



**Human Rights Commission**  
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## INVESTIGATIVE REPORT AND RECOMMENDATION

HRC Case No. PA23-0005

COMPLAINANTS: ██████████ o/b/o ████████

RESPONDENTS: Woodstock Union High School & Middle School and Windsor Central Supervisory Union

CHARGE: Discrimination based on race, color, and national origin

### Summary of Complaint

██████, through his mother, alleges that he was subjected to harassment by other students at Woodstock Union High School and Middle School (Woodstock Union). ████████ further alleges that Woodstock Union and Windsor Central Supervisory Union (WCSU) failed to adequately prevent, investigate, and respond to instances of harassment and bullying perpetrated against ████████

### Summary of Response

Woodstock Union and WCSU deny that they failed to adequately prevent, investigate, and respond to instances of harassment and bullying perpetrated against ████████

### Preliminary Recommendation

This investigation makes a preliminary recommendation to the Human Rights Commission to find there are **reasonable grounds** to believe that Woodstock Union or Windsor Central Supervisory Union discriminated against ████████ based on his race, color or national origin, in violation of the Vermont Fair Housing and Public Accommodations Act (VFHPAA) 9 V.S.A. §4502.

### Investigation

#### **Woodstock Union High School and Middle School**

- Harassment, Hazing, and Bullying Investigation Report – 9/14/2021
- Vandalism Report – 11/29/2021
- Safety Plan – 4/5/2022
- Attendance record for P.H.
- Restorative Justice Philosophy
- Restorative Circle Reflection Document

### **Windham Central Supervisory Union**

- Prevention of Harassment, Hazing, and Bullying Policies – 4/9/2018
- Prevention of Harassment, Hazing, and Bullying Procedures – 12/14/2015

### **Letters**

- Harassment, Hazing, and Bullying Final Determination Letter – 12/10/2021

### **Emails**

- Email from [REDACTED], Complainant, to Garon Smail, Principal at Woodstock Union, and Sherry Sousa, Superintendent at WCSU – 9/3/2021
- Email from Sherry Sousa to [REDACTED], Complainant, and Garon Smail, Principal at Woodstock Union – 9/3/2021
- Email from [REDACTED], Complainant, to Garon Smail, Principal at Woodstock Union, and Jacob Gladding, Physical Education and Health Teacher at Woodstock Union – 12/6/2021
- Email from Garon Smail, Principal at Woodstock Union, to [REDACTED], Complainant, and Jacob Gladding, Physical Education and Health Teacher at Woodstock Union – 12/6/2021
- Email from Garon Smail, Principal at Woodstock Union, to [REDACTED], Complainant – 12/6/2021
- Email from Jacob Gladding, Physical Education and Health Teacher, to Vali Stuntz, Counselor at Woodstock Union, Garon Smail, Principal at Woodstock Union, Hector Kent, Laurie Smith, Social Emotional Teacher at Woodstock Union, Melissa Fellows, Science Teacher at Woodstock Union, Anne Lessard, English and Global Studies Teacher at Woodstock Union, and Matthew McCormick, Social Studies Teacher at Woodstock Union – 12/17/2021
- Email from Garon Smail, Principal at Woodstock Union, to [REDACTED], Complainant – 3/16/2022
- Email from [REDACTED], Complainant, to Garon Smail, Principal at Woodstock Union – 3/17/2022
- Email from [REDACTED], Complainant, to Garon Smail, Principal at Woodstock Union, and Sherry Sousa, Superintendent at WCSU – 3/22/2022
- Emails from [REDACTED], Complainant, to Garon Smail, Principal at Woodstock Union – 3/29/2022
- Emails from Garon Smail, Principal at Woodstock Union, to [REDACTED], Complainant – 3/29/2022
- Email from Woodstock Union School Attendance Office to [REDACTED], Complainant – 3/31/2022
- Email from [REDACTED] to Woodstock Union School Attendance Office and Garon Smail, Principal at Woodstock Union – 3/31/2022
- Email from Garon Smail, Principal at Woodstock Union, to [REDACTED], Complainant, and Sherry Sousa, Superintendent at WCSU – 5/10/2022
- Email from [REDACTED], Complainant, to Garon Smail, Principal at Woodstock Union and Sherry Sousa, Superintendent at WCSU – 5/10/2022
- Email from Garon Smail, Principal at Woodstock Union, to [REDACTED], Complainant – 5/18/2022

- Email from Garon Smail, Principal at Woodstock Union, to Melissa Fellows, Science Teacher at Woodstock Union – 5/18/2022
- Email from Garon Smail, Principal at Woodstock Union, to [REDACTED], Complainant – 5/19/2022
- Email from [REDACTED], Complainant, to Garon Smail, Principal at Woodstock Union – 6/3/2022
- Email from [REDACTED], Complainant, to Garon Smail, Principal at Woodstock Union – 6/15/2022
- Email from WCSU to [REDACTED], Complainant – 7/8/2022
- Email from Laurie Smith, Social Emotional Teacher at Woodstock Union, to Garon Smail, Principal at Woodstock Union, and Marilyn Mahusky, Attorney for Respondents – 10/8/2022

#### **Additional Documents**

- Complaint – 8/18/2022
- Response – 10/10/2022

#### **Voicemails**

- Voicemail from Mr. Smail to [REDACTED] – 5/3/2022

#### **Interviews**

- [REDACTED], Complainant – 3/24/2023; 3/31/2023
- [REDACTED], Complainant – 3/31/2023
- Garon Smail, Principal at Woodstock Union – 5/31/2023
- Vali Stuntz, Counselor at Woodstock Union – 5/30/2023
- Melissa Fellows, Science Teacher at Woodstock Union – 5/30/2023
- Hector Kent, Math Teacher at Woodstock Union – 5/31/2023
- Anne Lessard, English and Global Studies Teacher at Woodstock Union – 5/31/2023
- Matthew McCormick, Social Studies Teacher at Woodstock Union – 5/31/2023
- Laurie Smith, Social Emotional Teacher at Woodstock Union – 5/31/2023
- Jacob Gladding, Physical Education and Health Teacher at Woodstock Union – 5/30/2023
- Sherry Sousa, Superintendent at WCSU – 5/30/2023

### **Factual History**

2021

[REDACTED] who was born in Rwanda, has dark black skin.<sup>1</sup> [REDACTED], [REDACTED]'s mother, met with Sheri Sousa, superintendent of WCSU, while she was considering which school [REDACTED] would attend for his 7<sup>th</sup> grade year.<sup>2</sup> [REDACTED] had heard about equity and diversity work being done at Woodstock Union.<sup>3</sup> Superintendent Sherry Sousa talked to her about the equity and diversity work she was doing, such as a presentation related to the book, *Belonging Through a Culture of Dignity*.<sup>4</sup>

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<sup>1</sup> Interview with [REDACTED].

