

IN THE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

S.J., by her parents and next friends Brandi)
and Anthony Johnson, and BRANDI and)
ANTHONY JOHNSON,)

Plaintiffs,)

v.)

WESTFIELD WASHINGTON SCHOOLS,)

Defendant.)

No. 1:21-cv-02793

JURY TRIAL DEMANDED

COMPLAINT FOR DAMAGES

Introductory Statement

1. During the 2019-20 school year, S.J.—then a seventh-grade student at Westfield Middle School, operated by Westfield Washington Schools, and one of very few Black students in her class—endured persistent, pervasive, and relentless racist bullying at the hands of her classmates. This bullying included statements regarding S.J.’s facial features, explicit comparisons to a monkey, questions regarding whether S.J. was sexually attracted to orangutans, and the routine use of the “n-word.” After the COVID-19 pandemic forced classes online in the spring of 2020, this bullying culminated with the chanting of the “n-word” by several students during a Zoom session of S.J.’s media literacy class. On numerous occasions beginning in December 2019, the racist abuse that S.J. was suffering was reported to school administrators. While these administrators purported to offer S.J. their sympathy, they repeatedly failed to take reasonable measures to protect S.J. from continuing abuse. The failure to protect S.J. from clear instances of racist bullying constitutes actionable discrimination under Title VI of Civil Rights of 1964, 42 U.S.C. §

2000d, *et seq.* It also represents the tort of negligence under Indiana law. S.J. and her parents are entitled to their damages.

Jurisdiction, Venue, and Cause of Action

2. The Court has jurisdiction of this case pursuant to 28 U.S.C. § 1331.
3. The Court has supplemental jurisdiction of the plaintiffs' state-law claim under 28 U.S.C. § 1367.
4. Venue is proper in this district pursuant to 28 U.S.C. § 1391.
5. This action is brought pursuant to Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, *et seq.*, and Indiana law.

Parties

6. S.J. is a minor resident of Hamilton County, Indiana who is proceeding by her initials pursuant to Rule 5.2(a) of the Federal Rules of Civil Procedure. She brings this action by her parents and next friends, Brandi and Anthony Johnson.
7. Brandi and Anthony Johnson are adult residents of Hamilton County, Indiana, and are the parents and next friends of S.J.
8. Westfield Washington Schools is a public school corporation that operates several schools in Hamilton County, Indiana.

Factual Allegations

S.J.'s initial experiences with racism within the Westfield Washington Schools

9. Westfield Washington Schools ("the School Corporation") is a public school corporation that operates several schools, including Westfield Middle School ("the Middle School") in Hamilton County, Indiana.
10. Westfield, Indiana is an overwhelmingly White community. Recent census statistics reveal

that between 85% and 90% of the community's population is White, while only 3.3% of the population is Black.

11. The racial make-up of the student body of the School Corporation mirrors this reality: the overwhelming majority of the student body is White, while a Black student might expect, at best, to have one or two other Black students enrolled in the same classes.
12. S.J. is currently fourteen years old. Until the fall of 2020, she and her family resided in Westfield. She attended elementary and intermediate schools operated by the School Corporation through the sixth grade, and then moved on to the Middle School for her seventh grade year. The Middle School serves seventh and eighth grade students only.
13. During the 2019-20 school year, S.J. was thus a seventh-grade student at the Middle School.
14. S.J. was one of few Black students in her class and, indeed, in the entirety of the Middle School.
15. Throughout that school year, S.J. routinely heard other students use racist and inappropriate language, including the liberal use of the "n-word." This language was used in the hallways, before and after school, and occasionally in the classroom itself.
16. In fact, S.J. quickly learned of an informal system for White students to request a so-called "n-pass." Under this system, a White student would request permission from any Black student to use the "n-word" and, if that permission were given, the White student would consider it permissible for him or her to use the "n-word" liberally at the Middle School. This is so even if a Black student felt obligated to provide this permission and even though the White student would be using the "n-word" in front of countless students, of all races, who had not provided permission for him or her to do so.

17. The liberal use of the “n-word” and other racist language at the Middle School made S.J. feel extremely uncomfortable, made her feel targeted and abused by her classmates, and made her feel like an outsider who could not fit in at the Middle School. Prior to December 2019, however, this language was not specifically directed to her—at least to her face.

