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School Violence and Race: The Problem of Peer Racial Harassment against Asian Pacific American Students in Schools.

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ARTICLES

SCHOOL VIOLENCE AND RACE: THE PROBLEM OF PEER RACIAL HARASSMENT AGAINST ASIAN PACIFIC AMERICAN STUDENTS IN SCHOOLS

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I. INTRODUCTION

Decades after the federal government intervened to protect African-American students at Central High School in Little Rock, Arkansas,¹ the federal government intervened in 2004 to protect Asian Pacific American (APA)² students at Lafayette High School in Brooklyn, New York.³ The U.S. Department of Justice (DOJ) found “systematic harassment” of APA students by other students who uttered racial slurs and engaged in violent assaults. These assaults included throwing food, cans, and metal locks at APA students in the school cafeteria.⁴ To protect these students, the DOJ had to file suit against New York City and school officials for ignoring “severe and pervasive harassment” directed at APA students by other students.⁵

“Fifty years after *Brown v. Board of Education*, this lawsuit [against Lafayette High School] is a reminder of our commitment to securing equal opportunities in education for all Americans,” declared one DOJ official.⁶ Equal opportunity for all, unfortunately, remains merely a commitment to an ideal rather than established reality as evidenced by the problem of peer racial violence faced by APA students at Lafayette and

1. *Cooper v. Aaron*, 358 U.S. 1, 12 (1958) (recounting the dispatching of federal troops in 1957 to Central High School to overcome protests against the admission of African-American students).

2. Press Release, U.S. Dep’t Just., Justice Department Settles Civil Rights Allegations Concerning Violence-Plagued Brooklyn High School (June 1, 2004) available at http://www.usdoj.gov/opa/pr/2004/June/04_crt_381.htm; cf. Jessica S. Barnes & Claudette E. Bennett, *The Asian Population: 2000*, CENSUS 2000 BRIEF, Feb. 2002, at 1 (defining “Asian Pacific-Americans” to include Pacific Islanders within the Census Bureau’s category of “Asian” that refers to people from the “Far East, Southeast Asia, or the Indian subcontinent.”). The report goes on to state that examples of “APAs” include those persons originating from “Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.” *Id.*

3. Press Release, U.S. Dep’t Just., Justice Department Settles Civil Rights Allegations Concerning Violence-Plagued Brooklyn High School (June 1, 2004) http://www.usdoj.gov/opa/pr/2004/June/04_crt_381.htm.

4. *Id.* (announcing that the harassment of the students involved both physical and verbal attacks as well as many violent assaults).

5. *Id.* (noting that the school officials failed to help the APA students equally participate in the school’s programs by helping them defeat language barriers).

6. Press Release, U.S. Dep’t Just., Justice Department Settles Civil Rights Allegations Concerning Violence-Plagued Brooklyn High School (June 1, 2004) http://www.usdoj.gov/opa/pr/2004/June/04_crt_381.htm (bridging the connection between the importance of the outcome in *Brown v. Board of Education* and the current situation). “This lawsuit comes at a momentous time in the troubled history of Lafayette High School and demonstrates the United States’ commitment to protecting the rights of New York City’s students to be educated in an environment free of harassment and violence.” *Id.*

other schools across the United States. Required to be in school where their plight is ignored by school officials, APA students are forced to fend for themselves against their attackers. “Bullying” inadequately describes the ordeal faced by the victimized students. Racially-motivated peer attackers, in conjunction with passive school officials, have led to APA students being subjected to “physical and verbal abuse, including multiple violent assaults.”⁷

This article exposes the pervasive problem of peer racial attacks against APA students, ranging from verbal insults to physical assaults so serious they constitute criminal acts. Part II provides examples of racial attacks against APA students that reveal the severity of the problem. Part III explains why APA students are targeted for attacks. Part IV identifies ways of preventing such attacks. APA students, like all other students, should have an equal opportunity to study at school, secure in their surroundings and free from fear.

II. PEER RACIAL HARASSMENT AGAINST APA STUDENTS IS A EVASIVE AND SERIOUS PROBLEM

Racial harassment is “abhorrent,” particularly when it occurs in a school setting,⁸ yet many APA students face severe peer racial harassment at school. Of course, APA students are not always victims and may at times be the harassers.⁹ However, the experience of APA students at Lafayette High School and APA students at other schools, together with research data has shown that APA students are often subjected to enduring and severe peer racial harassment that in some cases reach the level of criminal conduct.

A. Racial Harassment of APA Students at Lafayette High School

The situation at Lafayette High School shows how peer racial harassment combined with school administration neglect can create a hostile

7. *Id.* (concluding with a note that the DOJ entered into a consent decree with school officials, forcing them to apply an anti-harassment policy within the schools). “We are pleased that the city has agreed to take the steps set for in the consent decree and are confident that these measures will substantially stem the tide of violence.” *Id.*

8. Robert P. Joyce, *Racial Harassment in Education: Legal and Policy Issues*, 21 SCH. L. BULL. 16, 16 (Fall 1990) (“When it consists of attacks, verbal or otherwise, that are directed at particular individuals or small groups of individuals, it is especially odious.”).

9. Jason Ma, *East Bay Youths Fight Violence Together*, ASIAN WEEK, Sept. 23, 1999, available at http://www.asianweek.com/1999_09_23/p11_bay_youth.htm (“Indeed, despite the stereotype of Asian-American students as the object of inter-ethnic violence, Lin said Asian-Americans can be perpetrators as well.”). Contrary to the stereotypes, there is not a pattern of Asians being targeted by other groups. *Id.* In other words, Asians are not necessarily the victims. *Id.*

and dangerous environment for victimized APA students. The chancellor of New York City schools, Harold O. Levy, assigned Superintendent Ronald Woo to investigate allegations of peer harassment against APA students at Lafayette High School.¹⁰ Woo's report determined that school officials deprived the students of "the equal protection of the laws by remaining deliberately indifferent to an objectively hostile educational environment" in the face of "severe and pervasive peer-on-peer harassment of Asian students based on their race and national origin"¹¹ The peer harassment included "verbal abuse and physical assaults" against APA students in and around the school.¹² Students "threw food, drink cans, and even metal locks" at APA students and shouted ethnic slurs.¹³ Often, the conflicts were between African-American students and APA students.¹⁴

The federal government intervened because school officials failed to protect the APA students. City and school officials were "deliberately indifferent" to the plight of APA students who were subjected to an "objectively hostile educational environment."¹⁵ In June 2001, two teens were

