



**ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND**

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July 3, 2013

Torey B. Cummings  
U.S. Department of Justice, Civil Rights Division  
Educational Opportunities Section, PHB 4300  
950 Pennsylvania Ave., NW  
Washington, DC 20530

**Re: Harassment and discrimination against Milena Clarke during her participation in the basketball programs of Russell Independent School District and as a student at Russell Middle School in Russell, KY**

Dear Ms. Cummings:

The Asian American Legal Defense and Education Fund (“AALDEF”), on behalf of Milena Clarke and her parents Terry and Christi Clarke, submits this complaint to document the unlawful harassment and discrimination suffered by Milena while participating in the Red Devils (“RD”) basketball programs of Russell Independent School District (“RISD”) and attending Russell Middle School (“RMS”). RISD (located in Russell, Kentucky) has denied Milena, an adoptee of Asian Kazakh heritage, her right to equal protection under the law in violation of the Equal Protection Clause of the 14<sup>th</sup> Amendment of the U.S. Constitution,<sup>1</sup> and unlawfully discriminated against her in violation of Title VI of the Civil Rights Act of 1964 (“Title VI”).<sup>2</sup>

As a member of RD basketball teams and as an RMS student, Milena suffered severe and pervasive peer-on-peer racial and national origin harassment. RISD had actual knowledge of this discriminatory, hostile environment, but failed to take action to abate the harassment. This deliberate indifference constitutes unlawful discrimination on the basis of race and national origin. Moreover, after initial reports of harassment were submitted by the Clarke family, RISD staff took measures to discourage further reporting and to curtail Milena’s participation within the RD basketball program. These actions constitute dangerous retaliation strictly prohibited by federal law. We urge the Department of Justice to commence an investigation into these civil rights violations immediately.

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<sup>1</sup> The 14th Amendment of the U.S. Constitution states that “No State shall... deny to any person within its jurisdiction the equal protection of the laws.”

<sup>2</sup> 42 U.S.C. § 2000d states that “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

## **A. Overview of Harassment Suffered by Milena Clarke**

Milena Clarke is a 14-year-old 8th grade student at RMS. Terry and Christi Clarke adopted Milena from Almaty, Kazakhstan when she was 18 months old, and she has lived with them in Kentucky ever since. Through the efforts of the Clarke family, Milena remains bilingual in Russian and English, and has a strong connection to her Kazakh culture. She is only one of a handful of Asian American students who attend RMS,<sup>3</sup> and the only Asian and one of two female racial minorities on any of the RD basketball teams for which she has played since she first participated in RD team basketball in 6<sup>th</sup> grade.

Milena's first RD basketball season on the 6<sup>th</sup> grade team transpired without incident. At the season's end, her coach, Kim Stapleton Suttles, informed the Clarke family that Milena was a talented player who should try out for teams in the state's highly competitive Amateur Athletic Union ("AAU"). Since then and over the past three years, Milena has successfully earned positions on the most competitive AAU girls teams in Kentucky and nearby West Virginia, all-star recognition in both school and AAU tournaments and leagues, and high accolades from her many coaches.

The situation for Milena changed dramatically the following year. After earning a spot on both the RD's 7<sup>th</sup> grade and 8<sup>th</sup> grade teams, Milena was subject to racial harassment from her teammates. This harassment took the form of racial slurs and verbal abuse, and included some physical aggression. It transpired during practices and in the locker room, but eventually spread to other venues including the team bus, and the hallways and common areas of RMS on school days. RD coaches witnessed the harassment during team activities, but did not take reasonable measures to abate it.

Milena and her father have reported the harassment to RD coaches on several occasions since August 2011. At those junctures when Milena alerted coaches to what was happening, she was advised that the harassment was an inevitable part of participating on a sports team to which she would have to acclimate. Mr. Clarke sent multiple emails to members of the coaching staff and RISD officials, and met with several RISD representatives in person to discuss the matter. Unfortunately, his requests for intervention were left unattended. While a few RISD officials made unfulfilled promises of support, many others met his requests with incredulity or hostility. Most troubling, the treatment of Milena by her basketball coaches worsened subsequent to the family's reports of harassment, and RISD officials failed to intervene when alerted to the Clarke family's growing concerns of retaliation. RISD's retaliatory actions included attempts by

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<sup>3</sup> According to the Kentucky Department of Education "School Report Card" website, Asian students constituted 1.4% of the RMS student body (7 students total), and 1.2% of the entire RISD student population (27 students) in 2011-12. *See* Kentucky School Report Card, <http://applications.education.ky.gov/src/LearningEnvironment.aspx>

various coaches to humiliate Milena in front of her teammates, statements by RISD personnel that downplayed or denied the ongoing harassment, and tacit reprisals against Milena by RD coaches, including sudden and incongruous reductions in her playing time and threats to eliminate her future opportunities with the RD basketball program.