The racist abuse of S.J. by Student A and the threat of physical violence

18. On or about December 11, 2019, S.J. was racially harassed by another seventh grader, referenced herein as “Student A,” in the hallways of the Middle School during the school day. On multiple occasions on that date, Student A intentionally coughed in S.J.’s face. As he did so, he directed racist language at her: on the first two occasions, he called S.J. a monkey; and on the third occasion, he asked if S.J. was sexually attracted to orangutans.
19. After learning of this abuse that afternoon, S.J.’s parents left a voicemail for Michael Hall, the Principal of the Middle School. They received a return call from Valerie Love, the Assistant Principal of the Middle School, and reported the incident to Assistant Principal Love.
20. In an e-mail the following day, Assistant Principal Love informed S.J.’s parents that the Middle School had used Student A’s racial abuse of S.J. as a “teachable moment” and that unspecified disciplinary consequences had been imposed against Student A. While S.J. and her family do not know the precise disciplinary consequences, if any, that were imposed, on information and belief Student A was not suspended or expelled: Student A continued to attend classes that he had in common with S.J. and was also often in the vicinity of S.J.’s locker.
21. Whatever the disciplinary consequences imposed against Student A were, they did not deter his abuse of S.J. On or about February 3, 2020, Student A again harassed S.J. During

an interaction in the hallway between classes, Student A stated to S.J. that he was strong and that she was weak. He further informed S.J. that he had access to guns and that he visits the shooting range. Based on their past interactions, S.J. and her family believe that Student A's statements on this occasion were racially motivated or were the result of retaliation against S.J. for reporting his earlier abuse to school officials. Shortly after this incident, S.J. also learned from one of the few other Black students at the Middle School that Student A had made similar threats to other Black students.

22. S.J.'s parents promptly informed Assistant Principal Love of this incident via e-mail. In response, Assistant Principal Love indicated that school administration had been "made aware of remarks by [Student A] last week and . . . ha[d] been addressing them." Assistant Principal Love further informed S.J.'s parents that a police report had been made to the Westfield Police Department.
23. On information and belief, despite Assistant Principal Love's assurance to the contrary, no police report had been made by Assistant Principal Love, Principal Hall, or any other person associated with the School Corporation. In correspondence in July 2020, after S.J. and her family separately reached out to the Westfield Police Department through an attorney, the Westfield City Attorney informed S.J. and her family that the July correspondence from S.J. and her family "was the first time that the [Westfield] Police Department was made aware of any incident involving [S.J.] at the Westfield Middle School" and that no report had been "made to the school resource officer regarding [S.J.]"
The first meetings between S.J.'s parents and school administrators
24. After S.J.'s parents failed to hear anything else from Assistant Principal Love—or anything at all from Principal Hall—on or about February 17, 2020, they reached out to Dr. Joe

Montalone, the Director of Operations for the School Corporation, in order to request assistance in scheduling a meeting with school administrators to discuss the racial bullying that S.J. was suffering. Dr. Montalone had been S.J.'s principal when she was enrolled in elementary school and he and her family had a good relationship.

25. Dr. Montalone in turn reached out to Principal Hall and an in-person meeting with S.J.'s parents, attended by both Principal Hall and Assistant Principal Love, was scheduled for February 26, 2020.
26. At the meeting on February 26th, S.J.'s parents discussed with Principal Hall and Assistant Principal Love the bullying that S.J. had experienced from Student A. Principal Hall and Assistant Principal Love indicated again that a police report had been made. On information and belief, this was not true.
27. S.J.'s parents further discussed with Principal Hall and Assistant Principal Love the regular use of racist language, including the regular use of the n-word by numerous students in classrooms and in the hallway, at the Middle School. Principal Hall and Assistant Principal Love indicated that they were not aware that students in the Middle School used this language regularly. S.J. and her parents, however, believe that it is highly unlikely that this was true, for S.J. heard other students using this language, without any attempt to hide or disguise the language they were using, virtually on a daily basis and any school administrator or other official paying even modest attention to the happenings at the Middle School would have routinely heard this language
28. During this February 26th meeting, S.J.'s parents requested that school administration send an e-mail or other form of communication to the parents of children attending the School, informing parents (and, through them, their children) that the use of racist language at the

Middle School would not be tolerated. Principal Hall informed S.J.'s parents that he did not want to send any form of communication to parents for fear of "flooding the tip line" and potentially involving the families of students who had themselves not used racist language.