10. Yilu Zhao, *Schools Official to Investigate Treatment of Asian Students*, N.Y. TIMES, Aug. 28, 2001, at B4, available at <http://query.nytimes.com/gst/fullpage.html?res=9C03E3DF1630F93BA1575BC0A9679C8B63> (detailing the findings of the report). Five Chinese students were dismissed from Lafayette High School, without notice, shortly after the start of their senior year on the ground that their graduation requirements were complete. *Id.* Following outrage expressed by Chinese students, the superintendent's instructions were to produce a report and recommendations to the chancellor's office on how to go about improving race relations at Lafayette High School. *Id.*

11. Consent Decree at 2, *United States v. New York*, No. 04-2248 (E.D.N.Y. June 1, 2004), available at <http://www.usdoj.gov/crt/edo/documents/lafayetteor.pdf> (alleging violations of the Equal Protection Clause of the Fourteenth Amendment and the Equal Educational Opportunities Act of 1974, 20 U.S.C. § 1701).

12. *Id.* at 3 (asserting that persistent harassment creates an objectively hostile environment).

13. Elissa Gootman, *City to Help Curb Harassment of Asian Students at High School*, N.Y. TIMES, Nov. 22, 2004, at B9, available at <http://query.nytimes.com/gst/fullpage.html?res=9C05E7DD1431F931A35755C0A9629C8B63> (detailing the harassment of APA students as found by the DOJ). "Other problems included violent assaults against Asian students on and off school property." *Id.* One investigator found that in some instances, school safety officials told Asian students who had been victims of attack or harassment that unless they could identify their assailant, they could not be helped. *Id.*

14. Samuel G. Freedman, *Students and Teachers Expect a Battle in Their Visits to the Principal's Office*, N.Y. TIMES, Nov. 22, 2006, at B7 (illustrating the problems Lafayette High School continued to face despite having a new principal). According to a student who represented the high school on citywide council for high schools, "The majority of the students are not pleased with her . . . she brings out policies by just throwing them on students. She doesn't consult with us. She doesn't want to hear anybody else's input."

15. Consent Decree at 2, *United States v. New York*, No. 04-2248 (E.D.N.Y. June 1, 2004), available at <http://www.usdoj.gov/crt/edo/documents/lafayetteor.pdf> (on file with author).

charged with assault after attacking Pakistani immigrant Alisajjad Khan with metal chains and sticks outside Lafayette High School.¹⁶ In November 2002, a Chinese student was mugged at knifepoint on school grounds.¹⁷ A week later, a Chinese student was beaten in the cafeteria.¹⁸ In December 2002, students hurled racial slurs at Siukwo Cheng and assaulted him by kicking him and repeatedly punching his head until he was knocked unconscious and had to be treated at a hospital.¹⁹ Lafayette High School has been termed “Horror High” because of the abuses suffered by students at the school.²⁰

According to Steve Chung, president of the United Chinese Association of Brooklyn, students who complained of harassment to school officials felt their complaints were not taken seriously.²¹ Despite the numerous attacks, complaints, and investigations, the then-principal of Lafayette, Alan Siegel, dismissed claims that APA students were targeted for abuse.²² However, New York State Assemblyman William Colton said “Alan Siegel failed to live up to his responsibilities as an educator by looking the other way while his students were being brutalized.”²³ After DOJ intervention, the parties entered into a consent decree in 2004 under which the federal government would supervise the school for three years to ensure school officials adequately protected APA students.²⁴

16. Rocco Parascandola, *2 Teens Arrested in Assault*, NEWSDAY, June 8, 2001, at A17 (illustrating the prevalence of attacks in New York schools).

17. Maki Becker, *Asian Students Hit In Rash of H.S. Attacks*, N.Y. DAILY NEWS, Dec. 8, 2002, at 7 (discussing one of three incidences of violence that occurred at Lafayette in the span of a week).

18. *Id.* (discussing the second in a string of attacks on Asian students at Lafayette).

19. Joe Williams, *New Attack at Horror High School; Top Senior Jumped at Brooklyn's Troubled Lafayette*, N.Y. DAILY NEWS, Dec. 7, 2002, at 7 (“Siukwo Cheng, whose 96.86 grade point average makes him the likely valedictorian next spring, was knocked unconscious for several minutes in [a] gang attack.”).

20. Erin Teixeira, *Asian Youths Suffer Harassment in Schools*, ASSOC. PRESS ONLINE REGIONAL, Nov. 14, 2005, http://www.amren.com/mtnews/archives/2005/11/asian_youths_suffer_harassment.php (referring to articles mentioning that “[s]ome news reported dubbed the school “Horror High,” and Chinese students began going public about the problem”).

21. Bryan Virasami, *Lafayette High School Brutal Attack on Student Incites Probe*, NEWSDAY, Apr. 7, 2004 (expressing the concerns of Steve Chung, the president of the United Chinese Association of Brooklyn, who felt “their complaints are not taken seriously by the administration”).

22. Ellen Yan, *Calls Grow to Fire Brooklyn Principal*, NEWSDAY, Aug. 27, 2004, at A16 (“Siegel, who could not be reached, has said he’s taken measures to curb violence, and he dismissed claims that Asian students are special targets.”).

23. *Id.* (asserting that the school’s principal has not adequately lived up to his duty as an educator by taking steps to stop violence and harassment of his Asian students).

24. Consent Decree at 3, 8–9, *United States v. New York*, No. 04-2248 (E.D.N.Y. June 1, 2004), available at <http://www.usdoj.gov/crt/edo/documents/lafayetteor.pdf> (“The United

Even after entering into the consent decree, school officials failed to protect APA students against peer harassment. In 2005, an APA student was choked by other students in the boys' locker room.²⁵ Another APA student was punched on his way home from school, but school officials reportedly refused to investigate, and in fact hindered any investigation that might have taken place by blocking access to a student photo book that would have helped identify the attackers.²⁶ Another APA student who was victimized reported that school officials lost his harassment report.²⁷ These and other incidents prompted the Asian-American Legal Defense and Education Fund to assert that school officials were violating the consent decree.²⁸ School officials in December 2006 ultimately decided to close Lafayette High School, and four other failing New York high schools, because of their low graduation rates and safety problems.²⁹ The schools were to be phased out during a three-year period.³⁰

B. *Racial Harassment of APA Students at Skyline High School*

Lafayette High School is not the only place where APA students encounter peer attacks. At Oakland's Skyline High School in 1999, forty to fifty African-American students beat individual APA students after an earlier quarrel where six to seven APA students fought against approximately twenty African-American students.³¹ In 2005, eleven Chinese-speaking students came forward to state that they had been repeatedly

States may review the Defendants' progress in implementing the [English Language Learner Program] requirements of section IV [and the anti-harassment measure required by section V] of this Consent Decree and Compliance Plan, as long as this Decree remains in effect.").

