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April 24, 2021

Office for Civil Rights (Chicago Office)
U.S. Department of Education
John C. Kluczynski Federal Building
230 S. Dearborn Street, 37th Floor
Chicago, IL 60604

By email only: OCR.Chicago@ed.gov

Re: Complaint of Racial Discrimination by Oshkosh Area School District, Wisconsin

To whom it may concern:

I represent Melissa Swan, a resident of the Oshkosh Area School District (“OASD”), a Wisconsin public school district located in Winnebago County. This letter constitutes a complaint of racial discrimination against OASD.

Complainant

Ms. Swan resides at [REDACTED]. Ms. Swan’s email address is [REDACTED] and her phone number is [REDACTED].

Persons Discriminated Against

Ms. Swan is the mother of TreVon Swan (“TreVon”) and Karizmah Keys (“Karizmah”), both biracial students who have attended OASD schools since at least the 2014-15 school year. They began the current school year as students at OASD’s Merrill Middle School. [REDACTED]. Ms. Swan files this complaint on behalf of TreVon, Karizmah, and the class of Black and biracial students at Merrill Middle School.

District

OASD is a recipient of federal funds.¹ The OASD Office is located at 215 S. Eagle St., Oshkosh, WI, 54903.

Basis of Complaint

Under Title VI of the Civil Rights Act of 1964, no individual may be excluded in participation in, be denied the benefits of, or otherwise be subjected to racial discrimination under any program or activity that receives federal funds. *See* Investigative Guidance on “Racial Incidents and

¹ See OASD Annual Financial Report, available at <https://www.oshkosh.k12.wi.us/district/business-services/district-budget>.

Harassment against Students at Educational Institutions,” U.S. Dept. of Education, 59 Federal Register 11448 (March 10, 1994).

A violation of Title VI may be found where a recipient, such as a school district, has created or is responsible for a racially hostile environment—i.e., harassing conduct that is sufficiently severe, pervasive or persistent so as to interfere with or limit the ability of an individual to participate in or benefit from the services and opportunities provided by the school district. *Id.* To establish a violation of Title VI under the hostile environment theory, OCR must find that: (1) a racially hostile environment existed; (2) the recipient had actual or constructive notice of the racially hostile environment; and (3) the recipient failed to respond adequately to redress the racially hostile environment. *Id.* Regarding the third of these elements, an appropriate response to a racially hostile environment must be tailored to redress fully the specific problems experienced at the institution as a result of the harassment. *Id.* The responsive action must be reasonably calculated to prevent recurrence and ensure that students are not restricted in their participation or benefits at school as a result of the racially hostile environment. *Id.*

In addition, a school district that receives federal funds violates Title VI if one of its agents or employees, acting within the scope of their official duties, treats a student differently on the basis of race and without a legitimate, nondiscriminatory reason for the different treatment so as to interfere with or limit the student’s ability to participate in or benefit from the services, activities or privileges provided by the school district. *Id.*

OASD has committed the following violations of Title VI:

- OASD discriminated against TreVon Swan by failing to provide him with educational benefits and opportunities [REDACTED] that it provides to similarly situated white students.
- OASD discriminated against TreVon, Karizmah, and other students of color at Merrill Middle School by failing to adequately end, prevent and remedy a racially hostile environment of which it had actual knowledge.
- OASD discriminated against TreVon, Karizmah, and other students of color by investigating and punishing them for their role in an incident while declining to investigate or punish similarly situated white students for their role in the incident.
- OASD discriminated against TreVon, Karizmah, and other students of color by punishing them for their response to racial harassment and discrimination in a manner—namely, expulsion—that deprived them of an equal educational opportunity.
- OASD discriminated against TreVon by knowingly refusing to consider evidence of racial discrimination and harassment when rendering the decision to expel him.
- OASD discriminated against TreVon, Karizmah, and other students of color by expelling them for conduct for which it has not historically expelled similarly situated white students.

- OASD retaliated against Karizmah and other students of color by punishing them for speaking out to school leaders about racial discrimination and harassment.