29. S.J.'s parents further inquired as to whether teachers or other employees at the Middle School were offered some form of diversity training that might assist them in identifying and responding to student racism. They were informed that no such training was offered.
30. Instead of offering to provide some form of communication to students' families or to implement diversity training for staff or students, Principal Hall offered two "solutions." First, he offered to put some form of "working group" together to address the concerns that S.J. and her family had voiced. He further asked whether S.J.'s parents would be willing to participate in such a "working group" once it were created, and S.J.'s parents informed him that they would be willing to participate. Second, Principal Hall recommended that S.J. identify a teacher at the Middle School who could be designated to meet with S.J. regarding the racist abuse that she was suffering and to serve as a confidant to whom S.J. could report any incidents. S.J.'s parents recommended that S.J.'s language arts teacher, Renee Eldridge, be designated for this purpose, and Principal Hall informed them that he would set this up.
31. In reality, even these moderate "solutions" did not come to fruition. S.J.'s parents never again heard from school administration about the "working group" that Principal Hall had indicated would be created (and in which they were to be involved). Nor did either they or S.J. ever hear that school administration had met with or designated Ms. Eldridge to serve as S.J.'s "confidant" inside the Middle School. Ms. Eldridge herself never mentioned

to S.J. that she was available to discuss any racist incidents or abuse suffered by S.J., and certainly never met with S.J. about the concerns voiced by S.J. and her family.

32. Throughout the 2019-20 school year, S.J.'s mother attended the same gym as did Dr. Sherry Grate, the Superintendent of the School Corporation. Having heard nothing further from school administrators after the February 26th meeting, S.J.'s mother approached Dr. Grate at the gym on or about March 2, 2020. During this impromptu conversation, S.J.'s mother informed Dr. Grate of the racist abuse and bullying that S.J. had been suffering as well as of the recent meeting with Principal Hall and Assistant Principal Love. Both during this conversation and in a follow-up e-mail, Dr. Grate informed S.J.'s mother that she would follow up and take steps to ensure that S.J. felt welcome and safe at the Middle School.

Racist abuse of S.J. in the classroom and the subsequent meeting with administrators

33. Shortly after this conversation between S.J.'s mother and Dr. Grate—on March 4th and March 5th—S.J. and her fellow students were to watch a film about the Sudan in their language arts class. This film featured numerous images of Sudanese, or other African, persons.
34. Throughout the first day in which the film was shown, numerous members of S.J.'s class engaged in verbal racist abuse of S.J. They pointed to the images of Sudanese persons in the film and compared their facial features to S.J.'s features. Throughout this ordeal, they laughed at S.J. At least half a dozen students, and likely more, participated in this racist abuse of S.J., which caused S.J. to cry in class. S.J.'s reaction only caused the racist abuse to escalate.
35. When S.J.'s mother picked S.J. up from school on the afternoon of March 4th, S.J. still had

tears in her eyes. Upon hearing about what S.J. had experienced in class, S.J.'s mother promptly e-mailed Principal Hall and Assistant Principal Love, providing details about the abuse that S.J. had suffered in language arts class, and set up another meeting for the following afternoon, March 5th.

36. Despite the fact that the racist abuse that S.J. suffered was disclosed to school administrators on the afternoon of March 4th, when S.J. returned to language arts class the next morning the class watched the second day of the same movie. No steps were taken by S.J.'s teachers or any other school official to prevent S.J. from experiencing another day of racist abuse. If anything, the abuse escalated. This time, during the film about the Sudan S.J.'s fellow students mimicked monkey sounds and movements, directing that mimicry and related comments to S.J. Throughout this ordeal, they again laughed at S.J.
37. As planned, S.J. and her parents met with Principal Hall that afternoon. This was the first occasion on which any school administrator had spoken directly to S.J. about the abuse that she had been suffering for months. During this March 5th meeting, S.J. and her parents described the abuse that S.J. had just suffered while her language arts class watched a two-day film about the Sudan. S.J. also provided the names of several students who had participated in the racist abuse. Principal Hall did not provide any assurances that these students would be disciplined, that S.J.'s language arts teacher (or anyone else) had intervened or would intervene to address the students' behavior, or that any steps whatsoever would be taken to prevent future incidents of racist abuse, nor did they provide any other plan to ensure that S.J. was not harassed moving forward. S.J. certainly did not notice that any of her abusers were ever suspended from the Middle School and they continued to sit near her in her language arts class for the next few weeks.

38. During this March 5th meeting, S.J.'s parents specifically requested that Principal Hall send an e-mail to the parents of all students of the Middle School to address the persistent racial abuse that S.J. was suffering or to informing parents (and, through them, their children) that the use of racist language or other forms of abuse at the Middle School would not be tolerated. Principal Hall informed S.J.'s parents that he did not want to do this for fear of offending families that were not involved in the abuse.
39. At the conclusion of this meeting, S.J. was too upset to return to class and so she left school with her parents.
40. S.J. and her family are not aware of any concrete steps taken by school administration after or as a result of their March 5th meeting to address the racist bullying that S.J. was repeatedly experiencing.