<sup>2</sup> Interview with [REDACTED]; interview with Ms. Sousa.

<sup>3</sup> *Id.*

<sup>4</sup> Interview with Ms. Sousa.

█████ began attending Woodstock Union in 7<sup>th</sup> grade.<sup>5</sup> On September 2, the second day of school, Principal Garon Smail received a report from a parent that their child told them that a 10<sup>th</sup> grade student may have used the N-word toward a 7<sup>th</sup> grade student while the students were on the bus.<sup>6</sup> Principal Smail identified █████ as the student who may have been called the N-word based on the school's records, which he was able to do because there were few students with dark skin.<sup>7</sup>

Principal Smail contacted Matthew McCormick, one of █████'s teachers, to find out where █████ was located at that time.<sup>8</sup> Principal Smail knew that the student who was reported to have said the N-word attended a morning technical program and would not be on campus.<sup>9</sup>

Principal Smail also called █████'s mother, ~~Ms. Hollman~~, and let her know about the report he had received.<sup>10</sup> At the time, Principal Smail did not know if █████ had heard the other student saying the N-word.<sup>11</sup> █████ came to the school, and she and Principal Smail discussed how █████ should be involved.<sup>12</sup> During the discussion, Principal Smail stated the full N-word.<sup>13</sup> █████ told Principal Smail that he should not use the full-N-word.<sup>14</sup> Principal Smail stated that he had been unaware that he should not use the word even to make clear what had been said and that he now understood.<sup>15</sup>

During their conversation, they learned that Melissa Fellows, one of █████'s teachers, had already talked to █████ about a student saying the N-word.<sup>16</sup> Ms. Fellows had learned about the report from Mr. McCormick.<sup>17</sup> Ms. Fellows pulled █████ aside while he was at lunch to check on him, stating that she had heard about a student calling him the N-word.<sup>18</sup> █████ had not heard anyone call him the student call him the N-word, and he felt "shocked and confused."<sup>19</sup>

█████ was concerned that a teacher telling █████ that he had been called the N-word caused him unnecessary harm.<sup>20</sup> Principal Smail sent Counselor Vali Stuntz, who had joined their meeting, to get █████.<sup>21</sup> █████ also had Wayne Miller, the founder of a youth mentoring organization and █████'s mentor, with her.<sup>22</sup> █████, Mr. Miller, and Principal Smail discussed what had been done incorrectly in the school's response.<sup>23</sup> In Principal Smail's interview, he stated that he

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<sup>5</sup> Interview with █████.

<sup>6</sup> Interview with Mr. Smail.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Interview with █████.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Interview with Mr. Smail.

<sup>16</sup> Interview with Mr. Smail; interview with █████.

<sup>17</sup> Interview with Ms. Fellows.

<sup>18</sup> Interview with █████; interview with Mr. Smail.

<sup>19</sup> Interview with █████.

<sup>20</sup> Interview with █████.

<sup>21</sup> Interview with Mr. Smail; interview with █████; interview with Ms. Stuntz.

<sup>22</sup> Interview with █████.

<sup>23</sup> *Id.*



did not think that [REDACTED] should have been spoken to about the incident before the school was able to confirm what had happened.<sup>24</sup>

Principal Smail informed Superintendent Sousa what had happened, and Superintendent Sousa emailed [REDACTED] writing that Principal Smail had been “honest in his presentation of the missteps of [the] team and his concern of the impact of those teacher actions on [REDACTED]” Superintendent Sousa also wrote that she appreciated [REDACTED]’s willingness to “engage with us...exposing for us our white misconceptions, and asking us the hard questions that will allow us to become anti racist educators and leaders.”<sup>25</sup>

Principal Smail investigated whether the student had called [REDACTED] the N-word by talking to the student and reviewing attendance records. Principal Smail concluded that the allegation was unlikely to be true because the student was not present at the time of the alleged comment. When Principal Smail talked to the student, the student said that he did not know [REDACTED] and had not called him the N-word, but he and his family did sometimes say the N-word and it was possible that he had said the N-word at school at another time.<sup>26</sup> Either Principal Smail or another administrator told the student and his family that using harassing language such as the N-word is a violation of Woodstock Union policy and that the student would be subject to discipline for any future harassing language. Principal Smail also reviewed teachers’ duties related to harassment, hazing, and bullying with Woodstock Union staff at their staff meeting.<sup>27</sup>

On September 10, Principal Smail also met with [REDACTED]. Principal Smail told [REDACTED] about his investigation and they talked about the harm [REDACTED] had experienced because of the adults’ actions.<sup>28</sup> Principal Smail also told [REDACTED] the results of his investigation. [REDACTED] emailed Principal Smail, writing, “I see you striving toward true allyship and anti racist action and I see the steps you are doing well.”<sup>29</sup>

In September, [REDACTED] and Principal Smail talked about creating a restorative process for [REDACTED] and Ms. Fellows, and [REDACTED] provided a list of individuals who might be good restorative justice facilitators.<sup>30</sup> On October 4, Principal Smail emailed [REDACTED] apologizing for being out of touch regarding the restorative process, writing that the Counselor Vali Stuntz had been absent from work because of an injury and that he would work on scheduling it that week.<sup>31</sup> On October 18, [REDACTED] emailed Principal Smail stating that six weeks had passed since the incident and asking for a restorative meeting to be scheduled.<sup>32</sup> Principal Smail responded that he had been communicating with a reverend and expected to have a date and time soon.<sup>33</sup> On November 3, [REDACTED] emailed Principal Smail again to request a meeting, writing that she had “lost [her] patience and faith with this process.”<sup>34</sup> On November 4, Principal Smail emailed Ms.

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<sup>24</sup> Interview with Mr. Smail.

<sup>25</sup> Email from Ms. Sousa to [REDACTED] 9/3/2021.

<sup>26</sup> Interview with Mr. Smail.

<sup>27</sup> Harassment, Hazing, and Bullying Investigation Report, 9/14/2021.

<sup>28</sup> Email from Mr. Smail to [REDACTED] 9/10/2021.

<sup>29</sup> Email from [REDACTED] to Mr. Smail, 9/10/2021.

<sup>30</sup> Interview with [REDACTED]

<sup>31</sup> Email from Mr. Smail to [REDACTED] 10/4/2021.

<sup>32</sup> Email from [REDACTED] to Mr. Smail, 10/18/2021.

<sup>33</sup> Email from Mr. Smail to [REDACTED], 10/18/2021.

<sup>34</sup> Email from [REDACTED] to Mr. Smail, 11/3/2021.

