014-2015	3.69	2.93
2013-2014	4.45	4.96
2012-2013	6.68	7.40
2011-2012	4.60	4.59

**C. Mira Loma has historically maintained a hostile educational environment.**

Mira Loma staff’s failure to create a safe environment for African-American students during the 2016-2017 school year reflects a longer history of discrimination against African-American students. African-American students have been significantly underrepresented in the IB Program, and students who were not in the IB program had access to fewer resources and support. African-American students have also been subjected to disparate exclusion from class. While C.M. was a student at Mira Loma from 2007-2011, she experienced a racially- and sexually-hostile educational environment, where African-American girls were particularly targeted and discriminated against. The hostile school environment transcended the distinction between the IB program and the non-IB program. C.M., a successful and engaged IB student, recalls being mistreated by teachers and students compared to the treatment and experiences of her White and Asian peers. Teachers made discriminatory remarks toward her, and students harassed African-American students, particularly African-American girls. The ongoing hostile educational environment went largely unaddressed by Mira Loma school staff.

**III. LEGAL VIOLATIONS**

Title VI of the Civil Rights Act of 1964 (“Title VI”) prohibits recipients of federal financial assistance (“recipients”) from discriminating based on race, color, or national origin.<sup>21</sup> Title VI prohibits a recipient from discriminating against a protected group through disparate treatment of that group.<sup>22</sup> Mira Loma High School, in the San Juan Unified School District, is a recipient of federal funding.<sup>23</sup>

Under the Title VI regulations, 34 C.F.R. § 100.3(a), recipients shall not, on the grounds of race, color or national origin, exclude any person from participation in, deny any person the benefits of, or otherwise subject any person to discrimination under any program receiving

<sup>21</sup> 42 U.S.C. § 2000d (2013).

<sup>22</sup> 34 C.F.R. § 100.3(b)(1)-(2) (2013). The regulations promulgated by the U.S. Department of Education to implement Title VI prohibit a recipient of federal funds from “utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin.”

<sup>23</sup> Mira Loma High School is in the San Juan Unified School District which receives federal funding under Title I, Title II, and Title III.

federal financial assistance. Title VI and its implementing regulations at 34 C.F.R. § 100.3(a) and (b) require that school districts provide students with a nondiscriminatory educational environment.

In violation of Title VI, Mira Loma discriminates against African-American students through its intentional creation and maintenance of a racially hostile educational environment, including by: responding with deliberate indifference, through ineffective and inadequate efforts, to stop known acts of severe, pervasive, and objectively offensive racial harassment; discriminatorily excluding African-American students from District schools; and discriminatorily denying African-American students access to educational opportunity. Mira Loma's maintenance of a racially hostile educational environment continues to the present day.

Mira Loma's intent to discriminate is evident in its deliberate indifference to known discrimination;<sup>24</sup> its procedural and substantive departures from the generally-followed norms;<sup>25</sup> and the substantial disparate impact experienced by African-American students.<sup>26</sup>

#### 1. Mira Loma is Deliberately Indifferent to a Known Racially Hostile Environment

On several occasions, the complainants made the administration aware of the online and classroom harassment on several occasions and asked that V.B. be removed from Ashley's classes. The school ignored their complaints, refusing to conduct an adequate investigation and failing to take any mitigating action.

Vice Principal Jackson asserted that the school could not address the harassment because it occurred off campus, however, schools have the authority and obligation to regulate discriminatory harassment that occurs off campus when the harassment is "closely tied to the school" and when it is reasonably foreseeable that the "off-campus speech would reach the school."<sup>27</sup> First, complainants described to the Mira Loma administration V.B.'s harassment of Ashley on campus during class. Second, Mira Loma had the authority and duty to address B.B. and V.B.'s off-campus harassment of other Mira Loma students. It was foreseeable that the harassment would impact the school environment because the postings were made readily accessible to many Mira Loma students on Instagram and Twitter, and, in fact, the incident became an important topic of discussion among students at school.<sup>28</sup>

Mira Loma ultimately refused, once again, to appropriately investigate the peer-on-peer student harassment and institute appropriate remedial actions to address the racially-hostile educational environment in its letter to Ms. M., through her counsel, on October 19, 2017.

Mira Loma's inadequate response jeopardized Sarah's and Ashley's safety and denied them equal access to education. The sanctioned harassment was so pervasive that Sarah and Ms.

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<sup>24</sup> *Gant v. Wallingford Bd. of Educ.*, 195 F.3d 134, 137-38 (2d Cir. 1999) (defining deliberate indifference as circumstantial evidence permitting an inference of intentional race discrimination).

<sup>25</sup> *Williams v. City of Dothan, Ala.*, 745 F.2d 1406, 1414 (11th Cir.1984); *Arlington Heights*, supra.

<sup>26</sup> *Williams v. City of Dothan, Ala.*, 745 F.2d 1406, 1414 (11th Cir.1984); *Arlington Heights*, supra.

<sup>27</sup> *C.R. v. Eugene Sch. Dist. 4J*, 835 F.3d 1142, 1148 (9th Cir. 2016).