The chanting of the n-word at S.J. during an online class session

41. Due to the COVID-19 pandemic, in March 2020 the School began conducting classes remotely over Zoom and so S.J. was not subjected to the in-person racial bullying and harassment of her classmates. Despite the fact that S.J. was no longer forced to see her classmates in person on a daily basis, the racist bullying did not end.
42. Rather, on or about May 5, 2020, S.J. attended an online Zoom session for her media literacy class. When students initially logged on to the Zoom session, many of them did not immediately turn on their cameras so that they were visible to the teacher and to other students. S.J.'s teacher therefore instructed all students to turn on their cameras so that attendance could be taken.
43. As soon as S.J. turned on her camera, and therefore became visible to her classmates, several students in the class began chanting the n-word at her: "Ni%\$er! Ni%\$er!

Ni%\$er!.” S.J.’s mother overheard the commotion, without realizing at first what was being said, and therefore went to check on S.J. As soon as S.J.’s mother became visible on S.J.’s camera, students began chanting the n-word at *her*. This chanting persisted for some time as the teacher tried to figure out how to mute the students on the Zoom session. At least five or six students participated in this racist abuse of S.J. and her mother.

44. Zoom is only able to transmit audio from one speaker at a time and, because of this, S.J. and her parents do not know precisely which students participated in chanting the n-word at S.J. and her parents. Nonetheless, they are aware that a recording of the Zoom session was made and that school officials had access to this recording. The identity of the students chanting the n-word would have been ascertainable through viewing this recording.
45. S.J.’s teacher ultimately managed to turn the Zoom session off and restart the session. Quite clearly, S.J. was in tears and was too upset to rejoin the session. As it turns out, this was her very last experience in the School Corporation.
46. As soon as S.J.’s mother could compose herself after this incident, she e-mailed Dr. Grate, Principal Hall, and Assistant Principal Love to inform them of the incident. Dr. Grate responded with a vague assurance that Principal Hall was “conducting a thorough investigation.”
47. That same day, S.J.’s mother reached out to Principal Hall and requested that S.J. be excused from attending school for the remainder of the school year, which was set to end shortly anyway. S.J. was excused from attending school for the remainder of the school year without any adverse impact on her grades or school record.
48. After S.J. had been excused from attending classes for the remainder of the school year, S.J.’s mother spoke with Principal Hall about the steps that the school was taking to address

the racist abuse that S.J. had suffered during the May 5th Zoom session. She was informed that school officials had been in touch with several students and their parents but that they were not receiving much “cooperation” from the families involved. Principal Hall further informed S.J.’s mother that he would contact her again when he had more information and when he had a plan to protect S.J. moving forward.

49. S.J. and her family do not know why the “cooperation” of other students and their families would be necessary for school officials to take action to protect S.J. or to discipline her abusers, particularly when a recording of the Zoom session had been made. Over the next several weeks they did not hear back from Principal Hall or any other school administrator.

The publicization of the racist abuse suffered by S.J. and the response of officials

50. On June 2, 2020, Dr. Grate sent an e-mail to families of students attending schools operated by the School Corporation. In this e-mail, Dr. Grate addressed the murder of George Floyd and the ensuing nationwide protests against racial injustice. In this e-mail, Dr. Grate indicated that school administrators and other officials were “seeking the right way to teach our students to positively and productively stand up against injustice, racism and inequity.”
51. By this time, S.J. and her parents had heard nothing further from Dr. Grate, Principal Hall, or any other school official concerning the racist abuse that S.J. had endured for months. In light of the mediocre response of school officials to the racism within the School, S.J.’s mother viewed Dr. Grate’s e-mail as hollow and hypocritical. She therefore made a post to her personal Facebook page describing in detail S.J.’s experiences at the School. She followed this up the following day by making a similar post to the page of a Facebook “group” for mothers in Westfield, Indiana. Her post to this group page received a significant amount of attention from the Westfield community.