25. Ellen Yan, *H.S. Ignores Harassed Asians*, *NEWSDAY*, Aug. 20, 2005, at A4.

26. *Id.* (reporting that an Asian student who was a freshman at the Brooklyn school was punched on his way home in April, but administrators refused to investigate or to let anyone look at a student photo book to identify attackers, according to the Asian-American Legal Defense and Education Fund in Manhattan).

27. *Id.*

28. *Id.* ("These accusations spell the latest trouble at Lafayette, which Justice Department officials say was the first school taken to court by the Bush administration under the Civil Rights Act of 1964.").

29. Elissa Gootman, *Lafayette Among 5 High Schools to Close*, *N.Y. TIMES*, Dec. 12, 2006, at B3.

30. *Id.* ("In recent years, the school's performance and safety record plummeted; 44.4 % of the class of 2006 graduated on time."). Amongst its troubles, Lafayette was the center of a 2004 consent decree between New York City's education department and the DOJ, after finding evidence of "severe and pervasive peer-on-peer harassment of Asian students." *Id.*

31. Jason Ma, *Whose Oakland Is It? Are African Americans and Asian-Americans Competing for Resources in the New Oakland?*, *ASIAN WEEK* April 20, 2000, http://www.asianweek.com/2000_04_20/feature_oaklandrace.html.

harassed.³² One Skyline student, Li Jiang Hui, shared how he had been harassed from the moment he arrived at Skyline from Hong Kong – “[t]he last time, two bullies threatened me and went through my bags in the school bathroom, while their friend stood outside the door to make sure no one was coming.”³³ Like Lafayette school officials, Skyline school officials failed to help the APA students.³⁴ The APA students’ parents tried repeatedly to meet with Skyline school officials but were ignored.³⁵ In frustration, parents told their stories to a Chinese-language newspaper which publicized their plight, and only then did school officials agree to meet with the parents.³⁶

C. *Racial Harassment of APA Students at Other Schools*

At Edison High School in Fresno, California, students repeatedly taunted and threw food at APA students. “There had been patterns of this happening over and over again” with the school “overlook[ing] the issue,” according to Malcolm Yeung of the Asian Law Caucus.³⁷ In San Diego, California, junior high school students made the following comments to researchers studying the status of Southeast Asian refugees:

“I think Blacks and Whites get along great but it’s the Vietnamese we can’t stand.”

“This school has too many Nips and not enough white people and Mexican.”

“Too many Asians and not enough Blacks.”

“More white people.”

“Get rid of Yangs, and get a new location.”³⁸

These sentiments reveal the hostility that APA students, especially immigrant APA students, encounter in the school environment.

32. Carolyn Ji Jon Goossen, *You Can't Snitch If You Can't Speak: High School Bullies Target English Learners*, NEW AM. MEDIA, Dec. 28, 2005, http://news.ncmonline.com/news/view_article.html?article_id=88f6285f9901d688092979ac6831e221.

33. *Id.* (finding that threats and physical abuse plague Asian-Americans who have not adapted to the English language).

34. *Id.*

35. *Id.*

36. *Id.* (finding that changes are underway due to the disclosure of the plight of Asian-American families). Furthermore, “Youth Together” is campaigning for more non-English speaking liaisons between the different groups of students. *Id.*

37. *Asian Youth Persistently Harassed by Peers*, CHINADAILY.COM, Nov. 13, 2005, http://www.chinadaily.com.cn/english/doc/2005-11/13/content_494169.htm.

38. RUBÉN G. RUMBAUT & KENJI IMA, *THE ADAPTATION OF SOUTHEAST ASIAN REFUGEE YOUTH: A COMPARATIVE STUDY* 59 (1988) (describing students feelings about South Asian refugees).

However, Arab students are also at risk. In a 2003 peer attack in Marlboro, New Jersey, high school students in 2003 harassed fellow student Kabir Singh by trying to pull off his patka (a cloth covering the head), calling him “Osama,” and striking him on the head which resulted in hospitalization for his head injuries.³⁹ Najwa Ahmed, a Muslim student at Abraham Lincoln High School in San Francisco, recounted how others spit in his face and in one instance a person called him a “suicide bomber” and tried to run him over.⁴⁰ Given such racial animosity it is not surprising for Isami Arifuku of the Asian Pacific Islander Youth Violence Prevention center to report that one out of three APA students involved with the Center state that they have been racially harassed.⁴¹

D. *Research Data Revealing Enduring and Pervasive Racial Harassment of APA Students*

Peer attacks against APA students are an enduring problem.

A study of Neighborhood High School in New York City conducted from 1996 to 1998 “revealed numerous incidents of physical harassment of the Asian-American students by the non-Asian-American students in school.”⁴² It also found that Asian-American students “appeared to be more frequently targeted for robbery.”⁴³

In a 2000 study, researchers found that East and South Asian students had the highest reports of racial discrimination.⁴⁴

A 2004 study of one New York City high school found that APA students mainly reported being discriminated against by their peers, whereas

39. Letter from Hector Ayala, Division on Civil Rights Conciliator, Office of the Attorney General of the State of New Jersey, to Jaspal Singh Virdee (Dec. 7, 2006), available at <http://www.sikhcoalition.org/advisories/VirdeeDecision.htm> (documenting the attorney general’s finding of probable cause and containing a copy of and amendment to the verified complaint).

40. Jennifer Emiko Boyden, *Zero Tolerance: Racial Harassment in School Worsens for Scapegoated Students*, RACEWIRE, Dec. 2002, http://www.arc.org/racewire/021219j_boyden.html (finding that 9/11 has resulted in a biased stereotype against Arabs and Muslims that has resulted in a rash of hate crimes).

41. Carolyn Ji Jon Goossen, *You Can’t Snitch If You Can’t Speak: High School Bullies Target English Learners*, NEW AM. MEDIA, Dec. 28, 2005, http://news.ncmonline.com/news/view_article.html?article_id=88f6285f9901d688092979ac6831e221 (resulting in the claim that Asian-Americans are more often victims of bullying).