██████████ writing that he had not been able to get a third party to facilitate the restorative meeting. By then, neither ██████████ nor ██████ wanted to participate in a restorative process.<sup>35</sup>

Around November 29, ██████ received detention after he handed another student a marker, which the student used to write on the bathroom wall. ██████ and the other student, who is white, had to clean the school for around two hours, washing walls, lockers, windows, and the floor. Other students laughed at them as they cleaned. ██████ believed he should have been given a different consequence for giving the student a marker than the student received for writing on the wall.<sup>36</sup> ██████ did not approve of the punishment that the school had given to ██████, and she emailed Principal Smail, writing that her “express knowledge, agreement and permission is always required for any punitive action like the child labor...” ██████████ also wrote that she did not want Principal Smail to speak with ██████ without a parent being present.<sup>37</sup> ██████████ and Principal Smail later emailed about allowing ██████ to meet with Principal Smail if Mr. Gladding, physical education and health teacher, was also present.<sup>38</sup>

Around December 2, while ██████ was in Health and Wellness class, students were using markers to work on posters. One of the students, D., used a dark-colored marker to draw on ██████’s skin and said that he could not see where he had marked. Mr. Gladding told the student to get back to working on the poster. When Mr. Gladding told the students to get back to work, D. made a gun gesture to ██████’s head and said, “yeah, do the work.” Mr. Gladding sent D. out of the classroom for the last twenty minutes of class.<sup>39</sup>

On December 4, ██████████ emailed Principal Smail, stating that she wanted an update about an HHB investigation.<sup>40</sup> On December 6, Principal Smail sent a letter to each of the parents informing them that Principal Smail was investigating what had happened. On December 7, Principal Smail was going to talk to ██████ about the incident, but Principal Smail had not coordinated the meeting with Mr. Gladding and ██████ did not want to be interviewed with another adult present.<sup>41</sup> Principal Smail met with ██████ and Mr. Gladding later that week.<sup>42</sup> Principal Smail talked to D., and, after their conversation, he confirmed that the actions had happened. Principal Smail believed that D. had not understood how “racist” his actions were. Principal Smail assigned D. one week of lunch detention.<sup>43</sup>

On December 10, Principal Smail sent letters with the results of his investigation to the parents of each student. The letter stated that harassment based on ██████’s race was substantiated. The letter also stated that federal privacy law prevents discussing whether disciplinary action was taken in this matter with respect to other students, and that the school is mindful of the obligation to take prompt and reasonable remedial actions to prevent a reoccurrence.<sup>44</sup> The only consequence for D. that ██████

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<sup>35</sup> Interview with ██████████.

<sup>36</sup> Interview with ██████.

<sup>37</sup> Email from ██████████ to Mr. Smail, 12/1/2021.

<sup>38</sup> Email from Mr. Smail to ██████████, 12/6/2021.

<sup>39</sup> Interview with ██████.

<sup>40</sup> Email from ██████████ to Mr. Smail, 12/4/2021.

<sup>41</sup> Interview with ██████.

<sup>42</sup> Email from Ms. Smail to ██████████, 12/8/2021.

<sup>43</sup> Interview with Mr. Smail.

<sup>44</sup> Letter from Mr. Smail to Ms. and Mr. ██████████, 12/10/2022.

was aware of was D's removal from class for fifteen or twenty minutes, and he was confused by the lack of consequences for D.<sup>45</sup>

According to [REDACTED], D's behavior did not change. D. would say the first syllable of the N-word to [REDACTED] and stop before he said the entire word, making it seem like he was going to say the N-word.<sup>46</sup> Starting around December, students made comments to [REDACTED] about his race almost every day. Students talked about how his clothing was made of cotton. They said he must be good at basketball because he is Black. They said he liked fried chicken because of his genes. They related his foot speed to runaway slaves. Many of the comments happened in the hallway or during lunch. [REDACTED]'s lunch group was led by Ms. Fellows. According to [REDACTED], Ms. Fellows worked on her computer during lunch and did not intervene in the students' behavior.<sup>47</sup> In Ms. Fellows' interview, she stated that she did not recall hearing any comments from students other than the two incidents she reported in 2022.<sup>48</sup>

## 2022

Around March 15, A. texted [REDACTED] a song about [REDACTED]'s ancestors picking cotton. While [REDACTED] and A were in the hallway in between classes, A. used his cellphone to play the song.<sup>49</sup> Ms. Fellows, whose classroom door was nearby, heard A. playing the song.<sup>50</sup> She came out of her classroom, took A.'s phone from him, and told A. that he was not allowed to use his cellphone. Ms. Fellows also told A. that it was not respectful to talk about people in the way that the song did.<sup>51</sup>

Ms. Fellows told Laurie Smith, emotional and social learning teacher at Woodstock Union, about what had happened. Ms. Smith removed A. from the class he was in and talked to him about why playing a song about cotton was racist and not something to say.<sup>52</sup>

Principal Smail told [REDACTED] about what had happened, and he also told her that he did not plan to conduct an HHB investigation because what had happened was clear, and that staff had taken action to prevent the situation from happening again.<sup>53</sup> [REDACTED] initially emailed Principal Smail, writing, "[t]his makes perfect sense and I appreciate you looking them a harm reduction lens very much."<sup>54</sup> However, she emailed him again, writing that the responsibility of the administration to conduct an HHB investigation does not go away if the administration had the full facts of an event.<sup>55</sup>

On March 21 and March 22, [REDACTED] emailed Principal Smail and Superintendent Sousa that [REDACTED] told her that he was being harassed with "'jokes'" about his race nearly daily in the halls.<sup>56</sup> Ms.

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<sup>45</sup> Interview with [REDACTED]

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> Interview with Ms. Fellows.

<sup>49</sup> Interview with [REDACTED]; letter from Mr. Smail to [REDACTED], 3/28/2022.

<sup>50</sup> Interview with Ms. Fellows.

<sup>51</sup> Interview with [REDACTED]

<sup>52</sup> Interview with Ms. Smith.

<sup>53</sup> Interview with [REDACTED]; email from Mr. Smail to [REDACTED], 3/16/2022.

<sup>54</sup> Email from [REDACTED] to Mr. Smail, 3/17/2022.

<sup>55</sup> Email from [REDACTED] to Mr. Smail, 3/22/2022.

<sup>56</sup> Email from [REDACTED] to Mr. Smail, 3/21/2022; email from [REDACTED] to Mr. Smail, 3/22/2022.