Facts

In support of this complaint, Ms. Swan alleges the following facts:

1. According to data published by the Wisconsin Department of Public Instruction, in the 2021-22 school year, 70.2% of the OASD student population is white, 7.1% Black, and 7.1% biracial.²
2. Discipline data publicly available on DPI's WISEdash portal reveals stark disparities in disciplinary outcomes for the District's students of color.³ Specifically, in the 2019-20 school year (the most recent year for which data is available), the District suspended Black students at a rate of 37.3% and biracial students at a rate of 32.3%, while it suspended white students at a rate of only 10.4%. At Merrill Middle School, the school at issue here, the disparity was even more stark: the District suspended Black students at an astounding rate of **76.8%**, and white students at a rate of 26.4%. Moreover, of 606 Black students in the entire District that school year, 3 (or 0.4%) were expelled, while only 7 of 7,369 white students (or 0.09%) were expelled.
3. OASD documented five complaints of racial harassment and one of national origin discrimination harassment for the 2018-19 school year, seven complaints of racial harassment for the 2019-20 school year, and four complaints of racial harassment for the 2020-21 school year.⁴
4. TreVon's father figure was murdered in 2015, when TreVon was in kindergarten. The experience was traumatic for TreVon and caused him to shut down or become emotionally overwhelmed from time to time at school. TreVon's mother promptly reached out to the district about TreVon's struggles and attempted to work with the district on a plan to support TreVon. However, the district persistently took a punitive instead of a supportive approach to TreVon.
5. TreVon and Karizmah experienced bullying and racial harassment throughout their time as students in the District schools. Some of these incidents are documented in TreVon's school record, including an incident where a student punched and kicked TreVon,⁵ an incident where a student told TreVon "I'm about to pimp slap you so hard you're about to go to Africa,"⁶ and an incident where students made fun of TreVon in class.⁷

² See OASD Enrollment Percent by Ethnicity (2021-22) (attached, Ex. A). Also available at <https://wisedash.dpi.wi.gov/Dashboard/dashboard/18110>.

³ See OASD Discipline Data by Race (attached, Ex. B).

⁴ See OASD PI 9.07 Compliance Reports (attached, Ex. C).

⁵ T. Swan Expulsion Notice (attached, Ex. D) at *21.

⁶ *Id.* at *16

⁷ *Id.* at *14.

6. During the fall of 2021, a student named ██████████ in Karizmah's sixth grade class began a campaign of bullying and harassment against her. He called her racial slurs in class and on the playground including "chocolate bar" and "nigger bitch." ██████████ also racially harassed TreVon, calling him the N-word and threatening to beat him up. ██████████ also used racial slurs with other students of color.⁸
7. Throughout September and October of 2021, Ms. Swan notified the district of ██████████ harassment of her children and requested support, but the harassment continued. Karizmah also repeatedly told her teacher about the harassment.
8. As required by state and federal law,⁹ the District maintains policies which it is supposed to use for addressing racial harassment of students.¹⁰ OASD School Board Policy indicates that the District "will not tolerate any form of harassment," and that the District "encourages those within the District community...who feel aggrieved to seek assistance."¹¹ It is a violation of Policy 5517 to "[d]isregard[], fail[] to investigate adequately, or delay[] investigation of allegations of harassment, when responsibility for reporting and/or investigating harassment charges comprises part of one's supervisory duties."¹² It is also the District's policy that when a Complaint Officer receives a harassment complaint, the Officer will "consider whether any action should be taken in the investigatory phase to protect the complainant from further harassment or retaliation."¹³ OASD did not adequately investigate Ms. Swan's concerns, and it did not take any action to protect TreVon and Karizmah from further harassment or retaliation.
9. TreVon came to feel he could not rely on school staff to protect him, his sister, or his friends from the continuing bullying and harassment.¹⁴
10. During the week of October 18, 2021, Ms. Swan met with district staff to discuss ██████████ harassment of TreVon and Karizmah. During that meeting she requested that ██████████ be removed from Karizmah's class.¹⁵
11. OASD did not make any schedule changes. Instead, on Monday, October 25, 2021 Karizmah's teacher, Ms. Lubbers, called Ms. Swan to tell her that Karizmah had refused to sit next to ██████████ during class. Ms. Swan replied by email on October 26, 2021, stating:

I'm not really sure why you would call me to tell me that my child didn't want to sit next to a child who called her black n*** and CONTINUES to harass and call my child racial slurs she has definitely told you this. do not tell my child one more time to ignore him you do not ell a child who is being bullied because of her skin

⁸ Written Statement of Melissa Swan dated November 15, 2021 (attached, Ex. E) at *3.