42. Susan Rakosi Rosenbloom, *Experiences of Discrimination Among African American, Asian-American, and Latino Adolescents in an Urban High School*, 35 YOUTH & SOC’Y 420, 433 (2004).

43. *Id.* at 433–34.

44. Celia B. Fisher et al., *Discrimination Distress During Adolescence*, 29 J. YOUTH & ADOLESCENCE 679, 687 (2000).

African-American and Latino students mainly reported being discriminated against by adults such as teachers and police officers.⁴⁵

A preliminary 2006 survey of Sikh students in New York City found that “well over half (58.5%) of Sikh children who are harassed report that abuse has to do with their identity as South Asians or Punjabis.”⁴⁶ Of the Sikh students surveyed, approximately one in five reported being labeled as a terrorist, with a common survey response being, “[w]hen I was walking home from the subway, somebody asked me if I was a terrorist.” Additionally, over one-third of Sikh boys in Queens reported being physically harassed.⁴⁷ According to the survey, when the students requested help from school authorities, nearly a third of the requests were ignored.⁴⁸

Federal statistics also show APA students (categorized under “Other”⁴⁹) face peer harassment problems. The percentage of APA students (ages 12-18) who “reported being bullied” at school has increased in recent years:

- 2.5% (1999)
- 6.6% (2001)
- 6.8% (2003)⁵⁰

The 2005 statistics show Asian, Pacific Islander, American Indian, and Alaska Native students having higher reports of being targets of hate-related words (11.8%) as compared to White students (10.3%) and Hispanic students (10.5%), with the exception of Black students (15.0%).⁵¹ The 2005 statistics also show Pacific Islander students having the highest reports of being threatened or injured with a weapon on school property (14.5%).⁵²

45. Susan Rakosi Rosenbloom, *Experiences of Discrimination Among African American, Asian-American, and Latino Adolescents in an Urban High School*, 35 *YOUTH & SOC'Y* 420, 431 (2004).

46. Sikh Coalition, *Hatred in the Hallways: Preliminary Report on Bias Against Sikh Students in New York City's Public Schools* (June 2007), http://www.sikhcoalition.org/advisories/documents/HatredintheHallwaysFinal_000.pdf (supporting the assertion that attacks suffered by Sikh students are also a result of their South Asian or Punjabi ethnicity).

47. *Id.*

48. Press Release, U.S. Dep't Just., Justice Department Settles Civil Rights Allegations Concerning Violence-Plagued Brooklyn High School (June 1, 2004), http://www.usdoj.gov/opa/pr/2004/June/04_crt_381.htm.

49. NAT'L CTR. EDUC. STAT., U.S. DEP'T EDUC., *INDICATORS OF SCHOOL CRIME AND SAFETY: 2005*, Indicator 12 n.1, available at <http://nces.ed.gov/programs/crimeindicators/crimeindicators2005> (providing that the “other” category includes APA students).

50. *Id.* at Indicator 12.

51. *Id.* at Indicator 10.

52. *Id.* at Indicator 4.

E. *The Underreporting of Racial Harassment Against APA Students.*

The numbers from the above sources might actually be too low because of underreporting by APA students and their parents. Harassment against APA students is “greatly underreported,” according to the Coalition for Asian-American Children and Families.⁵³ “[C]learly, [violence against Asians] [is] underreported,” states Barbara Sicilia of the New York Police Department’s Hate Crime Task Force.⁵⁴

APA students who are victimized might not report harassment because they do not know who to turn to for help, or because they fear reprisals from their harassers.⁵⁵ Or they might not report because of language barriers, or to avoid the glare of publicity that could bring dishonor on the family.⁵⁶

Even if students report harassment to their parents, parents may be reluctant to speak with school officials because they mistrust school authorities.⁵⁷ Parents’ mistrust may be due to distrust of authorities in their own countries, or because they fear inquiries into their immigration status.⁵⁸ According to Emira Habiby Browne of the Arab-American Family Support Center in Brooklyn, New York, post-9/11, South Asians, Arabs, and Muslims are reluctant to report racial harassment for fear of their

53. VANESSA LEUNG, HIDDEN IN PLAIN VIEW: AN OVERVIEW OF NEEDS OF ASIAN-AMERICAN STUDENTS IN THE PUBLIC SCHOOL SYSTEM, THE COALITION FOR ASIAN-AMERICAN CHILDREN AND FAMILIES 28 (2004), <http://www.cacf.org/PDF/Hidden%20in%20Plain%20View.pdf> (discussing the phenomenon of under reporting of racial and ethnic harassment by APA students).

54. Alice McQuillan & Mary Jane Fine, *Asians Feeling Pain of Hatred*, N.Y. DAILY NEWS, Dec. 3, 2000, at 44, available at http://www.nydailynews.com/archives/news/2000/12/03/2000-12-03_asians_feeling_pain_of_hatre.html (detailing a brutal attack on an APA student by a group of White classmates as they hurled racial insults). All but one of the classmates pled guilty, but none would admit to the racial slurs. *Id.* Many crimes like this are never reported as racially violent crimes, often because the police are fearful of looking bad, tending to classify incidents as disputes, instead of bias crimes, or because they simply do not collect enough details necessary to get a bias-unit involved. *Id.* This in turn perpetuates more underreporting. *Id.*

55. VANESSA LEUNG, HIDDEN IN PLAIN VIEW: AN OVERVIEW OF NEEDS OF ASIAN-AMERICAN STUDENTS IN THE PUBLIC SCHOOL SYSTEM, THE COALITION FOR ASIAN-AMERICAN CHILDREN AND FAMILIES 28 (2004), <http://www.cacf.org/PDF/Hidden%20in%20Plain%20View.pdf>.

56. Thao N. Lee, *Non-Familial Victimization Among Asian Pacific Islander Youth: The Oakland Experience*, 3 J. ETHNICITY CRIM. JUST. 49, 52–53 (2005).

57. VANESSA LEUNG, HIDDEN IN PLAIN VIEW: AN OVERVIEW OF NEEDS OF ASIAN-AMERICAN STUDENTS IN THE PUBLIC SCHOOL SYSTEM, THE COALITION FOR ASIAN-AMERICAN CHILDREN AND FAMILIES 28 (2004), <http://www.cacf.org/PDF/Hidden%20in%20Plain%20View.pdf>.