The following outlines events that occurred throughout the RISD school year and RD basketball seasons from August 2011 until the present, and illustrates: the severe and pervasive nature of the harassment suffered by Milena Clarke; RISD's substantial control over Milena's harassers and the athletic and academic environments in which the harassment occurred; the District's actual knowledge of the harassment; and the retaliatory actions of its coaches in the RD basketball program.

## **B. RISD's Liability for Peer-to-Peer Harassment Under Title VI**

### **a. Milena Clarke Suffered Severe and Pervasive Harassment on an Ongoing Basis from July 2011 until May 2013 During RISD Basketball and School Activities of Which RISD Had Substantial Control**

The racial harassment suffered by Milena Clarke began during a series of joint basketball practices with the RD 7<sup>th</sup> and 8<sup>th</sup> grade teams in July and August 2011. In the first incident, two white, female 7<sup>th</sup> grade teammates physically restrained Milena to prevent her from rebounding during a drill and began to taunt, insult and provoke her. Similar additional incidents occurred throughout the remainder of the late summer practices, but RD coaches ignored the behavior. In fact, the derisive commentary escalated, including insinuations from her teammates that they "[didn't] like [Milena] playing for Russell." Despite witnessing it and receiving complaints directly from Milena, RD coaches Cari Jachimczak, Kristi Whitaker, and RD Head Coach Mandy Layne did not intervene, and instead advised her that she would have to learn to take the abuse or risk not playing for the varsity team in future.

The harassment became explicitly racial at the end of August 2011, when Milena's African-American coach and teammates from her AAU basketball league visited the Russell High School ("RHS") gymnasium to see her play in an RD game against Mason County. Beginning at halftime and continuing after the game in the RHS locker room, Milena's RD teammates repeatedly harassed her with racial slurs and comments, including "chink," "slant-eyed gook," "commie," and "nigger-lover." She was asked patently offensive racial questions numerous times by various RD teammates who derogatorily referenced Milena's AAU coach and teammates. These questions included: "How can you stand to play with niggers?"; "What did you talk to those niggers about?"; "Why do you talk to niggers?"; and "Is it something about you minorities sticking together?" She was also told by one teammate "I hate to play against niggers."

These racial provocations would typify the kinds of bigoted comments Milena would suffer over the next twenty months. Her RD teammates verbally abused and harassed her on a nearly daily basis, directing their comments at Milena's race, national origin, native Russian language, religion, and appearance. They commented on her relationships with African American players from the AAU and referred to them as "niggers." When addressing Milena, RD players would call out to her with various racial slurs, such as "Russian chink," "slant-eyed geek," "four-eyed chink," "slow, fat chink," and "commie gook." They made offensive comments about her Kazakh heritage, telling Milena, for example, "you don't even know who you are—you speak Russian but look like a Chink or Jap." The verbal abuse also referenced Milena's practice of Russian Orthodox Christianity, and included mocking questions about her Russian-language prayers and rituals.

Throughout basketball seasons spanning 2011 to 2013, the harassment took place during a range of RD activities and in a variety of venues. Before games, RD teammates repeatedly told Milena that they "wouldn't pass to a stupid Chink,"<sup>4</sup> and made a concerted effort to avoid passing to her during games, even when she was obviously open. When riding the team bus, Milena's RD teammates would use racially inflammatory language while "flicking" or otherwise striking her on her back, head, or shoulders. In locker room areas, RD teammates continued to incessantly reference Milena and her African American friends with racial slurs. These harassers took any measure possible to discourage her future participation with the RD basketball program, telling her that she was "wasting her time" and that she "should know that Asians can't play basketball." Nonetheless, RD coaches neither undertook effective corrective action to end the harassment, nor did they notify Milena's parents that she was a target of bullying.

