BEFORE THE UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

KAI LEWIS, KERRIN GIBBS, and DAMARCO DOOLEY, *Complainants*, v. MELROSE PUBLIC SCHOOLS and WINTHROP ELEMENTARY SCHOOL, *Respondents*.	**COMPLAINT UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964**

I. INTRODUCTION

Kai Lewis, an 11-year-old Black student at Winthrop Elementary School ("Winthrop"), which sits within the Melrose Public Schools ("MPS") system, has experienced severe and persistent racial bullying at school since September 2023. From the beginning of her time at Winthrop, she has faced racial hostility and violence. Her white classmates have called her "monkey" and "ape"; derogatorily commented on her dark skin tone; and cut her braided hair without consent. When Kai approached Winthrop administrators and teachers with these issues, she was met with contempt; an alarming lack of racial and cultural sensitivity; and ultimately no solution or plan to stop these attacks. Kai and her parents, Kerrin Gibbs and Damarco Dooley, bring this Complaint against MPS and Winthrop (collectively, "Respondents") for their ongoing and persistent failure to prevent – and failure to timely and adequately address and remedy – the racial bullying and violence that Kai has experienced.

Respondents' failure to prevent, address, and resolve these racial incidents constitutes a violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d *et seq*. Instead of creating and implementing policies and practices to address the race-based bullying, conducting prompt and thorough investigations of these incidents and imposing appropriate discipline on the perpetrators, or training staff on meaningful ways to prevent and remedy a racially hostile environment, Respondents' acts and omissions have subjected Kai to racial bullying and discrimination and allowed that bullying and discrimination to continue after Respondents had actual and substantial notice of the incidents. Where Respondents should have exhibited a zero-tolerance policy, they instead allowed school grounds to remain a racially hostile environment.

MPS's failures are systemic. Approximately one week before the filing of this Complaint, under-signed counsel filed a complaint with the Office for Civil Rights (OCR) on behalf of a

different Black student at MPS who experienced extensive racial discrimination and violence at the hands of his classmates, and was also met with indifference by administrators. *See Palacios, et al. v. Melrose Independent School District, et al.*, Complaint No. 01-24-1423 (filed June 3, 2024).[1] These back-to-back racial incidents follow OCR's 2015 finding that MPS violated Title VI by failing to comply with its obligations to address a racially hostile environment.[2] In connection with this finding, OCR entered into a monitoring agreement with MPS that expired in 2016. However, as the successive complaints demonstrate, there is a pattern, custom, and practice of discrimination in MPS, and the failure of school administrators to remedy and address that discrimination persists.

OCR's immediate and comprehensive intervention, investigation, and oversight are necessary to ensure that students like Kai can learn and connect with peers in an environment safe and free from discrimination, including identity- and race-based bullying. Because of the Respondents' acts and omissions, Kai has had to endure numerous incidents of racial bullying, which have impacted her grades and mental health, left her traumatized, and made her miss significant periods of school, all while she should be celebrating her elementary school graduation.

Racial bullying and harassment among youth are on the rise in Massachusetts and throughout the country.[3] These incidents traumatize students at an early age and can have a long-

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[1] Complaint *available at* https://lawyersforcivilrights.org/wp-content/uploads/2024/06/Palacios-OCR-Complaint-Final-.pdf; *see* James Vaznis, "Metco student frequently encountered racial slurs and bias, while Melrose school officials ignored them, according to US civil rights complaint," Boston Globe (June 3, 2024), *available at* https://www.bostonglobe.com/2024/06/03/metro/melrose-racial-discrimination-complaint/; Jane Appleyard Allen, "Metco student's bias complaint against Melrose signals a pattern," Boston Globe (June 10, 2024), *available at* https://www.bostonglobe.com/2024/06/10/opinion/letters-to-the-editor-melrose-bias-complaint/.

[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 (last visited June 12, 2024).