58. *Id.*

name showing up in some government database that may lead to their deportation.⁵⁹

Moreover, APA parents might not report their children's harassment to school officials because they fail to understand the severity of the peer harassment their children face in school, especially if the school fails to provide them with a complete and accurate account of the problem.

For these reasons, peer harassment fails to be officially reported. Consequently, racial peer harassment against APA students is likely more prevalent than indicated by official government statistics.

III. RACIAL STEREOTYPES HELP EXPLAIN WHY APA STUDENTS ARE RACIALLY HARASSED

How APA students are *perceived* helps explain why they are racially harassed by peers and given little support by school officials.⁶⁰ A person's perception can result from stereotypes. Research shows that stereotyping is a common, unconscious cognitive activity people engage in to more easily perceive, process, and retain information about others.⁶¹ Unfortunately, stereotypes all too often lead to inaccurate perceptions of individuals.⁶² Three racial stereotypes of APA students are the "model minority" stereotype, the "silent minority" stereotype, and the "perpetual foreigner" stereotype. These inaccurate racial stereotypes can lead to peer harassment because those who perceive APA students through racial stereotypes act in ways that reflect those inaccurate stereotypes. In short, inaccurate perceptions result in inappropriate behavior.

A. *The Model Minority Stereotype*

The "model minority" stereotype treats APA students as all-star academic achievers who can serve as "models" for others. This stereotype

59. See Andrea Elliott, *Study by Muslim Group Says Bias Crimes Up 50% in 2004*, N.Y. TIMES, May 12, 2005, at B5, available at <http://query.nytimes.com/gst/fullpage.html?res=9B07E1DD1030F931A25756C0A9639C8B63> ("[Arabs, South Asians and Muslims] want to be as quiet as possible . . . [t]hey know there are all these database everywhere, and if their name comes up they could be on some list and the next thing they know they are going to be in deportation proceedings.").

60. See STACEY J. LEE & KEVIN K. KUMASHIRO, A REPORT ON THE STATUS OF ASIAN-AMERICANS AND PACIFIC ISLANDERS IN EDUCATION: BEYOND THE "MODEL MINORITY" STEREOTYPE 10 (2005), <http://www.nea.org/teachexperience/images/aapireport.pdf> (discussing the relationship between the perception of APA students and peer harassment).

61. Darren Seiji Teshima, *A 'Hardy Handshake Sort Of Guy': The Model Minority and Implicit Bias About Asian-Americans in Chin v. Rannels*, 11 ASIAN PAC. AM. L.J. 122, 130-31 (2006) (explaining that stereotypes are distinct from prejudices).

62. See FRANK H. WU, *YELLOW: RACE IN AMERICA BEYOND BLACK AND WHITE* 76-77 (2002).

fuels the belief that all APA students are successful and do not encounter problems.⁶³ But this inaccurate portrayal of APA students by school officials and peers can lead to racial harassment of APA students.

1. School Officials Affected by the Model Minority Stereotype

One reason why school officials ignore calls for help by APA students is the model minority stereotype. School officials who hold this stereotype focus on the academic successes of APA students, overlooking the difficulties faced by APA students and “fail to intervene when problems arise.”⁶⁴ Despite the pleas of APA students and their parents for assistance, school officials are blinded by the model minority stereotype and fail to protect APA students against racial harassment when it occurs.⁶⁵

The model minority stereotype that causes school officials to ignore APA problems may, at the same time, cause them to accentuate APA achievements. Teachers may emphasize the academic achievements of APA students to hold them up as a “model minority” for other students to emulate.⁶⁶ This creates difficulties for APA students because it causes other students to resent APA students.

2. Students Affected by the Model Minority Stereotype

Non-APA students are also affected by the model minority stereotype. First, non-APA students believe in the model minority stereotype. One high school study found that most white students viewed APA students as “hardworking students who excelled in math and science.”⁶⁷ One White student acknowledged that APA students are identified with the “model minority” stereotype: “With Asians there are all these stereotypes, like they’re all good in math and go to MIT.”⁶⁸

Second, non-APA students may resent APA students for being “better” students. According to one African-American high school student, “there’s a stereotype of Asians being superbrains and there is some re-

63. See generally STACEY J. LEE & KEVIN K. KUMASHIRO, A REPORT ON THE STATUS OF ASIAN-AMERICANS AND PACIFIC ISLANDERS IN EDUCATION: BEYOND THE “MODEL MINORITY” STEREOTYPE 10 (2005), <http://www.nea.org/teachexperience/images/aapireport.pdf>.

64. *Id.* (discussing why academic success by APA students may deafen the ears of faculty to their cries for help).

65. *Id.* (discussing the stereotype of APA students held by faculty and its relationship to inaction by faculty when harassment is reported).

66. *Id.* (discussing how faculty uses the stereotype of APA students to “encourage” other students).

67. STACEY J. LEE, UNRAVELING THE “MODEL MINORITY” STEREOTYPE: LISTENING TO ASIAN-AMERICAN YOUTH 95 (1996).

68. *Id.* at 93.

sentment.”⁶⁹ Non-APA students may resent APA students not only for being perceived as being “better” students, but also for being perceived as receiving favorable treatment from teachers for being “better” students. The following interview of an African-American student is an example of the model minority stereotype at work:

Sheerah: The teachers think that the Chinese kids can do everything. . . . Kids bother the Chinese kids in the hallway. . . . You know Chinese kids are quiet in my class so, it’s like, they get a better grade.

Interviewer: So you think the teachers discriminate in favor of the Chinese kids?

Sheerah: I don’t think they [are] racist. . . . It’s just that they give Chinese kids a better grade.

Interviewer: Why do you think that is?

Sheerah: Cause they [are] quiet . . . and we [are] loud.⁷⁰

Essentially, teachers and administrators who believe in the model minority”stereotype and favor APA students create friction between APA students and other students.⁷¹ Although non-APA students may resent the teachers for favoring APA students, the actual expression of the resentment will typically be directed against the “favored” APA students because they are easier targets. Unable to direct their anger at school officials, resentful students instead direct their anger at APA students.

B. *The Silent Minority Stereotype*

The silent minority stereotype casts APAs as aloof academic automatons. Regarded as passive and reserved, they are viewed as silent stoics who rarely “rock the boat.” “Asians are known as a silent minority in this country,” states Helen Ying of the Chinese American Citizens Alliance.⁷² “They do not expect us to put up a loud fight.”⁷³ Barely seen,

69. *Id.* at 99.