Because many of the most active harassers among Milena's RD teammates were also from her grade level at RMS, the harassment also became a regular part of Milena's routine in spaces at school, including the classrooms, hallways, school locker area, and other common areas at RMS. In between classes, Milena's RD teammates would intentionally bump into her and utter racial epithets. Milena's harassers would also gang up on her and make derisive comments when she ate in the cafeteria. At one point in March 2013, Milena was forced to request a seat change during a class because one of her harassers was sitting close to her and making endless abusive comments to her.

As a result of this severe, pervasive and ongoing harassment, Milena has suffered cumulative impacts to her mental health. At various times since 2011, she has reported feeling depressed and unmotivated, and described emotional trauma associated with the innumerable episodes of harassment she has experienced. She has also been compelled time and again to

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<sup>4</sup> Players also used "commie" and other derogatory words.

modify her behavior during basketball activities and at school to try and reduce the impact of her teammates' harassment. These incidents, which are described in further detail in **Addendum A**, all took place during school and basketball-related activities of which RISD and its staff had substantial control.

**b. RISD Had Actual Notice of the Harassment Suffered by Milena Clarke, but was Deliberately Indifferent to It**

RISD had actual notice of the harassment suffered by Milena Clarke through the observations of its RD coaches over the two-year period. In addition, RISD staff received numerous reports of the harassment from the Clarke family. As mentioned above, Milena herself raised the issue when it first arose during the July and August 2011 practices. However, after making her reports, she was told by RD Coaches Whitaker and Layne on numerous occasions that she would just have to "take it" or risk not playing for the RD Varsity basketball team.<sup>5</sup> Moreover, Terry Clarke explicitly identified to RD coaches that the harassment against his daughter was racially discriminatory in nature as early as September 2011.

At various intervals throughout the 2011-12 and 2012-13 school years and basketball seasons, Mr. Clarke continued to reach out to a range of RISD officials seeking their assistance and intervention. This included, among others: RD Head Coach Mandy Layne; RD coaches Kristi Whitaker and Cari Jachimczuk; RISD Athletic Director Sam Sparks and his wife Assistant Coach Cynthia Sparks; RISD board member Terry Vest; Principal Alan Thompson; and Superintendent Susan Compton. Each time, Mr. Clarke was either assured that RISD was concerned with the situation and would address it, or rebuffed and dismissed for making allegations that RISD deemed overstated. In any event, his petitions, made in several e-mails and in-person meetings, were left unaddressed or wholly ignored. This lack of responsiveness by RISD personnel clearly violates Title VI, as well as the District's own Code of Conduct.<sup>6</sup> (The Clarke family's numerous reports to RISD are documented in **Addendum B**.)

On April 18, 2013, AALDEF sent RISD a letter to Superintendent Compton advising them of the District's obligations to address and abate the harassment. In violation of its own limited Code of Conduct, the District did not immediately initiate an investigation, nor did it reply to AALDEF's letter. Instead, Superintendent Compton e-mailed Mr. Clarke separately weeks later<sup>7</sup> informing him that an investigation would commence "immediately." More than two weeks after this correspondence, Mr. Clarke received a request from RMS Chief Academic

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<sup>5</sup> Some of these admonitions were made in front of Milena's harassers in what appears to be a tactic to embarrass Milena and discourage her future reporting.

<sup>6</sup> A copy of this document is available at <http://www.russellind.kyschools.us/documents/CodeofConductFinal10.pdf>

<sup>7</sup> Dr. Compton's e-mail was sent only after Mr. Clarke had brought AALDEF's letter to the attention of the Kentucky High School Athletic Association (KHSAA) and the Kentucky Department of Education (KDE). Neither agency has contacted AALDEF or the Clarke family to indicate that an investigation has commenced.

Officer Debbie Finley, requesting an interview with him and his daughter that would be conducted by Ms. Finley and Russell Primary School Principal Pam Wright. The Clarke family expressed skepticism of RISD's request in light of the belated nature of the response, and hesitated to permit RISD employees to interview them and their daughter, particularly since the interviewers maintain relationships with RD coaches. AALDEF communicated these misgivings to RISD and the family's strong opinion that an objective investigator outside of the District was essential.