[3] *See* A. Rickmers & O. Sellstrom, "Racial bullying in schools is on the rise – including here in Mass., WBUR (October 19, 2023), *available at* https://www.wbur.org/cognoscenti/2023/10/19/racial-bullying-george-floyd-alexis-rickmers-oren-sellstrom (Incidents in Massachusetts include a white student invoking George Floyd's name to torment a Black classmate; white students calling a Black classmate a monkey and threatening to whip him because he is Black; and students yelling racial slurs at prom and at a track meet.).

term impact on their social, emotional, and physical well-being, as well as their feeling of self-worth. Oftentimes, as a result of facing these experiences, students get lower grades, are less engaged in class work, and are at greater risk for depression, suicidal ideation, and substance abuse.[4]

Respondents' failure to prevent and promptly investigate, address, and resolve racial bullying incidents, which have subjected Kai to racial discrimination and racial bullying, constitute a continuing violation of Title VI. Accordingly, Complainants respectfully request that OCR launch an investigation into Respondents' policies and practices regarding identity- and race-based bullying and harassment in their schools, in order to ensure compliance with civil rights and anti-discrimination laws, including Title VI of the Civil Rights Act of 1964. We also request that OCR require Respondents to take immediate steps to address and resolve racial bullying and the racially hostile environment that Respondents have allowed to persist.

II. JURISDICTIONAL FACTS

A. The Complainants

Complainant Kai Lewis is an 11-year-old Black fifth-grader, who began attending Winthrop in September 2023 through the Metropolitan Council for Educational Opportunity ("METCO") program.[5] Complainants Kerrin Gibbs and Damarco Dooley are Kai's parents.

B. The Respondents

Respondent Winthrop is an elementary school within Respondent MPS's district that serves students in kindergarten through fifth grade. The student population at Winthrop is predominantly

[4] *See* Valerie A. Earnshaw, Sari L. Reisner et al., "Stigma-based bullying interventions: A systemic review," ScienceDirect (June 2018), *available at* https://www.sciencedirect.com/science/article/abs/pii/S0273229717300138.

[5] METCO is a state-funded program designed to promote diversity and educational opportunity, reduce the lack of access that racial minorities have to isolated suburban school districts, and reduce segregation in inner city schools. *See* Massachusetts Department of Elementary and Secondary Education, METCO Program, *available at* https://www.doe.mass.edu/metco/faq.html?section=d (last visited June 12, 2024).

white, with 83% of students identifying as white, while only 3% of students identify as Black or African American.[6] With Winthrop's total enrollment of 401 students,[7] that means only 12 students identify as Black throughout the entire school, for an average of only two Black students per grade. In fact, Kai was indeed one of only two Black students in her grade.

C. Timeliness

This complaint is filed within the applicable 180-day period required by OCR, as the racial harassment that Kai experienced has been continuous and ongoing, with the last incident occurring on May 28, 2024.

D. Receipt of Federal Funds

OCR has jurisdiction over this matter because MPS is a public school district and Winthrop is a public school in Massachusetts, both of which receive federal funding, subjecting them to Title VI compliance and OCR oversight. For example, in 2024, MPS received federal funds in connection with its programs to support English Language Learners.[8] Further, "Massachusetts invests approximately $16 billion a year in our public schools through a mixture of federal, state,

[6] *See* Massachusetts Department of Elementary and Secondary Education, School and District Profiles, Enrollment Data (2023-2024), *available at* https://profiles.doe.mass.edu/profiles/student.aspx?orgcode=01780050&orgtypecode=6& (last visited June 12, 2024).

[7] *See id.*

[8] *See* Massachusetts Department of Elementary and Secondary Education, 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 June 12, 2024).

and local funds."[9] OCR has recently found sufficient jurisdictional circumstances to impose remedial action against MPS. *See* OCR Complaint No. 01-14-1259.[10]

III. FACTUAL BACKGROUND

Kai started at Winthrop in September 2023, where she was the only Black student in her class of 20 students. She attended Winthrop through the METCO program, a program designed, in part, to reduce segregation in public schools.