70. Susan Rakosi Rosenbloom, *Experiences of Discrimination Among African American, Asian-American, and Latino Adolescents in an Urban High School*, 35 *YOUTH & SOC’Y* 420 (2004).

71. STACEY J. LEE & KEVIN K. KUMASHIRO, *A REPORT ON THE STATUS OF ASIAN-AMERICANS AND PACIFIC ISLANDERS IN EDUCATION: BEYOND THE “MODEL MINORITY” STEREOTYPE* 10 (2005), <http://www.nea.org/teachexperience/images/aapireport.pdf> (describing how the stereotype of APA students held by faculty actually harms the students).

72. Casey Parks, *Rights Abuse Thread Ties '04 to '40s*, *PORTLAND OREGONIAN*, Feb. 18, 2007, at B6.

and often not heard, APAs are rendered nearly invisible by the silent minority stereotype.⁷⁴

1. School Officials Affected by the Silent Minority Stereotype

School officials who believe in the silent minority stereotype may ignore requests for help by APA students to avoid negative publicity about racial problems at their school, thinking they can succeed because APA students and parents will remain silent.⁷⁵ These school officials believe they can, with impunity, ignore the problem of racial harassment against APA students. They may decide to preserve a fictional favorable image of their school that regrettably sacrifices the safety of their students.⁷⁶

2. Students Affected by the Silent Minority Stereotype

Students with this stereotype harass APA students believing they are easy targets who will not defend themselves or notify authorities of the harassment.⁷⁷ They assume attacking APA students is a risk-free crime with no consequences because APA students will remain silent.⁷⁸ Perhaps the non-APA students' perception of APA students as being easy targets is based in part on the lower incidences of violence associated with APA students. A 2000 study of middle and high school students

73. *Id.* (quoting panelist Helen Ying, from the Chinese American Citizen Alliance, as using the Day of Remembrance as a call to all Asian-Americans into action). "Asians have not done a good job of banding together to fight civil liberties abuses." *Id.*

74. See Chris K. Iijima, *Race as Resistance: Racial Identity as More than Ancestral Heritage*, 15 *TOURO L. REV.* 497, 499 n.6 (1999) (presenting personal recollections of instances of racism). The author describes being an Asian child growing up in New York in the 1950s. *Id.* at 499. He discusses the stereotypes he faced, and his realization that Blacks were at an even greater disadvantage. *Id.* His childhood, in which he was only allowed to play the villain when playing with other children, left him full of self-doubt and led to his intense desire to be of another race, using the specific example of wishing to be Puerto Rican. *Id.* at 498–99. When Iijima discusses prospects of race in the context of the future, including a time when the majority of Americans will be what are traditionally termed racial minorities, he worries that those "of color" who will make up the majority will "screw it up." *Id.* at 500.

75. Maki Becker, *Asian Students Hit in Rash of H.S. Attacks*, N.Y. *DAILY NEWS*, Dec. 8, 2002, at 7 ("[T]eachers, students and parents told the *Daily News* that Lafayette is out of control and that new immigrant students, who are perceived as weak and less likely to report crimes, often end up victimized.").

76. Ellen Yan, *Calls Grow to Fire Brooklyn Principal*, *NEWSDAY*, Aug. 27, 2004, at A16 ("He didn't do anything for the students, and he likes to cover up things . . . anything that would make him look bad or the school look bad.").

77. Maki Becker, *Asian Students Hit in Rash of H.S. Attacks*, N.Y. *DAILY NEWS*, Dec. 8, 2002, at 7.

78. *Id.* (citing perceptions that Asian students are seen as easy targets because they are not likely to contact authorities to report acts of violence against them).

found that Asian students were less likely than other students to be involved in violent behavior.⁷⁹ The violence-avoidance behavior of APA students, along with the impression of them as silent victims, helps to explain other students' perception of them as a silent minority who is desirable targets of harassment.

C. *The Perpetual Foreigner Stereotype*

The perpetual foreigner stereotype is another bias that explains why APA students are harassed. The perpetual foreigner stereotype casts APA students as non-American outsiders who perceived are part of the "others" rather than as part of the "us."⁸⁰ As outsiders, their loyalty and patriotism are constantly questioned.⁸¹ This is especially true when there is international tension between the United States and some Asian nation.⁸² For example, during and after the Vietnam war, racial epithets such as "gook" were hurled at APAs because they were equated with the Viet Cong foe. Likewise, after the 9/11 terrorist attacks, Muslim Americans were equated with terrorists. Sikh high school student Arjun Singh in Alpharetta, Georgia, was called a terrorist and threatened with mur-

79. Todd Michael Franke, *Adolescent Violent Behavior: An Analysis Across and Within Racial/Ethnic Groups*, 8 J. MULTICULTURAL SOC. WORK 47, 57 (2000) (studying the association between family characteristics, race/ethnicity, and adolescent violent behavior).

80. See William Y. Chin, *Implausible Denial: The Government's Denial of the Role of Race in Its Prosecution of Wen Ho Lee*, 5 RUTGERS RACE & L. REV. 1, 21–22 (2003) (explaining the perpetual foreigner bias and its impact on equality in the justice system). Chin explains how the bias prevents Asian-Americans from receiving the same legal protections given to non-Asians because they are viewed as foreigners and, therefore, underserving of those protections. *Id.* at 22. In spite of having United States citizenship, Asian-Americans are still seen as loyal to their country of origin which can weaken others' perceptions of them as participants in the American social and legal community. *Id.* at 21–22. This can lead to people ignoring their justice claims, as happened in Wen Ho Lee's case. *Id.* at 22. Officials believed he still swore allegiance to China and would betray the United States, in spite of his American citizenship. *Id.*

81. STACEY J. LEE & KEVIN K. KUMASHIRO, A REPORT ON THE STATUS OF ASIAN-AMERICANS AND PACIFIC ISLANDERS IN EDUCATION: BEYOND THE "MODEL MINORITY" STEREOTYPE 9 (2005), <http://www.nea.org/teachexperience/images/aapireport.pdf>.