██████████ requested a safety plan be put in place for ██████.<sup>57</sup> Superintendent Sousa emailed Ms. ██████ acknowledging receipt of her email.<sup>58</sup>

On March 28, Ms. ██████ emailed Principal Smail and Superintendent Sousa, writing that her earlier request for investigations to be conducted and for a safety plan had not been done.<sup>59</sup> Principal Smail replied to ██████, writing that he would “reopen” his HHB investigation and work to create a safety plan.<sup>60</sup>

Also, on March 28, D., who was in Mr. McCormick’s lunch group, came into Ms. Fellows’ lunch group. Teachers generally allowed students to move between classrooms during lunch because it was their only chance to socialize with each other. The students had finished eating, and there was an extra banana on the table. D. held out the banana to ██████ and told ██████ that it “looked like [██████] could use” the banana.<sup>61</sup>

On March 29, ██████ emailed Principal Smail writing about the incident that had happened during lunch the day before. Principal Smail responded, writing that they would take action to make sure that ██████ had a safe lunch environment.<sup>62</sup>

Principal Smail learned from another parent about concerning memes sent to ██████ by the parent’s son. Principal Smail emailed ██████, writing that he had learned about images being sent to ██████ including a cotton field and fried chicken. He also wrote that another student may have asked P.H. if *Planet of the Apes* was his favorite movie.<sup>63</sup> In ██████’s interview, he stated that the other students would also make fun of stereotypical African things like the sounds of other languages and lack of development.<sup>64</sup>

Each student has an email address that the school uses to share information such as schedules and curriculum materials.<sup>65</sup> The school uses a screening program that identifies if student emails have content related to weapons or suicidal ideation. The screening program does not screen for the types of messages that ██████ was receiving. In ██████’s interview, he stated that he repeatedly received similar emails and that he sometimes received as many as 20 messages related to race during a single class. Most of the emails were from J., but D. and A. also sent him similar emails.

In ██████’s interview, he stated, “I was so overwhelmed with all the comments and...constant, day-to-day harassment that I didn't know how to feel...I think if I felt any feelings of that, I would have to feel the feelings of all the other things that would happen to me so I don't think I could feel anything about that. I had to shut down.”<sup>66</sup>

Also, on March 29, D. approached ██████ in the hall and told ██████ that he was not racist. ██████ told D. that what he had said was obviously racist. D. continued to follow ██████ while he walked to class,

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<sup>57</sup> Email from ██████ to Mr. Smail, 3/22/2022.

<sup>58</sup> Email from Ms. Sousa to ██████, 3/22/2022.

<sup>59</sup> Email from ██████ to Mr. Smail and Ms. Sousa, 3/28/2022.

<sup>60</sup> Email from Mr. Smail to ██████ and Ms. Sousa, 3/29/2022.

<sup>61</sup> Interview with ██████

<sup>62</sup> Email from Mr. Smail to ██████, 3/29/2022.

<sup>63</sup> Email from Ms. Smail to ██████, 3/29/2022; interview with Mr. Smail.

<sup>64</sup> Interview with ██████

<sup>65</sup> Interview with Ms. Sousa.

<sup>66</sup> Interview with ██████

and [REDACTED] ignored him. On March 30, [REDACTED] did not send [REDACTED] to school.<sup>67</sup> Ms. [REDACTED] emailed Principal Smail and Superintendent Sousa, writing what had happened and stating that it would likely not have occurred had a safety plan been in place.<sup>68</sup>

On March 31, Principal Smail emailed Ms. Smith about creating a safety plan for [REDACTED].<sup>69</sup> Ms. Smith worked with [REDACTED] to create a safety plan. On April 4, Ms. Smith emailed [REDACTED] the finalized safety plan.<sup>70</sup> The plan stated:

Individual teachers will reach out to [REDACTED] and provide academic support as appropriate if he has missed class as a result of harassment, associated support services he may access during the day, or breaks he takes to mitigate harm... This may include materials for learning at home or individual work sessions with the teacher... Teachers may excuse certain assignments and will work with [REDACTED] to catch up when necessary... [REDACTED] will not be penalized for missed learning that may occur as a result of harassment or emotional distress... [REDACTED] will have access to a safe, quiet space for independent work if he chooses... Where appropriate, teachers will consult with parents to create a plan for him to access an alternative or adapted curriculum...

[REDACTED] will not be in classes, advisory, lunch, or clubs with students found to have engaged in harassment... Adult supervision will be in place every day before school. The students who engaged in harassment, and whom [REDACTED] has identified as needing space from, will be in a separate location... Adults will maintain a presence in the hallways during each passing period... [REDACTED] will have a support person present when meeting with school administration. This may be a parent or educator. [REDACTED]'s family will be notified prior to him meeting with an administrator.

Students found to have engaged in harassment, and whom has identified as needing space from, will be instructed not to speak with, approach, or communicate digitally with [REDACTED]... [REDACTED] will be able to take a break in Laurie Smith's office at any point during the day, without being questioned by teachers. If Laurie's space is not available, [REDACTED] may take a break in the counseling office or in the nurse's office... [REDACTED] will be allowed to confidentially call his parents at any time during the day using the phone in Laurie Smith's office, the counseling office, or the nurse's office.

[REDACTED] will report any incident of harassment or violation of this plan to Laurie Smith, Matt McCormick, Melissa Fellows or his parents. In the event [REDACTED] reports to a member of the school staff, his parents will be contacted immediately and the school will put in place a responsive interim safety plan, effective immediately, and

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<sup>67</sup> Email from WUHSMS Attendance to [REDACTED], 3/30/2022.

<sup>68</sup> Email from [REDACTED] to Mr. Smail, 3/30/2022.

<sup>69</sup> Email form Mr. Smail to Ms. Smith, 3/31/2022.

<sup>70</sup> Email from Ms. Smith to [REDACTED] 4/4/2022.

make certain [REDACTED] knows what this plan stipulates. All incidents will be reported to the HHB officer or appropriate administration.

The safety plan listed Principal Smail, Mr. McCormick, Ms. Fellows, Mr. Gladding, Ms. Smith, and several other teachers as individuals who had been assigned responsibility for implanting the plan. The plan stated that the plan would be reviewed on a weekly basis unless otherwise indicated by [REDACTED].<sup>71</sup>

The three students who had made race-based comments or sent race-based memes to [REDACTED] participated in a restorative circle with Mr. McCormick and two other adults.<sup>72</sup> Woodstock Union uses restorative processes to help students reflect on their choices and the impact of their behaviors.<sup>73</sup> The circle included several rounds of questioning that the students participated in.<sup>74</sup>

On April 8, [REDACTED] went to Woodstock Union to request copies of HHB materials related to [REDACTED]. [REDACTED] had emailed Principal Garon on March 30, asking if she could pick up any files related to [REDACTED], but she had not received a response.<sup>75</sup> [REDACTED] told office staff that she was there to pick up documents, and then Principal Smail told [REDACTED] that she would need to wait to receive the documents. [REDACTED] stated that she could wait there for copies of documents, and Principal Smail told her it would take longer than that. [REDACTED] told him that she had been requesting the documents and that documents were due to her. Later that day, the office gave [REDACTED] an envelope with copies of documents. In the envelope, there were HHB letters from March 28 and April 1 that [REDACTED] had not received, and she was concerned that those letters might have been created while she was waiting and not on the dates stated on the letters.<sup>76</sup>

Mr. McCormick had lunch with the students who were being separated from [REDACTED]. According to [REDACTED], after about a week with the safety plan, it was no longer enforced. Students were out at lunch again making comments and harassing him. In [REDACTED]'s interview, he stated that no teacher would take anything seriously enough to warrant his trust.<sup>77</sup> In Mr. McCormick's interview, he stated that his recollection was that he stopped having lunch with the students because [REDACTED] said it was okay for them to go outside. However, Mr. McCormick did not talk to [REDACTED] directly about whether that was okay with [REDACTED], and he did not remember who told him that [REDACTED] said it was okay with him for them to go outside.<sup>78</sup> The school did not communicate with [REDACTED] about no longer following the safety plan.

