

June 3, 2024

VIA EMAIL

Office for Civil Rights
U.S. Department of Education
5 Post Office Square, 8th Floor
Boston, MA 02109-3921
OCR.Boston@ed.gov

RE: Discriminatory Treatment Ignored in Melrose Independent School District

Dear Office for Civil Rights Office Region 1,

Enclosed please find our civil rights complaint filed on behalf of David L. Palacios and Ms. Nita Holder with the U.S. Department of Education (“USED”), Office for Civil Rights (“OCR”) against the Melrose Independent School District (“MISD”) and Melrose Veterans Memorial Middle School (“MVMMS”) for failing to investigate and remedy pervasive racial bullying and harassment against David L. Palacios.

The actions of MISD and MVMMS violate Title VI of the Civil Rights Act of 1964. This complaint falls within the jurisdiction of OCR because MISD is a recipient of federal funding as a public school district.

For more information, please contact the attorney listed below.

Sincerely,

/s/ Erika Richmond Walton

Erika Richmond Walton, Esq.
Alexis Rickmers

Lawyers for Civil Rights
61 Battery March St, 5th Fl.
Boston, MA 02110
(617) 482-1145
erichmond@lawyersforcivilrights.org

I. Introduction

Student David L. Palacios, a twelve-year-old Black student at Melrose Veterans Memorial Middle School (“MVMMS”), experienced racial harassment for years at school – beginning in fifth grade and lasting through seventh grade. He and his mother, Nita Holder, bring this Complaint against MVMMS and MISD for their ongoing and persistent failure to prevent and remedy the racial harassment that David has experienced at the hands of other students, resulting in repeated N-word¹ references and physical attacks. Instead of adequately addressing these incidents, MVMMS administration improperly disciplined David. This discriminatory treatment forced David to leave Melrose and to transfer to Boston Public Schools. Unfortunately, David’s experience is not an aberration.

MISD’s failure to address these incidents and its disparate discipline violates Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et. seq. Not only does MISD have a history of civil rights violations, but it is also continuing to discriminate against Black students and creating a racially hostile environment. In 2015, the Office for Civil Rights (“OCR”) of the U.S. Department of Education found MISD in violation of Title VI, finding that the district did not comply with its obligations regarding a racially hostile environment claim.² As a result, OCR entered into a monitoring agreement with MISD that expired in 2016. However, as David’s case confirms, this pattern of discrimination in MISD’s schools persists to this day. OCR’s immediate intervention is again necessary to ensure a safe learning environment for students like David, so

¹ This Complaint uses “N-word” or “N***er” in lieu of the epithet because “this word is perhaps the most offensive and inflammatory racial slur in English, ... a word expressive of racial hatred and bigotry.” *Toussaint v. Brigham & Women’s Hospital, Inc.*, 166 F.Supp.3d 110, 116 (D. Mass. 2015) (internal quotations and citation omitted). This is an “unambiguously” and “vicious” racial epithet. *Alston v. Town of Brookline*, 997 F.3d 23, 47 (1st Cir. 2021) (internal quotations and citation omitted). Here, Complainants try to avoid its use because the word is “pure anathema to African-Americans,” *Spriggs v. Diamond Auto Glass*, 242 F.3d 179, 185 (4th Cir. 2001).

² U.S. Department of Education, Office of Civil Rights, OCR Complaint No. 01-14-1259, *available at* <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/01141259-a.pdf>.

they are not forced to choose between attending school in a racially hostile environment or being forced to leave the district in pursuit of a discrimination-free environment. Delayed responses and continued inaction by MISD administrators and school leaders constitutes a continuing Title VI violation.

Racial harassment among youth, such as that experienced by David, is a significant and growing problem in Massachusetts and throughout the country.³ These types of incidents are devastating to students, as race-based bullying and harassment can have significant long-term social, emotional, and physical impacts on adolescents. These effects include lower grades, low engagement, and negative impacts on mental health, creating a greater risk for depression, suicidal ideation, and substance abuse.⁴

Accordingly, Complainants respectfully request that OCR open an investigation and to enforce compliance with civil rights laws, both at MVMMS and MISD. We also request that OCR require the district to take immediate steps to address the racial bullying and the racially hostile environment that school administrators have created and allowed to fester.