82. William Y. Chin, *Severing the Link Between International Tension and Discrimination Against Asian and Arab Americans*, 13 INT'L LEGAL PERSP. 8, 10 (2002) (describing governmental discrimination against Asians during periods of international tension). During these periods, there is a fear that Asians will overwhelm the United States with hoards of immigrant spies to subvert America from within. *Id.* There is also a fear that legions of workers will drown Western markets in low-priced imports. *Id.* These military and economic fears bolster the perpetual foreigner syndrome, resulting in discrimination. *Id.* These fears are unfounded. *Id.* Asian-Americans are not a threat to the United States, and participate in all spheres of American life, including joining the armed forces. *Id.*

der.⁸³ After 9/11, the Department of Justice investigated over 630 “backlash incidents” of violence and threats against South Asians, Arabs, and Muslims.⁸⁴

This stereotype comes to the forefront not only during periods of military tension, but also during periods of economic tension. For example, in 1982, a White Chrysler autoworker and an unemployed autoworker blamed Chinese American, Vincent Chin for the loss of United States autoworker jobs to Japanese carmakers and beat him to death with a bat days before his wedding.⁸⁵ Like the other two stereotypes above, the perpetual foreigner stereotype presents an inaccurate portrayal of APA students that leads to racial harassment in schools.

1. School Officials Affected by the Perpetual Foreigner Stereotype

School officials operating under the perpetual foreigner stereotype view APA students as different, part of “them” rather than part of “us.” This can create several negative consequences for APA students. First, school officials may fail to act quickly to protect APA students against racial harassment. A White school official, for example, may act with urgency when hearing from a White student of being harassed because the school official views the White student as one of “us.” But the White school official, when hearing from an APA student of being harassed, may fail to act or act without urgency because the APA student, especially one who is a recent immigrant, is regarded as a “foreigner” who resides in the “out” group.⁸⁶

83. Sikh Coalition, *Hatred in the Hallways: Preliminary Report on Bias Against Sikh Students in New York City’s Public Schools* (June 2007), http://www.sikhcoalition.org/advisories/documents/HatredintheHallwaysFinal_000.pdf (“Two days after the attacks of 9/11, Arjun Singh, a high school junior . . . was singled out for harassment at the hands of his fellow students. They put notes in his locker, verbally threatened to kill or hurt him, and called him an Afghani and a terrorist.”).

84. Andrea Elliott, *Study by Muslim Group Says Bias Crimes Up 50% in 2004*, N.Y. TIMES, May 12, 2005, at B5, available at <http://query.nytimes.com/gst/fullpage.html?res=9B07E1DD1030F931A25756C0A9639C8B63> (“[As of 2004], [s]ince 9/11, the department has investigated more than 630 ‘backlash incidents’ of violence and threats against Arabs, South Asians and Muslims, resulting in nearly 150 state and local prosecutions, and the federal prosecution of 27 defendants, a spokesman [of the Department of Justice] said.”).

85. See *Man Misses Payments to Kin of Beating Victim*, CHI. TRIB., Dec. 1, 1989, at 3, (detailing the events surrounding the death and how witnesses stated that the convict had blamed the Japanese for the loss of American jobs, and therefore beat the victim).

86. See Kerri Ullucci, *The Myths that Blind: The Role of Beliefs in School Change*, 2 J. EDUC. CONTROVERSY, Jan. 2007, <http://www.wce.wvu.edu/Resources/CEP/eJournal/v002n001/a006.shtml> (exploring the ways norms impact the achievement gap and how those beliefs must be changed so the gap will not continue). Ullucci first describes some of the beliefs teachers have. *Id.* They include the idea that minorities are uneducable, have parents who are not concerned about their children’s education, and the students them-

Second, when conflict occurs between White and APA students, school officials operating under the perpetual foreigner stereotype may perceive APA more negatively and blame them for creating the problem. One Hmong student recounted how the school principal described a fight as “between poor white kids and some ‘Asian gangsters.’”⁸⁷ This type of stereotyping causes schools officials to turn a blind eye to the victimization of APA students and blame them for racial tension in the school.

Third, school officials who see APA students as “perpetual foreigners” are likely to criticize APA students’ language skills, especially those of immigrant APA students who are English language learners (ELL) and still speak primarily in their native language. As one Hmong student explained, teachers who heard Hmong being spoken would exhibit an “icky look” and even “sneer.”⁸⁸ Such behavior by teachers signals to students that they too are permitted to act on their bias and racially harass APA students.

Finally, educators operating under the “perpetual foreigner” stereotype may actively harass a student. In the case of Jordanian-born Osama Al-Najjar who attended Tottenville High School in Staten Island, New York, his lawsuit against the school included allegations of a teacher repeatedly calling him “Bin Laden” and a gym teacher saying, “I thought you were in the back of a cave somewhere.”⁸⁹ Teachers who racially har-

selves are “wise guys” or “delinquents.” *Id.* Ullucci gives three myths that explain the beliefs people in general and teachers in particular have about educating minority students. *Id.* The first of these myths is meritocracy and color blindness. *Id.* This idea is that all people who work hard will get ahead, regardless of race. *Id.* It fails to take into account the inequities present with gender, race, class, and age, allowing schools to blame race neutral factors and factors out of the school’s control when minority children under perform academically. *Id.* The blame shifts to the child himself being lazy or unintelligent. The second myth explored is that of cultural deprivation. *Id.* This is the idea that children grow up in homes where the parents do not stress the importance of education. *Id.* This, too, allows schools to blame other influences on minority under performance, rather than themselves. *Id.* These beliefs make a difference in the way minorities are treated in schools, and lends itself to increased under performance. *Id.*

87. PEOPLE FOR THE AM. WAY, *INVISIBLE WALLS: A STUDY OF RACIAL DIVISION AND THE CHALLENGE OF BUILDING BRIDGES OF UNDERSTANDING IN THE ST. PAUL, MN AREA SCHOOLS* 23 (1994), http://www.eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/13/a6/a4.pdf (“In a school environment where there is a lack of trusting relationships or where students perceive mixed signals about their status and acceptance, what constitutes ‘unfair treatment’ may be difficult to discern.”).

88. *Id.* (“Among Asian students, unfair treatment is often associated with their English proficiency: many feel that teachers (and other students) assume that their English is poor, even before they speak. Explained one student, ‘They see you speaking Hmong, and they just give you a look.’”).

89. Stefanie Cohen, *Tale of 2 Osamas*, N.Y. POST, June 11, 2007, available at http://www.nypost.com/seven/06112007/news/regionalnews/tale_of_2_osamas_regionalnews_stefanie_cohen.htm (reporting the torment of this teenage boy). In addition to the re-

ass minority students compound the problem because other students are encouraged to also racially harass the minority students. An authority figure such as a teacher racially harassing APA students essentially gives permission to other students to also harass the victims.