On April 20, [REDACTED] emailed Principal Smail and Superintendent Sousa, writing that, when she worked with Ms. Smith to create [REDACTED]'s safety plan, she had requested the school to provide [REDACTED] with weekly support from a licensed clinical social worker (LCSW), [REDACTED] and a one-on-one tutor for [REDACTED] missed class due to harassment. Ms. Smith told [REDACTED] that the administration would have to approve that type of additional support. [REDACTED] asked for Principal Smail and Superintendent Sousa to review and approve her request.<sup>79</sup> Principal Smail

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<sup>71</sup> Safety Plan.

<sup>72</sup> Interview with Mr. McCormick.

<sup>73</sup> Interview with Ms. Smith.

<sup>74</sup> Interview with Mr. McCormick.

<sup>75</sup> Email from [REDACTED] to Mr. Smail and Ms. Sousa, 3/30/2022.

<sup>76</sup> Interview with [REDACTED].

<sup>77</sup> Interview with [REDACTED].

<sup>78</sup> Interview with Mr. McCormick.

<sup>79</sup> Email from [REDACTED] to Mr. Smail and Ms. Sousa, 4/20/2022.



responded, writing that WCSU would support LCSW [REDACTED] working with [REDACTED].<sup>80</sup> [REDACTED] responded, writing that, by the time of Principal Smail's response, [REDACTED] had met with LCSW [REDACTED] five times, and she requested for the school to pay for those sessions retroactively. Principal Smail responded that WCSU would pay for the five sessions that [REDACTED] had already had.

Ms. Fellows and Mr. McCormick planned to teach 7<sup>th</sup> grade students about human evolution, race, and racism. Ms. Fellows and Mr. McCormick talked to [REDACTED] before they began teaching those subjects. Part of Mr. McCormick's plan for the students was for them to read the book *Stamped, Racism, Antiracism, and You*. [REDACTED] had already read the book, and Mr. McCormick offered to have an alternate assignment for [REDACTED]. [REDACTED] wanted [REDACTED] to be able to leave the classroom if he felt he needed to, and Ms. Fellows and Mr. McCormick agreed that [REDACTED] could do that.<sup>81</sup>

Around May 3, students in Ms. Fellows' science class were trying to guess what type of animal different skulls belonged to. One of the students said that one of the skulls looked like [REDACTED]. Ms. Fellows told the student that they should not speak to other students that way and that comparing classmates to animals was unacceptable.<sup>82</sup> Ms. Fellows reported the incident, and Principal Smail called [REDACTED] and told her what had happened.<sup>83</sup>

On May 6, [REDACTED] emailed Principal Smail, writing that [REDACTED]'s science class was not safe for him and requesting that [REDACTED] be provided with assignments to complete in the library until what had happened was addressed and the unit about evolution was complete.<sup>84</sup> Principal Smail responded, writing that he respected her decision and that he would communicate with the teachers.<sup>85</sup> Principal Smail also emailed Ms. Smith, writing that he and Ms. Fellows were concerned that [REDACTED] would miss learning opportunities in class and asking what she thought.<sup>86</sup> Ms. Smith responded, writing "...It's incredibly disappointing...In talking with [Ms. Holliman] yesterday, I get the sense that she blames the school for any racist or racially insensitive comments students make but is also not comfortable with us educating students to correct their misperceptions and biases. At this point, my hunch is that she will be upset with whatever we do, so our focus should be on mitigating harm to [REDACTED]."<sup>87</sup>

On May 6, Ms. Fellows emailed [REDACTED] and [REDACTED], writing that she had posted an assignment for [REDACTED] about natural selection and evolution. On May 7, Ms. Fellows emailed Principal Smail, asking if she was supposed to plan an alternative lesson for each science class for the rest of the year.<sup>88</sup> Ms. Smith emailed, writing that Ms. Fellows could email [REDACTED] to clarify if she was requesting an alternate unit, access to the same unit from the library, or more information about the unit before deciding whether [REDACTED] would participate.<sup>89</sup> Ms. Fellows responded, writing that she was uncomfortable reaching out to [REDACTED] because [REDACTED] had contacted Principal Smail

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<sup>80</sup> Email from Mr. Smail to [REDACTED], 5/3/2022.

<sup>81</sup> Interview with Mr. McCormick.

<sup>82</sup> Interview with Ms. Fellows.

<sup>83</sup> Voicemail from Mr. Smail to [REDACTED].

<sup>84</sup> Email from [REDACTED] to Mr. Smail, 5/6/2022.

<sup>85</sup> Email from Mr. Smail to [REDACTED], 5/6/2022.

<sup>86</sup> Email from Mr. Smail to Ms. Smith, 5/6/2022.

<sup>87</sup> Email from Ms. Smith to Mr. Smail, 5/6/2022.

<sup>88</sup> Email from Ms. Fellows to Mr. Smail, 5/7/2022.

<sup>89</sup> Email from Ms. Smith to Ms. Fellows, 5/7/2022.

about [REDACTED] being provided with assignments, not Ms. Fellows.<sup>90</sup> Principal Smail emailed that he would email [REDACTED].<sup>91</sup>

Ms. Smith also emailed Principal Smail, writing that it would be helpful to let [REDACTED] know about school actions taken in response to the May 3 incident.<sup>92</sup> On May 10, [REDACTED] emailed Principal Smail and Superintendent Sousa, writing that she was not aware of any action that had been taken in response to the May 3 incident. She also wrote, “[u]ntil the harassment has been adequately addressed by the school, [REDACTED] will have to remain in an alternative location...If the perpetrator of the May 3rd harassment is not in the classroom, then [REDACTED] will be able to attend. If they are present, will be heading to the library for the duration of the class period...”<sup>93</sup> Principal Smail replied, writing that, after the May 3 incident, both Ms. Fellows and Principal Smail addressed the student’s comments with the student and that it was likely that students would make more statements during the unit.<sup>94</sup>