52. After this Facebook post began to receive significant attention, S.J. and her family were contacted by the local media and an interview of S.J. and her family concerning the abuse S.J. suffered at the Middle School aired on the local news on or about June 12, 2020.
53. As soon as the Facebook post made by S.J.'s mother began to receive significant attention, Principal Hall released a video message concerning, in part, S.J.'s experiences at the Middle School. In this video message, Principal Hall acknowledged that the incidents detailed by S.J.'s mother in her Facebook post "were reported to Westfield Middle School administration." He further indicated that school administration continued to investigate the racist abuse that S.J. had suffered and encouraged families to stay engaged to learn "how *you* can be part of the change."
54. In July 2020, a meeting was conducted between S.J.'s family and school officials, which was also attended, at the request of S.J.'s family, by representatives of the NAACP. Following this meeting, the School Corporation offered a formal written apology to S.J. and her family and, in so doing, identified several "goals" and "action steps" that they intended to take "to grow and develop [their] cultural intelligence." At the conclusion of this letter, school officials requested that S.J. and her family withdraw a complaint that they had recently filed with the Office for Civil Rights of the U.S. Department of Education.
55. The following month, the School Corporation proposed a "Student Success Plan" that would be implemented upon S.J.'s return to the Middle School the next month.
56. S.J. and her family believed strongly that the "Student Success Plan" was horribly inadequate to address S.J.'s needs and to protect her from another year of racist abuse from her classmates. For instance, it focused primarily on ensuring that S.J. herself had assistance in developing strategies for discussing her past experiences and for addressing

“possible situations that may arise” at the Middle School but did not establish a meaningful plan to prevent or discourage racist abuse in the first instance. S.J. and her family also had significant concerns about school officials’ commitment to actually implementing the “Student Success Plan,” for several of the proposals were similar to the proposals that Principal Hall and Assistant Principal Love had made in February but had never actually been implemented.

57. In any event, the statements of school officials and the proposed “Student Success Plan” during the summer of 2020 came far too late. S.J. and her family had begun exploring alternative educational arrangements for S.J. immediately after school officials failed to meaningfully address the racist abuse that S.J. suffered during the classroom showing of the video on the Sudan on March 4th and March 5th.
58. Over the summer of 2020, S.J. and her family enrolled her in the Indiana Connections Academy, a public school offered online, for the 2020-21 school year. In late 2020, S.J. and her family moved away from Westfield altogether and beginning in the fall of 2021 S.J. began attending a private high school with a diverse student body.
59. S.J. decided not to return to the Middle School and she and her family decided to move away from Westfield due exclusively to the School Corporation’s refusal to take any meaningful steps to protect S.J. from the racist abuse of her peers.

Concluding Factual Allegations

60. The racist abuse suffered by S.J. during the 2019-20 school year was discriminatory and was so severe, pervasive, and objectively offensive that it deprived S.J. of any meaningful or equal access to educational benefits and opportunities.

61. Since at least December 2019, school administrators were regularly and promptly made aware of the racial abuse that S.J. was suffering and they therefore had actual knowledge of this abuse.
62. School administrators were deliberately indifferent to the racist abuse that S.J. was suffering and failed to respond reasonably to each incident of abuse and to take reasonable measures to protect S.J. from future abuse.
63. The School Corporation receives federal financial assistance and is therefore subject to the requirements of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, *et seq.*
64. Superintendent Grate, Principal Hall, and Vice Principal Love all had authority to take appropriate action to end the discrimination against S.J.
65. The School Corporation and its employees had a duty under Indiana law to provide a safe school environment and to protect S.J. from bullying or harassment that was reasonably foreseeable. The School Corporation and its employees breached this duty, and S.J. and her parents suffered damage as a result of this breach.
66. S.J. timely and properly served notice on the School Corporation of S.J.'s tort claim pursuant to Indiana Code § 34-13-3-1, *et seq.*, and more than ninety days has passed without any response from the School Corporation.
67. As a result of the actions or inactions of the School Corporation and its administrators, S.J. has suffered substantial emotional and other damages. Her parents have been forced to incur substantial financial damages, including payments for S.J. to receive therapy, to relocate, and to attend school other than through the School Corporation.

Legal Claim

68. The actions or inactions of the School Corporation and its officials violate Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, *et seq.*
69. The failure of the School Corporation and its employees to protect S.J. from the bullying of her classmates constitutes the tort of negligence under Indiana law.

Jury Trial Demand

70. The plaintiffs demand a trial by jury on all issues so triable.

Request for Relief

WHEREFORE, the plaintiffs request that this Court do the following:

1. Accept jurisdiction of this case and set it for hearing.
2. Declare that the defendant has violated the rights of the plaintiffs for the reason(s) described above.
3. Award the plaintiffs their damages.
4. Award the plaintiffs their costs and attorneys' fees pursuant to 42 U.S.C. § 1988 and any other applicable statute.
5. Award all other proper relief.

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