In the interim, however, RISD finalized its investigation and report (attached as **Addendum D**), acknowledging "a lack of understanding on the part of the coaching staff of when to move a complaint to an administrator," but somehow disavowing any responsibility for reports of harassment failing to "reach[ ] an administrator in the system." Such an assessment is wholly discordant with the facts asserted herein, and with RISD's clear obligations to identify and immediately abate racial harassment against racial minorities like Milena Clarke. Moreover, RISD's final investigation and delayed response appear to be a convenient and coordinated attempt to eschew responsibility for failures and breakdowns in RISD's reporting process. To wit, the document fails to recommend any plan to address the actual harassment Milena continues to suffer at school, and proposes no specific remedies for ensuring her immediate and future well-being. Such action on RISD's part is only consistent with the patterns of misdirection, obfuscation, and lack of accountability demonstrated by RISD staff over the last two years, and warrants the attention and investigation of OCR.

**c. After Receiving Reports of Harassment Against Milena Clarke, RISD Employees Engaged in a Pattern of Behavior Against the Clarke Family that was both Retaliatory and Racially Discriminatory**

RISD personnel have engaged in behavior that discouraged further reporting from the Clarke family and curtailed Milena Clarke's future opportunities in the RD basketball program. This pattern of behavior constitutes prohibited retaliation and racial discrimination by RISD.

When Milena first reported the mistreatment she suffered in July 2011, RD coaches set a hostile and discouraging tone for future reporting. They not only failed to act when witnessing the harassment first hand, but also proactively warned Milena that future complaints about the harassment would result in penalties to Milena herself. While positing that jealousy was the reason teammates bullied her, coaches Layne and Whitaker told Milena numerous times that she would have to learn to "take" the abuse or risk future opportunities to play for the Varsity team. These comments to Milena were made in the presence of her harassers, and further humiliated and discouraged Milena from reporting.

The coaches also characterized Milena’s vocal attempts to protest her treatment during practices as a “bad attitude,” and used this claim to intimidate her publicly during practices and games. Coach Layne, in particular, adopted a particularly aggressive tone with Milena at various intervals throughout the 2011-12 and 2012-13 basketball seasons in what appear to have been a series of reprisals for raising the harassment issue. This included: screaming and berating her during a September 2011 meeting between RD coaches and the Clarke family in which the harassment issue was discussed; repeatedly threatening to eliminate her opportunities to play for the Varsity team in front of her harassers (though she was the only one to play JV as a 7<sup>th</sup> grader); singling out and yelling at Milena for alleged mistakes during several practices and games in obvious disproportion to her white RD teammates; and reducing Milena’s playing time and calling her “lazy” and “out-of-shape” in front of other players. The last of these tended to occur with greater intensity soon after Milena’s father lodged complaints of harassment with RISD staff (including RD coaches). In fact, when Mr. Clarke pushed more actively for RISD intervention in the early months of 2013, Coach Layne began pulling Milena aside several times during practices to tell her in a hushed but hostile tone “You know I can’t single you out, don’t you?”

RISD’s retaliation was not endured by Milena alone. When her father, Terry Clarke, made reports of the harassment to coaches and RISD officials, he was frequently rebuffed or given mixed messages about how RISD would address the situation. Coach Layne took a harsh tone in her initial meeting with Mr. Clarke in September 2011, and actively dismissed his warnings that the harassment involved a distinctly racial element. (Even when Mr. Clarke brought OCR materials and other literature identifying and describing racial harassment and the legal prohibitions against it to a December 2012 meeting, Coach Layne simply replied that “it was all just bullying of one kind or another.”) The Clarke family also received a phone call from RISD employee and Assistant Coach Cynthia Sparks in December 2012, who admonished Milena’s mother, Christi Clarke, that there “was no racial harassment” and that Terry Clarke was “crazy” for raising the issue. Finally, when Mr. Clarke approached Principal Alan Thompson of Russell High School about the harassment issue after an RD basketball event in 2013, he was immediately advised that the principal could not speak about the behavior of Coach Layne, since she was not under his supervision. These incidents and others (outlined in **Addendum C**) depict a school district that was not only deliberately indifferent to the harassment, but also one in which various staff members throughout RISD implemented a strategy to discourage future reporting, instead of abating the harassment immediately.