Principal Smail did not support removing the student from the classroom.<sup>95</sup> In Superintendent Sousa’s interview, she stated, “what I’ve come to understand is that undoing those patterns of beliefs, especially in middle school, take multiple presentations and opportunities...I’m not sure what interaction or what conversation would totally eliminate a behavior pattern.”<sup>96</sup>

[REDACTED] returned to school, but he did not attend the science or social studies classes. He was not comfortable being in a classroom with the same kids who were making comments about his race, and the curriculum about race made it easier for other students to make ignorant comments. [REDACTED] also felt uncomfortable being in those classes because he thought the teachers did not fully understand what they were teaching nor how harmful the students’ comments were.<sup>97</sup>

During science and social studies, [REDACTED] went to the library. Ms. Fellows and Mr. McCormick posted information and assignments on Google Classroom. In [REDACTED]’s interview, he said he was trying to continue learning, but Google Classroom was not an adequate way to continue my learning. In class, the students worked with interactive notebooks and presentations. Teachers would show videos, but even if he had access to the video, he would not have access to the teacher explaining the video and the student discussion of the video.<sup>98</sup>

On May 17, [REDACTED] emailed Principal Smail and Superintendent Sousa, writing that [REDACTED] being in the library was only an emergency strategy and that it was not acceptable for [REDACTED] to remain in the library with no instruction. [REDACTED] asked for a personal learning plan (PLP) for [REDACTED].<sup>99</sup> Principal Smail responded, writing that he disagreed that the current curriculum and environment in the seventh-grade social studies and science classes created an unsafe environment. He wrote that he saw comments from students as a situation to be prepared for and to address with restorative approaches but not as a reason to miss the classes. He wrote that the teachers are

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<sup>90</sup> Email from Ms. Fellows to Ms. Smith, 5/7/2022.

<sup>91</sup> Email from Ms. Smail to Ms. Fellows, 5/8/2022.

<sup>92</sup> Email from Ms. Smith to Ms. Fellows, 5/7/2022.

<sup>93</sup> Email from [REDACTED] to Mr. Smail and Ms. Sousa, 5/10/2022.

<sup>94</sup> Email from Mr. Smail to [REDACTED], 5/10/2022.

<sup>95</sup> Interview with Mr. Smail.

<sup>96</sup> Interview with Ms. Sousa.

<sup>97</sup> Interview with [REDACTED].

<sup>98</sup> *Id.*

<sup>99</sup> Email from [REDACTED] to Mr. Smail and Ms. Sousa, 5/17/2022.



committed to facilitating a classroom environment where students can engage in inquiry into challenging topics, including addressing inappropriate comments, microaggressions, and reporting possible harassment. He also wrote that assignments had been put online, and that would be similar to a PLP.<sup>100</sup>

After [REDACTED] stopped attending science class with Ms. Fellows, he continued to have Ms. Fellows for his advisory period. According to [REDACTED], she was very friendly in the beginning of the school year, but, after he stopped attending her science class, it was “like [he] wasn’t even there.”<sup>101</sup>

In Ms. Fellows’ interview, she stated that she tried to make sure that all materials were available on Google Classroom so that all students could have access to it if they weren’t in the classroom at the time. She stated that she was not interacting with [REDACTED] other than posting the materials. She stated, “I would have been happy to work with him more closely, but it seemed like at that point that the family really wanted distance from what we were doing in the science class and the curriculum...there wasn’t a lot of communication that I was aware of...it was hard to do that without more feedback on what I could do differently in order to meet their expectations.”

In Mr. McCormick’s interview, he stated that the reason [REDACTED] was missing his class was never communicated to him. He received no communication from [REDACTED]’s parents or the administration about materials he should have been providing. Mr. McCormick did not reach out to [REDACTED] or his parents, and he believed that doing so was not his responsibility.<sup>102</sup>

In June, the school year ended. Also, in June, [REDACTED] provided Principal Garon with invoices for [REDACTED]’s sessions with LCSW [REDACTED].<sup>103</sup> In July, [REDACTED] emailed Principal Smail and Superintendent Sousa, writing that it had been one month since [REDACTED] submitted the first invoice and LCSW [REDACTED] had not been paid. On July 8, WCSU mailed payment to LCSW [REDACTED].<sup>104</sup>

### Legal Analysis

This investigation was tasked with determining whether Woodstock Union or WCSU violated Vermont’s Fair Housing and Public Accommodations Act (VFHPAA).<sup>105</sup>

The VFHPAA, 9 V.S.A. §4502 provides as follows:

- (a) An owner or operator of a place of public accommodations or an agent or employee of such owner or operator shall not, because of the race...color...of any person, refuse, withhold from or deny to that person any of the accommodations, advantages, facilities and privileges of the place of public accommodation.

Harassment is a form of discrimination under the law; thus, the anti-harassment provisions of Title 16 V.S.A. §11(a)(26)(A)-(B) are relevant here:

<sup>100</sup> Email from Mr. Smail to [REDACTED], 5/19/2022.

<sup>101</sup> Interview with [REDACTED]

<sup>102</sup> Interview with Mr. McCormick.

<sup>103</sup> Email from [REDACTED] to Mr. Smail, 6/3/2022; email from [REDACTED] to Mr. Smail, 6/15/2022.

<sup>104</sup> Email from WCSU to [REDACTED], 7/8/2022.

<sup>105</sup> 9 V.S.A. §4602(a).

(26)(A) "Harassment" means an incident or incidents of verbal, written, visual, or physical conduct, including any incident conducted by electronic means, based on or motivated by a student's or a student's family member's actual or perceived race, creed, color, national origin, marital status, sex, sexual orientation, gender identity, or disability that has the purpose or effect of objectively and substantially undermining and detracting from or interfering with a student's educational performance or access to school resources or creating an objectively intimidating, hostile, or offensive environment.

(B) "Harassment" includes conduct that violates subdivision (A) of this subdivision (26) and constitutes one or more of the following:...

(iii) Harassment of members of other protected categories, which means conduct directed at the characteristics of a student's or a student's family member's actual or perceived...sexual orientation...and includes the use of epithets, stereotypes, slurs, comments, insults, derogatory remarks, gestures, threats, graffiti, display, or circulation of written or visual material, taunts on manner of speech, and negative references to customs related to any of these protected categories.