II. Jurisdictional Facts

A. The Parties

³ For example, in October of 2023, a 13-year-old Black student was called a “monkey” at Concord Middle School; a group of white students yelled the N-word during the Hamilton-Wenham Regional High 2023 junior prom; a Black student at Wayland Middle School was called the N-word during a track meet in April of 2023; and in February 2024, a white student spit on a Black student from Pittsfield during a basketball game at Worcester State University. See A. Rickmers & O. Sellstrom, Racial bullying in schools is on the rise-including here in Mass., WBUR (October 19, 2023), <https://www.wbur.org/cognoscenti/2023/10/19/racial-bullying-george-floyd-alexis-rickmers-oren-sellstrom>; see also Michael Goot, Pittsfield player: Being spat on ‘traumatic’; School rips athletic association for not addressing racial slurs, WNYT (March 14, 2024), <https://wnyt.com/top-stories/pittsfield-player-being-spat-on-traumatic-school-rips-athletic-association-for-not-addressing-racial-slurs/>.

⁴ See Maria Xu, Natalia Macrynika et al., Racial and Ethnic Differences in Bullying: Review and Implications for Intervention, NATIONAL LIBRARY OF MEDICINE (October 18, 2019), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7453877/>; see also Valerie A. Earnshaw, Sari L. Reisner et al., Stigma-based bullying interventions: A systemic review, SCIENTEDIRECT (June 2018), <https://www.sciencedirect.com/science/article/abs/pii/S0273229717300138>.

Complainant David L. Palacios is a Black seventh grader, who began attending Melrose Veteran’s Memorial Middle School in 2021, before transferring to Boston Public Schools in 2024. Complainant Nita Holder is his mother.

Respondent Melrose Veteran’s Memorial Middle School is a school within the Melrose Independent School District that serves grades six through eight. The student population at MVMMS is predominantly-white, with approximately 74.4% of students identifying as white.⁵ Only 5.5% of the students at MVMMS identify as Black.⁶

B. Timeliness

This complaint is filed within the applicable 180-day period required by OCR, as the racial harassment that David experienced has been continuous and ongoing for many years, with the last incident occurring on January 23, 2024.

C. Receipt of Federal Funds

OCR has jurisdiction over this complaint, as MISD is a public school district and MVMMS is a public school in Massachusetts, which receive federal funding, subjecting them to compliance with federal civil rights laws. For example, in 2024, the MISD received federal funds to support its programs for English Learners.⁷

Under Title VI, public schools that receive funding are prohibited from discrimination based on race, color, or national origin. *See* 42 U.S.C. § 2000d (“No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving financial

⁵ Massachusetts Department of Elementary and Secondary Education (“DESE”), Enrollment Data (2023-24), <https://profiles.doe.mass.edu/profiles/student.aspx?orgcode=01780305&orgtypecode=6&> (last visited May 31, 2024).

⁶ *Id.*

⁷ Massachusetts Department of Elementary and Secondary Education (“DESE”), *State and Federal Entitlement and Allocation Grants by Fund Code*, available at <https://www.doe.mass.edu/grants/entitlement-allocation.aspx?code=0180&fy=2024&view=code> (last visited May 29, 2024).

assistance.”). OCR has recently found sufficient jurisdictional circumstances to impose remedial action against MISD. *See* OCR Complaint No. 01-14-1259.⁸

Factual Background

a. First Racial Bullying Incident

From his earliest days in Melrose, David experienced racial discrimination and mistreatment.⁹ In April of his sixth-grade year, David was sitting with classmates in the cafeteria during lunch when a white classmate called him the N-word.¹⁰ The Assistant Principal called Ms. Holder that evening to inform her of the event. Ms. Holder requested that the school mediate the incident with the offending student as a restorative justice opportunity. However, the school declined to do so – and in fact, undertook no meaningful investigation of the incident at all.

b. Second Racial Bullying Incident

In the fall semester, on September 8, 2023, David was outside the library on the seventh-grade floor eating lunch when two white students – an eighth and a ninth grader – approached him. One of them called David the N-word, and then the two students proceeded to physically attack him. Upon seeing the fight, six teachers rushed in and restrained David. Meanwhile, the two white students who began the fight received no such treatment: only one teacher pulled them off David. David was then physically restrained by an administrator.¹¹ Since the physical attack was coupled with the racial epithet, it was clearly racially-motivated. Nevertheless, the school’s response in support of the racist perpetrators essentially endorsed and condoned the racist assault against David. In fact, David was subsequently taken to the vice-principal’s office and punished. After

⁸ Available at <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/01141259-a.pdf>.