A. Humiliation: Monkey and Ape References

On September 12, 2023, less than two weeks into school, one of Kai's white classmates called her a "monkey." On December 13, 2023, another white student walked by Kai and said, "that monkey looks like you," referring to a Chromebook math app character. A third incident occurred on January 11, 2023, where yet another white student walked by Kai in the cafeteria and referred to "an ape like Kai." Thus, within the first few months that Kai was at Winthrop, she was called or compared to a monkey or an ape by her white classmates on at least three separate occasions, all of which occurred during the school day and on school grounds. For Kai, this was continuously demoralizing and stigmatizing, causing her to come home crying and making her feel unsafe and uncomfortable around her classmates.

Following up on the complaints she made immediately after each of the above incidents, Kerrin contacted Winthrop's Principal, a white man, by email on January 11, 2024, to address the fact that Kai was being racially bullied at school, and that there was widely-known, ongoing racial

[9] Massachusetts Department of Elementary and Secondary Education, Administration and Finance, *available at* https://www.doe.mass.edu/finance/#:~:text=Massachusetts%20invests%20approximately%20%2416%20billion,%2C%20state%2C%20and%20local%20funds (last visited June 12, 2024).

[10] *Available at* https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/01141259-a.pdf (last visited June 12, 2024).

bullying experienced by other students of color within MPS. In her email, Kerrin also stated that Winthrop failed to prevent or curtail the racial bullying. Given the fact that students in Kai's classroom were the perpetrators, and that those individuals made Kai uncomfortable, Kerrin requested Kai's transfer to another fifth-grade class, where she could join the only other Black fifth-grader. The Principal denied the transfer request without explanation. On January 12, 2024, Kerrin emailed the Principal requesting an explanation. The Principal responded that the school looked at a variety of factors in coming to that decision, but none of the factors identified included the fact that Kai had been a repeated victim of racial bullying, or that Kai and her family had requested the transfer so that she could feel safe. In the same email on January 12, 2024, Kerrin also raised the fact that the student handbook contains no language that mentions the use of racial slurs or the resulting consequences for using them.

The school did not meaningfully respond to these serious concerns, including the escalating racial bullying. Ultimately, the Superintendent overrode the Principal's decision, and allowed Kai to transfer classrooms. However, the Principal's dismissive attitude and response gave Kai and her family extreme cause for concern about Kai's ongoing safety at school because the Principal has authority over day-to-day operations at Winthrop, and he had already exhibited a willingness to let Kai suffer from racial attacks in the same classroom. The Superintendent also authorized a safety plan that included the fact that Kai should be separated from the students in her original classroom, but Kai was still obligated to enter her original classroom every day to obtain a Chromebook for her classwork, putting her at risk of additional bullying and attacks and, therefore, eliminating any safety the plan was supposed to provide. For example, one day when Kai went into her original classroom, one of the white students who called her an ape asked her why she kept coming into

that classroom, and that student also said that Kai should stop coming into that classroom to steal their Chromebooks. The safety plan was, thus, ineffective and useless.

B. Isolation and Stigma

Meanwhile, Kai continued to face racially-charged incidents. For example, on April 9, 2024, while playing outside, Kai expressed that she was feeling hot. A white classmate told her that the sun is more attracted to her because she is Black. In this manner, Kai continued to be regularly stigmatized.

C. Physical Attack and Assault

In the most recent racial attack, on May 28, 2024, a student cut off one of Kai's braided weave extensions while Kai was concentrating on classwork. Kai wears her hair in braids – a hairstyle and cultural expression for many Black people. Kai extends the length of the braids through hair extensions. With the extensions, her braided hair falls just below waist level. Kai only discovered that her braid had been cut when she was about to leave the classroom and saw approximately 10 inches of cut braid on the floor. Kai was immediately stunned and upset, not knowing what happened, who cut her hair, or why. None of her classmates spoke up or supported her, and then she sought help from the teacher.

Kai requested that the teacher help identify the perpetrator(s), by asking the rest of the students who cut off her braid. Instead, the teacher responded aggressively, placing the blame on Kai. The teacher suggested that maybe Kai sat on her hair, causing it to fall out, and then suggested that maybe it fell out because Kai was playing with it. At that point, her teacher said that when she – a white woman – runs her fingers through her own hair, some of it falls out. The teacher's actions disregard the fact that Black hair has a different texture, that braided hair weaves do not fall out in that manner, and that a portion of the extension had been slashed and cleanly cut off. A photo of

Kai's hair and the cut braid is attached as Exhibit A. Ultimately, Kai's teacher essentially said: Fine. If it is such a big deal, you can go to the principal's office.