Section 570f(a)(1) outlines the duties of schools to address harassment. It states that:

"An educational institution that receives actual notice of alleged conduct that may constitute harassment shall promptly investigate to determine whether harassment occurred. After receiving notice of the alleged conduct, the school shall provide a copy of its harassment policy, including its harassment investigation procedure, to the alleged victim and the alleged perpetrator. If either the alleged victim or the alleged perpetrator is a minor, the copy of the policy shall be provided to the person's parent or guardian."<sup>106</sup>

Section 570f(b) indicates that a public accommodations lawsuit can only be brought in Court "after the administrative remedies available to the claimant under the policy adopted by the educational institution...have been exhausted." Exceptions are permitted under various circumstances, including if "the educational institution does not maintain such a policy," if "a determination has not been rendered within the time limited established under section 570a of this title," or if "exhaustion would be futile."<sup>107</sup>

The statute also states that, in order to prevail in an action alleging unlawful harassment, the plaintiff shall prove both of the following:

- (1) The student was subjected to unwelcome conduct based on the student's or the student's family member's actual or perceived membership in a category protected by law by 9 V.S.A. §4502.

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<sup>106</sup> 16 V.S.A. § 570f(a)(1).

<sup>107</sup> 13 V.S.A. § 570f(b).

(2) The conduct was either:

- (A) For multiple instances of conduct, so pervasive that when viewed from an objective standard of a similarly situated reasonable person, it substantially and adversely affected the targeted student's equal access to educational opportunities or benefits provided by the educational institution; or
- (B) For a single instance of conduct, so severe that when viewed from an objective standard of a similarly situated reasonable person, it substantially and adversely affected the targeted student's equal access to educational opportunities or benefits provided by the educational institution.<sup>108</sup>

The above statutes are based on the expressed statutory policy that "all Vermont educational institutions provide safe, orderly, civil and positive learning environments. Harassment, hazing and bullying have no place and will not be tolerated in Vermont schools. No Vermont student should feel threatened or be discriminated against while enrolled in a Vermont school."<sup>109</sup> To that end, the law requires that schools "develop, adopt, ensure the enforcement of, and make available ... harassment, hazing, and bullying prevention policies that shall be at least as stringent as model policies developed by the Secretary."<sup>110</sup> Further, "Any school board that fails to adopt one or more of these policies shall be presumed to have adopted the most current model policy or policies published by the Secretary."<sup>111</sup>

WCSU has a Prevention of Harassment, Hazing, and Bullying Policy (Policy) and Prevention of Harassment, Hazing and Bullying Procedures (Procedures). The Policy states:

WCSU...is committed to providing all of its students with a safe and supportive school environment... It is the policy of WCSU...to prohibit the unlawful harassment of students...WCSU...shall address all complaints of harassment, hazing, and bullying according to the procedures accompanying this policy.<sup>112</sup>

The Procedures state:

...Any school employee who witnesses conduct that s/he reasonably believes might constitute hazing, harassment and/or bullying shall take reasonable action to stop the conduct and to prevent its reoccurrence and immediately report it to a designated employee...The school administrator shall, no later than one school day after Notice to a designated employee, initiate or cause to be initiated, an investigation of the allegations, which the school administrator reasonably believes may constitute harassment, hazing, or bullying...In determining whether the conduct constitutes a violation of this policy, the investigator shall consider the surrounding circumstances, the nature of the behavior, past incidents or past continuing patterns of behavior, the relationships between the parties involved and the context in which

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<sup>108</sup> 13 V.S.A. §570f(c).

<sup>109</sup> 13 V.S.A. §570(a).

<sup>110</sup> 13 V.S.A. §570(b).

<sup>111</sup> *Id.*

<sup>112</sup> WCSU Policy on Prevention of Harassment, Hazing, and Bullying of Students.

the alleged incidents occurred...No later than five school days from the filing of the complaint with the designated employee...the investigator shall submit a written initial determination to the school administrator...The investigator shall prepare a report to include a statement of the findings of the investigator as to whether the allegations have been substantiated, and as to whether the alleged conduct constitutes hazing, harassment and/or bullying...Within 5 school days of the conclusion of the investigation, the designated employee shall...notify in writing both the complainant and the accused individual...that 1. The investigation has been completed; 2. Whether or not the investigation concluded that a policy violation occurred...3. That federal privacy law prevents disclosure of any discipline imposed as a result of the investigation...After a final determination that an act(s) of hazing, harassment and/or bullying has been committed, the school shall take prompt and appropriate disciplinary and/or remedial action reasonably calculated to stop the hazing, harassment and/or bullying and prevent any recurrence of harassment, hazing and/or bullying...Remedial action may include but not be limited to an age appropriate warning, reprimand, education, training and counseling, transfer, suspension, and/or expulsion of a student...A series of escalating consequences may be necessary if the initial steps are ineffective in stopping the hazing, harassment and/or bullying...Other remedies may include providing counseling to the victim...<sup>113</sup>

### **Prima Facie Case: Harassment**

In order to make a prima facie case of harassment, [REDACTED] and [REDACTED] must establish (1) that [REDACTED] was subjected to unwelcome conduct on the basis of his race, color or national origin; (2) the conduct was so severe or pervasive that it negatively impacted his equal access to the learning opportunities at Woodstock Union; (3) that [REDACTED] and [REDACTED] exhausted their administrative remedies or had a valid reason for bypassing them; and (4) that Woodstock Union or WCSU failed to take prompt and appropriate remedial action to stop the conduct towards [REDACTED]<sup>114</sup>

#### **1. Element One: Unwelcomed Conduct on the Basis of [REDACTED]'s Race, Color or National Origin**

In this case, [REDACTED] was told by a teacher that a student called him the N-word, and he was subjected to numerous comments and actions based on his race, color, and national origin, including being drawn on with a black marker and told that the mark could not be seen, a student repeatedly starting to say the N-word, students talking about how his clothing was made of cotton, saying he must be good at basketball because he is Black, saying that he liked fried chicken because of his genes, relating his foot speed to runaway slaves, asking him if *Planet of the Apes* was his favorite movie, making fun of stereotypical African things like the sounds of other languages and lack of development, saying that it looked like he could use a banana, saying that an animal's skull looked like his skull, sending him images of a cotton field and fried chicken, and playing a song about picking cotton in his presence. He was clearly subjected to unwelcome conduct on the basis of his race, color and national origin.

Finding: [REDACTED] suffered unwelcome conduct on the basis of his sexual race, color and national origin.

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<sup>113</sup> WCSU Prevention of Harassment, Hazing, and Bullying Procedures.

<sup>114</sup> 13 V.S.A. §570f; *Washington v. Pierce*, 2005 VT 125, 179 Vt. 318, 335-37 (2005).