⁹ See generally 42 U.S.C. 2000d et seq.; Wis. Stat. § 118.13.

¹⁰ OASD School Board Policy 5517 (attached, Ex. F)

¹¹ *Id.* at 1.

¹² *Id.* at 2.

¹³ *Id.* at 6.

¹⁴ TreVon Swan Expulsion Hearing Transcript (attached, Ex. G) at 99-100.

¹⁵ Ex. E at 2.

color to ignore another child who is constantly calling her the n-word calling her chocolate bar and calling her b****.¹⁶

12. On October 26, 2021, administrators called TreVon to the office to ask him about the harassment and told him that [REDACTED] would be suspended.
13. However, OASD did not suspend [REDACTED]. On the next day, October 27, [REDACTED] was again present in class and called Karizmah a “black N word.”
14. Merrill Middle School held a Halloween dance on the afternoon of October 27 which [REDACTED] attended. Shortly before the dance, [REDACTED] harassed and threw water on three Black and biracial students, all friends of TreVon’s: [REDACTED], [REDACTED], and [REDACTED].¹⁷ TreVon witnessed this incident.
15. During the dance, some Black and biracial students verbally challenged [REDACTED] about the harassment, and because they believed that [REDACTED] had taken a phone from [REDACTED]. School staff observed the confrontation and intervened. They removed [REDACTED] from the dance and placed him in a classroom, allegedly due to concerns over [REDACTED] well-being.¹⁸ School staff thus demonstrated greater concern for [REDACTED] safety than for the safety of the Black and biracial students he had verbally and physically harassed over the preceding weeks and even right before the dance. School staff did not investigate or consider the role or effect of [REDACTED] racial harassment of Black and biracial students, even though Ms. Swan had raised this concern to school administration in the days immediately preceding the dance.
16. Based on the school’s prior failures to protect him and others from bullying and racial harassment, TreVon did not trust school staff to retrieve [REDACTED] phone. TreVon waited calmly in the hallway outside the room where [REDACTED] was for several minutes. A white teacher, Christopher Willems, told TreVon to leave and TreVon tried to explain that he was remaining in the hallway to make sure his friend’s brother got his phone back. Willems grew agitated and began yelling at TreVon. In response, TreVon also raised his voice.¹⁹
17. Assistant Principal Amy Hughes approached TreVon and spoke with him. Ms. Hughes told TreVon to go home, so he went to the cafeteria where the dance was being held to retrieve his belongings so that he could leave. Ms. Hughes followed TreVon to the cafeteria.²⁰
18. While TreVon was in the cafeteria putting on his sweatshirt, someone in a crowd of students threw a full water bottle at him and it hit him in the head. He threw it back into the crowd.

¹⁶ Melissa Swan Email (attached, Ex. H).

¹⁷ Video Ex. A at 00:25:05-20. A link to the video exhibits will be sent in a separate email.

¹⁸ Video Ex. B at 00:00:00-07.

¹⁹ Ex. G at 100-02; Video Ex. B at 00:01:00-00:05:50.

²⁰ Ex. G at 102, 106; Video Ex. B at 00:06:54-59.