Kai was distraught that the teacher, whom Kai thought was supposed to be there to help, did nothing of the sort. So, Kai sought out assistance from another staff member who she hoped might help her navigate the trauma from the racial attack she had just experienced – the Assistant Principal. When she got to the Principal's office, she asked the Assistant Principal, a white man, if she could call her mother, but he told Kai that she needed to speak with him first. After she explained how her hair was cut without consent and that her teacher did nothing to help – which exacerbated the trauma – the Assistant Principal refused to let Kai call home, and told her to throw the braid away and return to class. As a result of the teacher's and the Assistant Principal's dismissive reactions, Kai felt like she had no one to turn to for help, and that reporting these racial bullying incidents was useless because the administration consistently failed to protect her.[11]

As a result of these incidents, Kai has been traumatized and these experiences have caused significant humiliation, stigma, fear, and danger. She often cries at home, feels hopeless, has trouble sleeping, has trouble with her grades, and isolates herself, none of which occurred prior to these racial bullying incidents.[12] As a Black girl who wears braids as part of her personal

[11] The Superintendent later apologized to Kai's mother for the incident and the Assistant Principal's actions. Unfortunately, at that point, the damage had already been done. Kai had been traumatized by the fact that a white classmate cut her braid off, then re-traumatized when her teacher responded aggressively and failed to take action on Kai's behalf, and then traumatized again when the Assistant Principal told her to throw the braid away and return to class. Kai was then denied access to her only source of support – calling home.

[12] The negative effects of racial bullying that Kai experienced are in line with those that have been documented in case law and scientific literature. Victims of racial bullying experience a wide range of adverse effects, including getting lower grades, engaging less in the classroom, declining mental health, and increasing risk for depression, suicidal ideation, and substance abuse. *See L.M. v. Middleborough*, 2024 WL 2887665, at *9, *17, *20 (1st Cir. June 9, 2024) (internal quotation marks omitted) (citations omitted) ("Across the decades, the federal courts in the line of authority we find persuasive have recognized that the special characteristics of the school environment warrant affording school officials the ability to respond to the way speech demeaning other students' unalterable or otherwise deeply rooted personal characteristics can poison the school atmosphere"; also noting that negative psychological effects often result from targeted and demeaning speech); *Nuxoll ex rel. Nuxoll v. Indian Prairie Sch. Dist. #204*, 523 F.3d 668, 671, 674 (7th Cir. 2008) (The reason why most people get upset by "comments about their race, sex, etc.," is "because for most

expression, the most recent incident was particularly harmful because it was a physical assault and also an attack on her cultural identity.[13] The nature of the assault also raises serious concerns about Kai's physical safety. Kai should have been looking forward to her elementary school graduation, but, instead, she is plagued by these racial attacks. Kai is rightfully fearful and anxious about her safety, especially because the racial attacks escalated in the absence of MPS intervention. Kai has missed a significant amount of school and has been deprived of educational opportunities because she does not feel safe or protected at school. Concerned for Kai's safety, her family is considering removing Kai from MPS altogether.[14]

Kai's mother, Kerrin, brought these incidents to the attention of the Assistant City Solicitor for Melrose, the MPS school committee, the MPS superintendent, and Winthrop's principal, assistant principal, and other administrators and teachers. Despite perfunctory responses to

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people these are major components of their personal identity"; also noting that targeted student speech can lead to "a decline in students' test scores, an upsurge in truancy, or other symptoms of a sick school"). *See also* Maria Xu, Natalia Macrynikola et al., "Racial and Ethnic Differences in Bullying: Review and Implications for Intervention," National Library of Medicine (October 18, 2019), *available at* https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7453877/; Valerie A. Earnshaw, Sari L. Reisner et al., "Stigma-based bullying interventions: A systemic review," ScienceDirect (June 2018), *available at* https://www.sciencedirect.com/science/article/abs/pii/S0273229717300138.