Lastly, the Clarke family remains troubled by the impact that their reporting has had on Milena’s opportunities within the basketball program. As mentioned above, Milena has suffered constant humiliation from her RD coaches, who have made it clear that her continued attempts to report harassment would not be acknowledged. Among this mistreatment, the constant threats to preclude her from playing Varsity basketball—coupled with the RD coaches’ permissive

response to various acts of sabotage by Milena’s RD teammates (including not passing to her in games or disrupting her play during drills)—have made it impossible for Milena to trust that her opportunities in the RD basketball program correlate with her performance. Moreover, despite receiving all-star selections and accolades well-above RD teammates from her grade and playing on elite AAU teams for which no other RD teammates qualified, Milena has been denied positions and playing time without cause, and to the benefit of other players. This includes instances in which the coaches dramatically reduced her minutes during games soon after Mr. Clarke emphasized to them the importance of Milena’s Kazakh culture, or after Milena’s African American AAU coaches and friends visited Russell facilities.

**C. RISD’s Failure to Timely Respond to Reports of Milena Clarke’s Harassment Violates Equal Protection, Title VI, Kentucky State Law, and the By-Laws of the Kentucky High School Athletic Association**

The aforementioned actions of RISD staff—including RD coaches and RISD administrators—represent a pattern of deliberate indifference to the peer-to-peer harassment committed by students under RISD’s direct control and disciplinary authority. Furthermore, the District’s inadequate response to the harassment—including the failure of RD coaches, RISD administrators, and an RISD board member to report it and abate it—constitutes discrimination on the basis of race, in violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution, and Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, et seq., and its implementing regulations.

The actions of RISD and its staff also violate Kentucky state laws that mandate immediate reporting by school officials and staff who have been made aware of incidents of bullying and harassment. In relevant part, Kentucky’s anti-bullying legislation provides that:

Any employee of a school or a local board of education who knows or has reasonable cause to believe that a school student has been the victim of a violation . . . committed by another student while on school premises, on school-sponsored transportation, or at a school-sponsored event *shall immediately cause* an oral or written report to be made to the principal of the school attended by the victim. The principal *shall notify* the parents, legal guardians, or other persons exercising custodial control or supervision of the student when the student is involved in an incident reportable under this section. The principal shall file with the local school board and the local law enforcement agency or the Department of Kentucky State Police or the county attorney within forty-eight (48) hours of the original report a written report...

KRS 158.156 (emphasis added). As student-on-student “harassment” at school is a violation under Kentucky statutory law,<sup>8</sup> the treatment by Milena Clarke’s teammates warranted the

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<sup>8</sup> Among several other qualifying behaviors, KRS 525.070(1)(f) defines harassment as student behavior that “creates a hostile environment by means of gestures, written communications, oral statements, or physical acts that a



immediate filing of a report with school officials, and a swift notification to Milena's parents that the harassment had been identified, and that an investigation was underway. Neither of these legal obligations was fulfilled throughout the two-year period in which Milena suffered ongoing racial harassment at RMS and in the RD basketball program. RISD's June 3, 2013 "Final Harassment Report," furthermore, did not address in any relevant part the substance of Milena's harassment itself.

RISD and the RD basketball program have failed to comply with the by-laws of the Kentucky High School Athletic Association (KHSAA), which governs acceptable conduct for participants in girls' basketball programs throughout the state of Kentucky. By-Law 11 of the KHSAA imposes a "clear obligation" upon all staff members of participating school sports programs "to practice the highest principles of sportsmanship and the ethics of competition in all interscholastic relationships with fans, officials, players, coaches, official representatives of member schools, and the general public." KHSAA rules further clarify that sportsmanship principles include a respect for cultural diversity, emphasizing that "[p]rejudice on the basis of sex, race, creed or ethnic origin cannot be tolerated."<sup>9</sup> KHSAA has "full authority to suspend the coach, student, or any member school whose representatives may be convicted on competent evidence of the violation of this obligation." Without question, the ongoing racial harassment of Milena Clarke constituted a violation of By-Law 11, both in terms of the treatment she received from RD players and coaches, as well as the hostility against black players and coaches demonstrated in many of the remarks from her fellow teammates.

Further intervention is critical to ensure the safety and well-being of Milena Clarke and to ensure that her equal protection rights are preserved. Thus, the Clarke family requests the Department of Justice's immediate intervention and investigation of the racial harassment suffered by Milena Clarke, including the assertions contained herein.

Sincerely,

Thomas L. Mariadason  
Staff Attorney

Cc: Beverly Johnson  
U.S. Department of Education, Office of Civil Rights

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reasonable person under the circumstances, should know would cause another student to suffer fear of physical harm, intimidation, humiliation or embarrassment."

<sup>9</sup> Case BL-11-9 of By-Law 11 KHSAA rules.