⁹ David attended MVMMS as a student in the Metropolitan Council for Educational Opportunity (METCO) program, a state-funded grant program that promotes diversity and educational opportunity to reduce the racial isolation of suburban school districts, and to reduce segregation in city schools. *See* DESE, *METCO Program*, available at <https://www.doe.mass.edu/metco/faq.html?section=d>.

¹⁰ *See supra* note 1.

¹¹ Ms. Holder has since filed a complaint with DESE regarding this incident as an unlawful physical restraint.

David explained that he was called the N-word and physically attacked, the school punished David and took punitive action against him with a one-day suspension for fighting. Although David had informed the teachers of the use of the N-word, the school administration did not meaningfully investigate the incident – nor did they notify Ms. Holder. David eventually told Ms. Holder about the racial harassment, and she immediately called the school. In response, MVMMS claimed that they would investigate the incident and involve the Office for Civil Rights for Region One. However, Ms. Holder never received any follow-up communications from the school, and upon information and belief, no such investigation occurred. The school’s inaction created a strong impression that Black students like David could be insulted and violently attacked without any consequences for the racist perpetrators. This unleashed further racial violence targeted at David.

c. Third Racial Bullying Incident

Around the week of January 23, 2024, David was at home texting in a group chat consisting of several students from his school. In the chat, a white student called David the N-word. Later, another student told David that the white student regularly used the N-word when David was not around.

d. Fourth Racial Bullying Incident

Approximately two days after the group chat racial bullying incident, the same white student who used the N-word escalated the misconduct by physically attacking David near the school entrance. This started a fight with many onlookers.

Although the school had not investigated previous reported use of the slur, despite being made aware by Ms. Holder for this instance as well, it immediately moved to punish, condemn, and suspend David after he was attacked. David was placed on another emergency removal from school with school officials alleging that he began the physical altercation. This baseless claim

relied on video footage with an obstructed view of the fight. The school administrators also pointed to purported witness statements. One school administrator said that David got off the bus and “just started swinging.”¹²

During the suspension hearing, Ms. Holder produced a video she received from David’s classmate, with an unobstructed recording of the fight, which the school did not have. This video confirmed that David was attacked first. In light of this irrefutable evidence, the school dropped the threat of suspension against David.¹³ The school did not, however, investigate the use of the racial slur, and no action was taken to ensure that the racial violence ceased. It took no protective action despite an alarming history – and escalating pattern – of racial violence targeting David as a Black student.

Ms. Holder withdrew David from MVMMS, as she did not feel safe sending her son to an environment where racial harassment was unchecked and unaddressed. Only after Ms. Holder removed David did the school attempt to take any action to initiate an investigation of any kind. The school started looking into the situation in March 2024, in clear violation of MVMMS’ own policy, which is to investigate claims of racial harassment within twenty days of receiving a complaint. The school reached out to Ms. Holder, but she chose not to participate in the school’s

¹² The school’s assumption that David should be punished – and the presumption of his guilt – is rooted in “myths, stereotypes, and racist ideologies.” Calvin John Smiley & David Fakunle, *From “brute” to “thug:” the demonization and criminalization of unarmed Black male victims in America*, *Journal of Human Behavior in the Social Environment* (2016) (noting “the synonymy of Blackness with criminality”), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5004736/>; see also Ta-Nehisi Coates, *The Enduring Myth of Black Criminality*, available at <https://stuartcenter.org/resource/enduring-myth-black-criminality-ta-nehisi-coates> (“The enduring view of African Americans in this country is as a race of people who are prone to criminality.”).

¹³ This was not the first time that MVMMS had improperly targeted David for disciplinary action. When he was in fifth grade, the school attempted to suspend him for an incident at recess, in a haphazard process that failed to give Ms. Holder proper notice. After Ms. Holder pointed out the school’s failings, the school did not count the suspension. Melrose’s misuse of procedure demonstrates their tendency to enact arbitrary suspensions against Black students. The pattern continued, with MVMMS administrators consistently assumed David, as a Black student, was breaking rules, despite no evidence of such. During his fifth-grade year, David experienced a medical issue and the Principal, Laurie Lawler, approached David while he was in the bathroom, assuming he was misbehaving. Another incident occurred when David was using his inhaler and Principal Lawler unfairly accused him of vaping.

botched process since it came many weeks after David fled Melrose for his own safety. Ms. Holder also reasonably believed that the school's process would be deeply flawed because her son was punished every time he was victimized, while his white tormentors were tolerated and condoned.