[13] Traditionally Black hairstyles are part of a person's cultural identity. This expression is legally protected. *See* "An Act Prohibiting Discrimination Based on Natural and Protective Hairstyles" (Massachusetts CROWN Act), 2022 Mass. Acts 117 (July 26, 2022), *available at* https://malegislature.gov/Laws/SessionLaws/Acts/2022/Chapter117. The CROWN Act was designed to protect cultural identity as expressed through different hairstyles, explicitly including "braids, locks, twists, and Bantu knots," and it prohibits discrimination based on these hairstyles that are "historically associated with race." *Id*.; *see also* NAACP Legal Defense and Education Fund, "Background Resources on Black Hair Discrimination and Bias," *available at* https://www.naacpldf.org/wp-content/uploads/LDF-Primer-on-Hair-Discrimination-Resources-FINAL.pdf (last visited June 12, 2024); *Landrau-Romero v. Banco Popular De Puerto Rico*, 212 F.3d 607, 614 (1st Cir. 2000) (disparaging hair comments may constitute discrimination); *Jenkins v. Blue Cross Mut. Hosp. Ins., Inc.*, 538 F.2d 164, 169 (7th Cir. 1976) (same); *Snowden v. Southerton*, No. 22-CV-514, 2023 WL 3601654, at *9 (S.D.N.Y. May 23, 2023) (same); *Gurley v. David H. Berg & Associates*, No. 20-CIV-9998, 2022 WL 309442, at *4 (S.D.N.Y. Feb. 2, 2022) (same); *Rogers v. American Airlines, Inc.*, 527 F. Supp. 229, 232 (S.D.N.Y. 1981) (same).

[14] Kai's experience is, unfortunately, one of many within MPS. For example, as discussed in *Palacios, et al. v. Melrose Independent School District, et al.*, Complaint No. 01-24-1423 (June 3, 2024), a Black MPS student's mother withdrew him from MPS due to safety concerns under circumstances where he was repeatedly called the N-word and physically attacked. That student attended the same middle school that Kai would attend in fall 2024, if she remains in MPS. Kai's family is aware of this complaint, and the fact that the middle school also treats racial bullying with indifference only adds to the family's concern for Kai, going forward. In addition, OCR already has a record of having to monitor MPS for its failure to comply with Title VI in response to a hostile racial environment.

Kerrin's phone calls and emails, no one adequately addressed Kerrin's concerns as she raised them, which allowed these racial attacks against Kai to continue and cascade throughout the school year.

IV. LEGAL ANALYSIS

Title VI of the Civil Rights Act of 1964 states: "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 Federal financial assistance." 42 U.S.C. § 2000d. Respondents are subject to Title VI enforcement as public schools that receive federal funding. *See* 42 U.S.C. § 2000d-4a(1) (Under Title VI, "the term 'program or activity' and the term 'program' means all of the operations of – a department, agency, special purpose district, or other instrumentality of a State or of a local government."). OCR has already demonstrated its authority to enforce Title VI against Respondent MPS.[15]

In the educational setting, a school is liable under Title VI if the complainant "establishes: (1) substantial control, (2) severe and discriminatory harassment, (3) actual knowledge, and (4) deliberate indifference." *Zeno v. Pine Plains Central School Dist.*, 702 F.3d 655, 665 (2nd Cir. 2012).

A. Respondents Had Substantial Control Over Circumstances of Racial Bullying

The "substantial control" element is satisfied where it is shown that the school has "control over the alleged harassment and authority to take remedial action." *Zeno*, 702 F.3d at 665 (quoting *Davis Next Friend LaShonda D. v. Monroe County Bd. Of Educ.*, 526 U.S. 629, 644-45 (1999)). As the U.S. Supreme Court has noted, a school district exercises substantial control over the circumstances of bullying or harassment when those acts occur "during school hours and on school

[15] *See* U.S. Department of Education, Office for Civil Rights, OCR Complaint No. 01-14-1259, *available at* https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/01141259-a.pdf (last visited June 12, 2024).

grounds." *Davis*, 526 U.S. at 646. "Similarly, a school district's authority to take remedial action lies in its longstanding disciplinary oversight over its students." *Zeno*, 702 F.3d at 665.