## **2. Element Two: Severe or Pervasive Conduct that Substantially and Adversely Impacted [REDACTED]'s Access to Educational Opportunities**

According to Title 16, to prevail in a claim, the conduct the student experienced must have been either, “(A) for multiple instances of conduct, so pervasive that when viewed from an objective standard of a similarly situated reasonable person, it substantially and adversely affected the targeted student’s equal access to educational opportunities or benefits provided by the educational institution; or (B) for a single instance of conduct, so severe that when viewed from an objective standard of a similarly situated reasonable person, it substantially and adversely affected the targeted student’s equal access to educational opportunities or benefits provided by the educational institution.”<sup>115</sup>

The law demands that the conduct be viewed from an objective standard of a similarly situated reasonable person.<sup>116</sup> In this instance, the investigation considers how the conduct would be viewed by a middle school student who is being singled out by students on the basis of his race, color, and national origin. The United State Government Accountability Office issued a report about students’ experiences with hostile behaviors, including harassment. The report states hostile behaviors may negatively affect a student’s mental health and education, including through poor attendance and decreased school participation.<sup>117</sup> In this case, the unwanted conduct [REDACTED] experienced appears to have been so pervasive that it led to him to stop attending two of his classes, which aligns with the responses of other students who experience similar conduct. The unwanted conduct clearly impacted his equal access to learning opportunities.

Finding: The conduct was so severe or pervasive that it negatively impacted [REDACTED]'s equal access to learning opportunities at Woodstock Union.

## **3. Element Three: Exhaustion of Administrative Remedies**

Although an exhaustion of administrative remedies may be required for court action, it is not required before an investigation is started or completed at the HRC. Nevertheless, this investigation finds that the Complainants did exhaust the administrative remedies provided by the Respondents, sufficient to satisfy this element. [REDACTED] reported problems [REDACTED] was experiencing to Principal Smail. [REDACTED] communicated about the problems [REDACTED] was experiencing not only to Principal Smail, but also to Superintendent Sousa and Ms. Smith. After being dissatisfied with the responses they received, [REDACTED] and [REDACTED] filed a Complaint at the Human Rights Commission. WCSU’s Procedures include the Human Rights Commission as an avenue for complaints.<sup>118</sup>

Finding: [REDACTED] and [REDACTED] exhausted their administrative remedies.

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<sup>115</sup> 16 V.S.A. § 570(f)(c)(2).

<sup>116</sup> 16 V.S.A. § 570f(c)(2)(A-B).

<sup>117</sup> United States Government Accountability Office, *Students’ Experiences with Bullying, Hate Speech, Hate Crimes, and Victimization in Schools*, available at: <https://www.gao.gov/assets/gao-22-104341.pdf> (last visited 1/4/2022).

<sup>118</sup> WCSU Prevention of Harassment, Hazing, and Bullying Procedures.

#### 4. Element Four: Prompt and Appropriate Remedial Action to Stop the Conduct Motivated by Race, Color, and National Origin

Title 16 creates an affirmative duty for schools to follow the procedures set out in the law.<sup>119</sup> In this case, Woodstock Union's responses to the harassment [REDACTED] experienced failed to follow the requirements of Title 16 and WCSU's Procedures.

The Procedures require the school administrator to initiate an investigation within one day after receiving information that harassment may have occurred. When Principal Smail received information about the first incident of harassment in September, he began an investigation immediately. However, as incidents of harassment continued, Principal Smail failed to investigate each incident. Principal Smail received information about several incidents that happened in 2022, and he only conducted one investigation.

The Procedures require the investigator to create a determination from the investigation no later than five days of receipt of the information by a designated employee, such as Principal Smail. Even when Principal Smail did investigate incidents of harassment against [REDACTED], he did not do so within the required five days. For example, an incident happened on March 15, and Principal Smail emailed [REDACTED], writing that he was not going to investigate the incident. [REDACTED] responded that he was required to conduct the investigation. Principal Smail did not agree to investigate the incident until March 28. Principal Smail's March 29 email to [REDACTED] stated that he would "reopen" the investigation, but the records provided by the school do not support that the investigation was opened before that date.

The Procedures require that, after a final determination that an act of harassment has been committed, the school shall take prompt and appropriate disciplinary and/or remedial action reasonably calculated to stop the harassment and prevent any recurrence of harassment. In this case, Woodstock Union took action including warning and educating students. The Procedures state that remedial action may include those actions. The Procedures also state that a series of escalating consequences may be necessary if the initial steps are ineffective in stopping the harassment. Statements from Principal Smail and Superintendent Sousa support that the school knew the actions they had taken were ineffective in stopping the harassment [REDACTED] experienced. In this case, the only additional step Woodstock Union took was creating a safety plan.

Woodstock Union worked with [REDACTED] and [REDACTED] to create a safety plan, but the plan was not done promptly or carried out effectively. [REDACTED] requested a safety plan on March 22, and multiple other incidents occurred before a safety plan was created on April 4. The safety plan stated that [REDACTED] would not be in lunch with students found to have engaged in harassment. Mr. McCormick kept some students at lunch with him for approximately one week after the safety plan was put in place. After that week, the students were at lunch with [REDACTED], and no one at Woodstock Union communicated with [REDACTED] about allowing those students to be at lunch with [REDACTED].

The safety plan stated that [REDACTED] would not be in classes with students found to have engaged in harassment. Woodstock Union did not take action to keep students who were found to engage in harassment from being in class with [REDACTED]. Instead of attending class with students who were found to

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<sup>119</sup> 16 V.S.A. § 570(f)(a)(1).



engage in harassment, [REDACTED] went to the library, despite [REDACTED] emailing that having [REDACTED] study in the library was not acceptable.

The safety plan stated that individual teachers would reach out to [REDACTED] and provide academic support if he missed class as a result of harassment. The safety plan also stated that teachers would consult with [REDACTED]'s parents to create a plan for [REDACTED] to access an alternative or adapted curriculum. Ms. Fellows provided [REDACTED] with an assignment but did not reach out to [REDACTED] and provide academic support. Mr. McCormick stated that the reason [REDACTED] was missing his class was never communicated to him, that he received no communication from the administration about materials he should have been providing, and that he did not reach out to [REDACTED] or his parents, and he believed that doing so was not his responsibility. Both Ms. Fellows and Mr. McCormick received the safety plan and are listed as individuals who were assigned responsibility for implementing the plan.

By failing to follow the process required by Title 16, WCSU's Procedures and the safety plan created for [REDACTED], Woodstock Union failed to take prompt and remedial action to stop the unwanted conduct [REDACTED] experienced motivated by race, color, and national origin.

Finding: Woodstock Union and WCSU failed to take prompt and appropriate remedial action reasonably calculated to stop the harassment [REDACTED] experienced related to race, color, and National Origin.

### Conclusion and Recommendation

Based on the above, this investigation makes a final recommendation to the Human Rights Commission to find that **there are reasonable grounds** to believe that Respondent discriminated against the Complainant based on his race, color and national origin, in violation of the Vermont Fair Housing and Public Accommodations Act, 9 V.S.A § 4502.

*Cassie Burdyslaw*

1/4/2024

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Cassie Burdyslaw  
Staff Attorney Investigator

\_\_\_\_\_  
Date

Approved:

*Big*

1/4/2024

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Big Hartman, Esq.  
Executive Director

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Date