III. Analysis

Title VI of the Civil Rights Act of 1964 states that recipients of federal funding may not exclude individuals from participation in their programs or activities on the basis of race, color, or national origin. Public school districts, such as the MISD, that receive federal funds are subject to this mandate. 42 U.S.C. § 2000d.¹⁴

Courts have long held that Title VI is violated where schools act with deliberate indifference, failing to take to take adequate measures to prevent racial bullying and harassment against a student. A hostile environment is created when race-based harassment is so severe, pervasive, and objectively offensive that it denies or limits a student's ability to benefit from a school's programs or activities. *Zeno v. Pines Plains Cent. School Dist.*, 702 F.3d 655, 665-66 (2d Cir. 2012). Depriving a student of a supportive, scholastic environment free from racism and harassment constitutes a deprivation of educational benefits under Title VI. *Id.* at 667; *see also DiStiso v. Cook*, 691 F.3d 226, 242-43 (2d Cir. 2012). Deliberate indifference is shown when a school's response to harassment (or lack thereof) is clearly unreasonable in light of the known circumstances.¹⁵ *Davis Next Friend LaShonda D. v. Monroe County Bd. of Educ.*, 526 U.S. 629, 631 (1999). Under the deliberate indifference standard, the action or inaction by the school needs

¹⁴ OCR has exercised jurisdiction against MISD. *See* OCR Complaint No. 01-14-1259, *available at* <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/01141259-a.pdf>.

¹⁵ While Davis construed the deliberate indifference standard in the context of Title IX, lower courts have used this standard in Title VI cases where student-on-student harassment is alleged, since Congress based Title IX on Title VI. *See, e.g., Bryant v. Independent School Dist. No. 1-38 of Garvin County*, 334 F.3d 928, 934 (10th Cir. 2003).

to “at a minimum, cause students to undergo harassment or make them liable to or vulnerable to it.” *Id.* at 645.

A single use of a racial slur, such as the N-word, can rise to the level of “severe” harassment and create a hostile environment.¹⁶ The N-word is a cutting and highly offensive word to use against any Black student, let alone one as young as David. Courts have described it as “the most noxious racial epithet in the contemporary American lexicon....” *Fennell v. Marion Independent School Dist.*, 804 F.3d 398, 409 (5th Cir. 2015) (citing *Monteiro v. Tempe Union High School Dist.*, 158 F.3d 1022, 1034 (9th Cir. 1998)). The history behind the racial slur is extensive and relates to the oppression and degradation of Black people.¹⁷ The derogatory nature of the word includes a depiction of Black people as lazy, slow-witted imbeciles, and has been utilized to institute a racial hierarchy.¹⁸ It is deeply-rooted in violent anti-Blackness and inextricably intertwined with racial subjugation and white supremacy.¹⁹ At such a formative age, David’s social interactions were being shaped by the constant use of this slur. Not only do schools have an obligation to investigate instances of racial discrimination, but they also have a requirement to correct the environment.

David was subjected to a hostile environment based on continuous racial harassment that was severe, pervasive, and persistent. David was called the N-word at least three times, beginning in 2023 and continuing through 2024. From the cafeteria to the hallway, to group chats with

¹⁶ See *DiStiso*, 691 F.3d 226 at 242-43 (“Defendants do not and cannot dispute that such conduct, particularly the use of the reviled epithet “nigger” raises a question of severe harassment going beyond simple teasing and name-calling”); *Zeno*, 702 F. 3d at 666-67(2d Cir. 2012) (explaining that being called the N-word, ‘homey,’ and ‘gangster’ went beyond ‘simple acts of teasing and name-calling among school children’); *Fennell*, 804 F.3d 398 at 409.

¹⁷ Phil Middleton & David Pilgrim, *Nigger (the word), a story*, AFRICAN AMERICAN REGISTRY, <https://aaregistry.org/story/nigger-the-word-a-brief-history/> (last visited May 30, 2024).