<sup>28</sup> See *Wynar v. Douglas Cty. Sch. Dist.*, 728 F.3d 1062, 1068 (9th Cir. 2013); *J.C. ex rel. R.C. v. Beverly Hills Unified Sch. Dist.*, 711 F. Supp. 2d 1094, 1108 (C.D.Cal. 2010).

M. decided that Sarah should transfer back to her previous school in the middle of the school year. This was an incredibly difficult decision because it meant withdrawing Sarah from the IB Program, sacrificing the educational opportunity offered by the IB Program for her safety. Unfortunately, Ashley was not able to transfer. Consequently, Ashley remained at Mira Loma throughout the spring semester and continued to face harassment. Because Mira Loma has continued to refuse to address its racially-hostile educational environment during the current school year, Ashley now attends an online homeschooling program.

2. Mira Loma’s Official Actions and Omissions Exhibited Significant Procedural and Substantive Departures from Generally-Followed Norms.

The California Education Code and San Juan Unified School District policy, adopting state and federal standards,<sup>29</sup> require school officials to respond to complaints of discrimination and harassment. Under these policies, school staff have an affirmative duty to immediately investigate and intervene in situations of harassment and separate students when it is safe to do so.<sup>30</sup> District policy also requires the discipline of students who use slurs against others on the basis of race, sex or disability status.<sup>31</sup> These requirements establish school officials’ duty to maintain a safe environment for all students and especially for federally-protected classes. Mira Loma school officials’ failure to investigate, intervene, and discipline students who engaged in racial harassment constitutes significant procedural and substantive departure from these requirements and their normative duties. Mira Loma once again refused to conduct an adequate investigation or commit to additional staff training or policy changes on October 19, 2017.

3. Mira Loma Has Disparately Denied African-American Students Access to Educational Opportunities.

Mira Loma has disparately excluded African-American students from the IB program, as well as disparately suspended African-American students, over the course of multiple school years. These exclusions serve to bolster a racially hostile educational environment, as they are reflected in the teachers’ attitudes regarding students who are not in the IB program and are particularly apparent in highly subjective suspensions. African-American students at Mira Loma consequently have far less access to educational opportunity than their peers.

Mira Loma staff have shown a pattern of discrimination which affects African-American students. As described above, Mira Loma staff fail to investigate complaints of harassment when submitted by African-American students. The school’s refusal to enforce its complaint policies to protect African-American students has severe discriminatory effects and creates a hostile educational environment that violates Title VI.

Mira Loma’s acts and omission caused such a severe negative effect that Sarah was forced to sacrifice her education for her well-being and transfer out of Mira Loma where she was an outstanding student in the IB Program. It also silenced Ashley from participating in class and

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<sup>29</sup> “School staff who witness bullying **shall immediately intervene** to stop the incident when it is safe to do so and separate the victims and perpetrators to protect the safety of all involved.” (Education Code section 234.1)

<sup>30</sup> BP: 5131.2; Education Code section 234.1.

<sup>31</sup> BP 5131.42.

from reporting continued harassment, negatively affecting her psychological well-being. Ashley too left the IB program at the end of the 2016-2017 year due to the school's failure to prevent her from being harassed. Because of the school's discriminatory refusal to follow complaint procedures, African-American students at Mira Loma cannot rely on policies intended to secure their safety and well-being. Mira Loma's failure to respond to complaints of discrimination and harassment urgently warrants intervention.

#### **IV. REMEDIES**

Mira Loma High School violates Title VI by maintaining a hostile learning environment. Complainants respectfully request that OCR require Mira Loma to develop and implement plans to accomplish the remedies described below:

##### **A. Complaint Process**

- The District should change its policies to clearly explain how students and their families can report discriminatory harassment, and what procedures the District will use to investigate complaints.
- The District should develop a uniform procedure that is followed at all schools to provide students and families with updates on the District's investigation and subsequent response to incidents of discriminatory harassment.
- Parents and students should be made aware of the potential remedies, and supports available to victims of harassment, as well as interim measures that can be taken to prevent further harm. These supports should include, among others, additional tutoring, academic accommodations, schedule changes, and counseling.
- There should be a designated person, at each school site, who can assist students and parents with reporting incidents of bullying and harassment, and ensure that all complaints are forwarded to the District's General Counsel. Alternatively, a person should be designated at each school who will accept complaints. School personnel should report all incidents of discriminatory harassment to the District.
- These policies should be widely available and accessible to students, parents, and teachers. An explanation of the Uniform Complaint Procedure and the District's bullying and discrimination policies should be included in all student handbooks, and complaint forms should be readily available to students at each school.

##### **B. Professional Development**

- All teachers and staff should be trained on how to identify discriminatory harassment, and how to report, or assist students or parents in reporting such incidents.
- The District should implement mandatory trainings for all school employees on racial discrimination, implicit bias, and bullying prevention. The District should also train teachers on how to discuss issues of discrimination with students.

##### **C. School Climate**

- In order to create a more welcoming environment for African American students, and

students not in the IB program, the District should hire an expert who can help identify problems with school climate and recommend policy and practice changes to address the current school climate.

Respectfully submitted,

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