Here, there is no question that Respondents had substantial control. First, every racial incident at issue occurred during school hours and on school grounds. Second, Respondents clearly had the authority to discipline the students who perpetrated racial attacks on Kai, as school districts have disciplinary oversight over their students as a matter of course. *See New Jersey v. T.L.O.*, 469 U.S. 325, 342 n. 9 (1985) (quoting *Tinker v. Des Moines Indep. Community Sch. Dist.*, 393 U.S. 503, 507 (1969)) ("We have 'repeatedly emphasized the need for affirming the comprehensive authority of the States and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools.'"). Therefore, the substantial control element is satisfied here.

B. <u>The Racial Bullying Kai Experienced Was Severe, Pervasive, and Discriminatory</u>

Severe, pervasive, and discriminatory acts under Title VI include any act that would "[s]ubject an individual to segregation or separate treatment in any matter related to [her] receipt of any service, financial aid, or other benefit" or "[r]estrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit" at the school. 34 C.F.R. § 100.3(b)(1)(iii-iv). Any misconduct that "simply created a disparately hostile educational environment relative to her peers . . . could be construed as depriving [the victim] of the benefits and educational opportunities available at [the school]." *Hayut v. State University of N.Y.*, 352 F.3d 733, 750 (2nd Cir. 2003). "Educational benefits include an academic environment free from racial hostility." *Zeno*, 702 F.3d at 666; *Hill v. Colorado*, 530 U.S. 703, 716-17 (2000) (citation omitted) (The "right to be let alone" is "the most comprehensive of rights and the right most valued by civilized men."). Being free from hostility "involves not

only freedom from physical assaults but from psychological attacks that cause young people to question their self-worth." *L.M. v. Middleborough*, 2024 WL 2887665, at *9 (1st Cir. June 9, 2024) (citation and quotations omitted). Further, "speech demeaning other students' 'unalterable or otherwise deeply rooted personal characteristics' can 'poison the school atmosphere.'" *Id.* at *17 (citation and quotations omitted).

In Kai's case, she was the only Black student in her class, and she was repeatedly singled out by her white peers who called her "monkey" and "ape"; commented on her dark skin tone attracting the sun; and physically assaulted her by cutting her hair. By design, sinister and surreptitious hair-cutting provokes fear and terror. In fact, hair-cutting is part-and-parcel of victimization and dehumanization. Facts may vary case by case, but the jurisprudence is replete with assailants terrorizing victims by cutting their hair. *See, e.g.*, *People v. Blakes*, No. 3–15–0482, 2017 WL 4708089, at *2 (Ill. App. Ct. Oct. 18, 2017) (unpublished opinion) (assailant "cut a large chunk of [victim's] hair off"); *Cooks v. Quarterman*, No. 06-CV-1621, 2008 WL 534537, at *4 (N.D. Tex. Feb. 27, 2008) (same); *Lenard v. City of Cleveland*, No. 17-CV-440, 2017 WL 2832903, at *1 (N.D. Ohio June 30, 2017) (same).[16]

Due to these incidents, and Respondents' failure to protect her or adequately address the issues, Kai was subjected to segregation, treated differently, and restricted from enjoying her educational benefits. She missed school because the racial bullying and violence produced humiliation, stigma, fear, trauma, and danger. Without question, Kai was placed in a "disparately

[16] Even just the threat of cutting someone's hair is assaultive, but the instant case involves actual physical contact. This is a textbook example of assault and battery, particularly because case law clearly establishes that scissors may be considered a "dangerous weapon." *See, e.g.*, *O'Sullivan v. Felix*, 233 U.S. 318, 320 (1914) (noting "a dangerous weapon, to wit: a pair of scissors"); *Commonwealth v. Miller*, 88 Mass. App. Ct. 1111 (2015) (same); *Commonwealth v. Alves*, 64 Mass. App. Ct. 1101 (2005) (same); *Commonwealth v. Conley*, 34 Mass. App. Ct. 50, 57 (1993) (same).

hostile educational environment relative to her peers." *Hayut*, 352 F.3d at 750. Therefore, the severe and discriminatory act requirement is satisfied here.