¹⁸ *Id.*

¹⁹ “Indeed, it is beyond question that the use of the word ‘nigger’ is highly offensive and demeaning, evoking a history of racial violence, brutality, and subordination. This word is perhaps the most offensive and inflammatory racial slur in English ... a word expressive of racial hatred and bigotry.” *Chery v. Sears, Roebuck and Co.*, 98 F. Supp. 3d 179, 193 (D. Mass 2015) (internal quotations and punctuation omitted) (citing *McGinest v. GTE Service Corp.*, 360 F.3d 1103, 1116 (9th Cir. 2004)).

classmates, David experienced racialized bullying during two school years in different grades and settings. For David, school became a place where he was called a racial slur repeatedly and had no trust in the school to meaningfully investigate and to take him seriously.

When he was being treated this way, the school's inaction and lackluster response allowed a hostile environment to form and fester. Despite Ms. Holder and David informing the school of racial slurs being used, school officials did not investigate. They failed to take corrective action to protect David. Additionally, David's Individualized Education Plan team, consisting of his therapist, psychologist, therapeutic mentor, and intensive care coordinator, told the school that the racism David experienced impacted his emotions and behaviors significantly.²⁰ When Ms. Holder requested a restorative justice session to mend David's relationship with a white classmate who called him the N-word, the school did not meaningfully engage. When David was called the N-word the following school year and was attacked by yet another white classmate, David was physically restrained, punished, and blamed. When, earlier this year, a peer once again called David the N-word and another fight ensued, and the school moved to suspend David using an unreliable video that was ultimately debunked by Ms. Holder. Melrose school officials have repeatedly viewed David as the aggressor. Whether conscious or unconscious, this biased mistreatment strongly suggests that MVMMS and MISD have negative associations and correlations with David based on his race.²¹

MVMMS and MISD have moved to punish and stigmatize David rather than protect him. They have failed to investigate the instigators. They have failed to address the pervasive racist bullying, harassment, and physical violence perpetrated against David. The school's

²⁰ An Individualized Education Plan is "a written statement, developed and approved in accordance with federal special education law in a form established by the Department that identifies a student's special education needs and describes the services a school district shall provide to meet those needs." 603 CMR 28.02.

²¹ See *supra* notes 12 & 13.

administrators avoided conducting such investigations and instead allowed racial bullying to go unchecked.

The school's failure to act opened the door to escalation. The number of students that have participated in racial bullying against David grew over time and cascaded. The race-based attacks also involved many different white students. This exemplifies a widespread racial bullying culture that was allowed to flourish unchecked. The number of incidents – and their growing intensity – correlates to persistent, ongoing harassment by peers. The prevalence of the N word – and its normalization – in the school is shocking and alarming. This is part-and-parcel of a pervasive anti-Black culture at the school.

David was denied a supportive educational environment, and due to the district's inaction, his family had no other options but to transfer him to Boston Public Schools for his safety. Despite being called the N-word multiple times by different classmates, Melrose continuously failed to investigate and create a safe environment for David to thrive at MVMMS. This places Black students like David at risk and shows that Melrose does not take racial harassment and discrimination seriously.

IV. RELIEF REQUESTED

Because MVMMS or MISD have shown a persistent unwillingness to actively eliminate a hostile school environment, Complainants respectfully request that OCR:

- 1) Conduct a comprehensive investigation of MISD's policies and practices regarding race-based bullying and harassment in each of its schools;
- 2) Issue a finding that MISD and MVMMS have violated Title VI by allowing a racially hostile school environment to persist;

- 3) Ensure future compliance by MISD and MVMMS with Title VI and implementing regulations;
- 4) Require MISD and MVMMS to create and implement policies that protect vulnerable populations of students against bullying and harassment;
- 5) Require MISD and MVMMS to implement procedures requiring prompt, thorough investigations of identity/race-based bullying and harassment allegations;
- 6) Require MISD and MVMMS to create and implement affirmative steps to remedy and end hostile environments caused by racial bullying, including but not limited to unconscious bias and cultural sensitivity trainings;
- 7) Require MISD and MVMMS to create processes for victims to report incidents of racial bullying;
- 8) Require MISD and MVMMS to provide mental health, social service, and other support to victims of racial bullying and harassment; and
- 9) Require MISD and MVMMS to create and implement rules, policies and procedures that exemplify a zero-tolerance policy against identity-based and racial bullying, including discipline of perpetrators.

Dated: June 3, 2024

Respectfully submitted,

/s/ Erika Richmond Walton

Erika Richmond Walton, Esq.

Alexis Rickmers
Lawyers for Civil Rights
61 Battery March Street, Fifth Floor
Boston, MA 02110
(617) 482-1145
erichmond@lawyersforcivilrights.org