19. Middle school principal Kristi Levy grabbed TreVon from behind and dragged him out of the cafeteria. TreVon was frightened and began wriggling frantically, flailing his arms, and pushing against Ms. Levy, trying to get free.²¹
20. Some of TreVon’s friends saw Ms. Levy manhandling TreVon and followed them into the hallway. ██████ attempted to pull TreVon away from Ms. Levy. Other students, including Karizmah, verbally told Ms. Levy to let go of TreVon and loudly told staff members that this was a racial incident.²²
21. Ms. Hughes and Ms. Levy dragged ██████ down the hallway and locked him in the teachers’ lounge.²³
22. Meanwhile, students in the cafeteria were agitated and trying to see what was going on. Teachers forced the cafeteria door closed, creating a crush of students at the door to the hallway.²⁴ In that struggle, a student struck a glass window in the cafeteria door and broke it. Teachers then had students evacuate the cafeteria through other doors.
23. A teacher called 911 and the Oshkosh police department responded to the scene.
24. A police officer interviewed Willems about the incident.²⁵ Willems told the police that he was aware there had been a confrontation between ██████ and four other students before the dance.²⁶ Willems stated that teachers intervened in the conflict between ██████ and the Black and biracial students in order to protect ██████. Willems stated that he did not know the reason for the conflict between the students of color and ██████ but attributed responsibility to the students of color. During the interview, Willems did not acknowledge ██████ racial harassment of the other students. Willems stated that the students of color were angry that the teachers were protecting ██████ and that they called the teachers “racist.”
25. Ms. Levy, Ms. Hughes, Mr. Willems, a male OASD administrator and several police officers—all white—met in the school office to review video footage of the incident.²⁷ During the meeting, Ms. Hughes stated:

The backstory is, ██████ and Karizmah, they’re claiming that ██████ calls her the n-word and a whole bunch of other names.²⁸

²¹ Video Ex. C at 0:00:11-0:00:45; Ex. G at 106-107.

²² Video Ex. D at 0:00:00-01:00.

²³ *Id.* at 0:01:00-15.

²⁴ Video Ex. C at 0:00:20-50.

²⁵ Video Ex. E at 0:00:6:34-09:44.

²⁶ This was presumably the conflict that arose when ██████ harassed and threw water on ██████ ██████ and ██████ as described in ¶ 14, *supra*.

²⁷ Video Ex. E at 0:13:50-46:44.

²⁸ *Id.* at 00:18:20-52.

None of the administrators present made any effort to follow up on this comment, to ascertain whether the allegation of racial harassment had been investigated or addressed, or to consider how racial harassment might have played a role in precipitating the incident.

26. During the meeting, the white male administrator referred to one of the biracial students as a “monster.”²⁹
27. After reviewing the video, the administrators and police officer decided to refer seven students, all black or biracial, for juvenile charges.³⁰ Trevon and Karizmah were both referred for disorderly conduct. The school’s decision to seek to charge these students was made without any investigation whatsoever about the cause of the conflict, even though at least some of the school staff present had previously been notified of the racial harassment.
28. For Karizmah and at least one other student of color, the basis of the disorderly conduct referral was that the students had been present while TreVon was being dragged down the hall and after he was locked in the faculty lounge and tried to explain that the incident was racial.
29. The same seven students—all students of color—were subsequently referred for expulsion.
30. TreVon remained locked in the teachers’ lounge while the administrators and police were meeting. The school also held the other students of color, some in the hallway and some locked in separate rooms. The school did not detain ██████ in a locked room, even though he had precipitated the incident by calling students of color racial slurs and throwing water on them.
31. The students’ parents gathered outside the entrance to the school, waiting for them to be released. The parents repeatedly asked officers whether racial harassment was the cause of the incident. Ms. Swan asked a student whether ██████ had been involved and then told an officer that she had met with the district earlier that week regarding ██████ racial harassment of her children.³¹
32. The day after the incident, ██████ mother came to school to speak to the administration about the incident.³² She attempted to tell a teacher that ██████ and his friends had jumped on ██████ and called him the n-word, but the teacher said “I don’t want to hear it.” She then spoke to a police officer about those concerns. A teacher told the police officer that ██████ mother had spoken to Ms. Levy but Ms. Levy ended the conversation because “it was not an appropriate conversation.” The police officer then spoke to Ms. Levy and told her that ██████ mother had been making accusations of racial harassment but that there was no evidence. However, despite the district policy requiring investigation of racial harassment, no one in the district spoke to ██████ or otherwise investigated his mother’s allegations. Nor did the police investigate the racial harassment allegations.

²⁹ *Id.* at 0:34:10-16.