C. Respondents Had Actual Knowledge of the Racial Bullying

There can be no doubt that Respondents had actual knowledge of the racial bullying that Kai suffered. Kai and her parents brought these incidents to the attention of Respondents on multiple occasions, through both emails and in-person discussions, including with the Assistant City Solicitor for Melrose, the MPS school committee, the MPS superintendent, and Winthrop's principal, assistant principal, and other administrators and teachers. The actual knowledge element is amply satisfied here.

D. Respondents Demonstrated Deliberate Indifference to the Racial Bullying and Violence

With regard to deliberate indifference, "[t]he school's action—or inaction—must, 'at a minimum, cause students to undergo harassment or make them liable to or vulnerable to it.'" *Zeno*, 702 F.3d at 666 (quoting *Davis*, 526 U.S. at 645). Courts will find deliberate indifference if the school's actions were "clearly unreasonable in light of the known circumstances." *Id.* (quoting *Davis*, 526 U.S. at 648).

Here, Respondents showed deliberate indifference by failing to adequately address the incidents in an appropriate manner as they occurred. This caused Kai to endure continued and unabated racial bullying, with the incidents escalating to a racially motivated physical attack when a white classmate or classmates cut off her braid. Respondents' acts and omissions were clearly unreasonable in light of the known circumstances, and the family's reasonable suggestions for stopping the racial bullying were dismissed. For example, Respondents initially denied Kerrin's request to transfer Kai – a single student – to another fifth-grade classroom, even though failing to do so subjected her to continued racial bullying and harassment from the same students in her

classroom. Even after the transfer, the Principal who had dismissed Kai's concerns remained as the day-to-day administrator at her school, and an ineffective "safety plan" that led to more taunting was put in place. When the braid-cutting incident occurred, Kai's concerns were again dismissed when she asked her teacher to help identify the perpetrators; Kai was denied an opportunity to call home for help after her braid was cut and she was clearly distraught after being physically attacked; and Kai was forced her to throw her cut braid away and to return to class, as if nothing had happened. At each step, MPS aggravated the violence.

Respondents were charged with providing a safe environment for students to learn and connect with peers – there is no exception for students of color. The repeated incidents of racial bullying, and Respondents' failure to prevent or adequately address it, demonstrate that Respondents failed to create and implement affirmative steps to remedy and end the hostile racial environment that Kai had to endure because of racial bullying. Respondents failed to curb the racial bullying that Kai continued to experience at school – a place where she was supposed to be protected and safe. For these reasons, the deliberate indifference element is amply satisfied here.

Because Complainants have established each element of the test for a Title VI violation by Respondents, remedial relief is both appropriate and necessary.

V. REQUESTED RELIEF

Because Respondents have shown a failure and an unwillingness to timely and actively eliminate a hostile school environment, including persistent failures when responding to racial bullying incidents, Complainants respectfully request that OCR:

1) Conduct a comprehensive investigation of Respondents' policies and practices regarding race-based bullying and harassment in their schools;

2) Issue a finding that Respondents have violated Title VI by allowing a racially hostile school environment to persist;
3) Ensure future compliance by Respondents with Title VI and its implementing regulations;
4) Require Respondents to create and implement policies that protect vulnerable populations of students against bullying and harassment, including, but not limited to, students of color;
5) Require Respondents to implement procedures requiring prompt, thorough investigations of identity/race-based bullying and harassment allegations in their schools;
6) Require Respondents to create and implement affirmative steps to remedy and end hostile environments in their schools caused by racial bullying, including, but not limited to, unconscious bias and cultural sensitivity trainings for school officials and staff;
7) Require Respondents to create and implement processes for victims to safely report incidents of racial bullying and harassment;
8) Require Respondents to provide mental health, social service, and other support to victims of racial bullying and harassment;
9) Require Respondents to create and implement rules, policies, and procedures that exemplify a zero-tolerance policy against identity-based and racial bullying, including discipline of perpetrators; and
10) Grant all other relief that OCR finds appropriate and just.

Respectfully submitted,

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Exhibit A