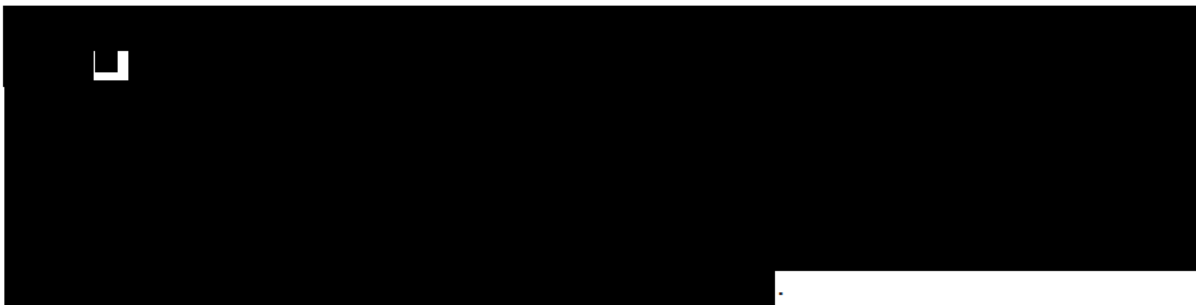
³⁰ *Id.* at 0:41:00-46:44.

³¹ Video Ex. F at 0:03:50-08:00; Video Ex. G 0:02:50-06:30; Video Ex. H at 0:06:25-08:00.

³² Video Ex. I at 0:02:50-11:10.

33. OASD held an expulsion hearing for TreVon on November 22, 2021. The district gave notice of two grounds for expulsion: first, that TreVon had endangered others, and second, that TreVon had repeatedly failed to follow school rules.

34.



35. OASD claims to implement PBIS in its school. PBIS is a comprehensive approach to school behavior management which treats behavior errors as “opportunities to teach rather than situations requiring punishment” and provides “tiered interventions” to “improve social [and] emotional outcomes for all students, including . . . students from underrepresented groups.”³⁴ However, OASD has not provided such supportive interventions to TreVon, even though his behavior record is similar to the behavior records of students to whom OASD has provided PBIS interventions.

36. At Trevon’s expulsion hearing, Trevon’s counsel attempted to introduce evidence and to cross examine administrators regarding [REDACTED] harassment of TreVon and Karizmah and the district’s response to Ms. Swan’s complaints. The district’s designated expulsion hearing officer excluded the evidence and foreclosed cross examination.³⁵ The hearing officer also excluded evidence of extreme racial disparity in discipline at Merrill Middle School.³⁶

37. The OASD School Board formally expelled TreVon on December 17, 2021. He has been attending virtual school through the district’s alternative program for approximately two hours a day since that time.

38. Karizmah also attended virtual school from approximately November 2021 until April 2022 because she did not feel safe attending school in person and because her expulsion status was in question. Karizmah began the 2021-22 school year with an IEP in place. In March 2022, Principal Levy notified Ms. Swan that the district had determined that Karizmah no longer qualified for an IEP. Ms. Levy did not explain the reason for the district’s determination.

39. On April 18, 2020, Karismah returned to in-person school after Ms. Hughes called Ms. Swan and stated that OASD had decided not to move ahead with expelling Karizmah.

Ms. Swan seeks remedial action from the district including but not limited to the following:

³³ Ex. D at *10-23.

³⁴ Expulsion Order (attached, Ex. I) at *16-18.

³⁵ Ex. G at 33-34, 90.

³⁶ *Id.* at 22-23.

1. Ensure cessation of racial harassment, including the use of racial slurs, in its schools;
2. Expungement of TreVon's expulsion;
3. Expungement from Karizmah's behavior record of any consequences related to the October 27 incident or otherwise arising from [REDACTED] harassment of Karizmah;
4. Training for administration and staff on recognizing and responding to racial harassment and racial discipline disparities;
5. Review and revision of the district's policies for responding to complaints of racial harassment;
6. Review and revision of the district's discipline policies to eliminate racial disparities and ensure that students of color have equal access to supportive interventions; and
7. Implementation of an anti-bias and anti-harassment curriculum for all students at Merrill Middle School.

Respectfully submitted,

/s/ Elisabeth Lambert

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