2. Students Affected by the Perpetual Foreigner Stereotype

Students who believe in the “perpetual foreigner” stereotype have an “us against them” mentality. They harass APA students because they view APA students, especially newly-arrived immigrants, as outsiders who are different and do not fit in. One difference used to ridicule APA students is language. According to one APA student at Lafayette High School, she endured repeated racial slurs because non-APA students target “people who look weaker and don’t speak English.”⁹⁰

English-learning APA students are harassed not only because their native languages sound strange to others, but also because they are perceived as being risk-free targets whose English difficulties prevent them from reporting the harasser. One student who admitted to harassing other students conceded that APA students are targeted because they are learning English. “If you’re going to rob somebody, you don’t want to get told on,” he explained.

In addition to language differences, APA students are harassed because of physical differences. For example, in *Yap v. Oceanside Union Free School District*, an APA middle-school student who was racially harassed explained how other students would “pull the outer edge of their eyes toward the back of their head with their fingers to make themselves look Asian and make fun of me.”⁹¹

Because of these perceived differences, APA students are regarded as “outsiders” who are often told to go back to their own country. This racist sentiment can become pervasive in a school setting.

This foreigner sentiment further developed after 9/11. For example, students in a Pennsylvania school repeatedly called seventh-grader Mandeep Singh “bin Laden” and “meatball head,” and yanked at his

peated referrals as “bin Laden” the boy was also beaten up by two students. *Id.* Later, when the boy’s mother confronted the assistant principal about the assault she was told to put her son in an Islamic school. *Id.* The boy was also told by one teacher to “stop coming to class because he would never pass.” *Id.*

90. *Asian Youth Persistently Harassed by Peers*, CHINADAILY.COM, Nov. 13, 2005, http://www.chinadaily.com.cn/english/doc/2005-11/13/content_494169.htm

91. *Yap v. Oceanside Union Free Sch. Dist.*, 303 F. Supp. 2d 284, 290 (D.N.Y. 2004) (showing one example of how not only words, but also physical features, are used to ridicule students).

jurkha (the topknot worn by Sikh men).⁹² To many of their peers, APA students are foreigners who do not belong in their school, much less the United States, and who should be removed and sent elsewhere.

IV. COUNTERING STEREOTYPES, AND OTHER MEASURES, CAN PREVENT ATTACKS ON APA STUDENTS

Solutions are needed to address the problem of racial violence directed at APA students. Schools should be safe harbors for students, a place where they pursue academic goals, rather than scuffle for survival. Schools should produce graduates, not victims. To prevent APA students from becoming victims, the following actions are necessary.

A. *Understanding Racial Stereotypes and Peer Racial Harassment*

Perceptions matter. Perceiving people through racial stereotypes leads to racial discrimination. As a result, racial stereotyping is a problem that must be countered. Additionally, failing to perceive a problem, is a problem in and of itself. Thus, failing to perceive peer harassment as a serious problem and instead perceiving it as merely harmless “bullying” is itself a problem.

1. Countering Racial Stereotypes of APA Students

a. Providing Educators with Cultural Competency Training

Schools can protect students against peer racial harassment by providing administrators and teachers with cultural competency training. As American society becomes more racially diverse, classrooms are also becoming more racially diverse, creating a need for culturally competent school employees who are aware of racial stereotypes and know how to prevent and respond to racial tensions in schools.⁹³

The definition of “cultural competency” within the educational context is “a system of congruent behaviors, attitudes, and policies that enables teachers to work effectively in cross-cultural situations.”⁹⁴ States can, and should, promote cultural competency in education to ensure educators are able to work effectively in cross-cultural situations. Indiana is making an effort by requiring schools to “consider methods to improve the cultural competency of the school’s teachers, administrators, staff,

92. Sikh Coalition, *Hatred in the Hallways: Preliminary Report on Bias Against Sikh Students in New York City’s Public Schools* (June 2007), http://www.sikhcoalition.org/advisories/documents/HatredintheHallwaysFinal_000.pdf (documenting the 2003 incident).

93. See generally RESEARCH ON THE EDUCATION OF ASIAN AND PACIFIC AMERICANS (Clara C. Park, A. Lin Goodwin & Stacey J. Lee, eds., 2001).

94. IND. CODE § 20-31-2-5 (West 2007) (defining cultural competency to mean a method of which enables teachers to effectively perform in cross-cultural situations).

parents, and students.”⁹⁵ Specific methods include (1) identifying the racial and ethnic groups making up the student population, (2) using “culturally appropriate strategies” to enhance educational opportunities and performance for each group, and (3) recommending ideas on cultural competency professional development.⁹⁶

Connecticut is also making an effort to improve cultural competency in education by providing for an intergroup relations coordinator to “evaluate, and recommend the use of, textbooks and curricula material concerning racial and cultural minorities.”⁹⁷ The coordinator will also “introduce and implement programs of intergroup relations in such schools.”⁹⁸ Further, Connecticut college students seeking teacher certification are encouraged to take classes that will “counteract[] . . . biases, discrimination and prejudices” and “impart[] . . . an appreciation of the contributions to American civilization of the various ethnic, cultural and economic groups composing American society”⁹⁹

Such cultural competency training that combines instructions on racial discrimination assessment and peer conflict resolution is needed to produce school administrators and teachers capable of resolving peer racial tensions. The need for such training was evident to Department of Justice officials when they responded to racial harassment of APA students at Lafayette High School.¹⁰⁰ Department of Justice officials crafted a consent decree requiring training for teachers and other school employees on how to report peer racial harassment and “recognize, prevent and respond appropriately to such harassment.”¹⁰¹

Schools must adjust to changing demographics that are creating more racially diverse classrooms. Just as educators teach students to “know

95. *Id.* §20-31-6-2(a) (requiring consideration of methods to improve a school community’s cultural competency when developing a school’s plan).

96. *Id.* § 20-31-6-2(b). Requiring the committee to:

(1) identify the racial, ethnic, language-minority, cultural, exceptional learning, and socioeconomic groups that are included in the school’s student population; (2) incorporate culturally appropriate strategies for increasing educational opportunities and educational performance for each group in the school’s plan; and (3) recommend areas in which additional professional development is necessary to increase cultural competency in the school’s educational environment. *Id.*

97. CONN. GEN. STAT. ANN. § 10-226g (West 2008) (providing guidelines for programs that promote intergroup relations training for coordinators).

98. *Id.* (describing additional guidelines for coordinators of intergroup relations).

99. *Id.* 10-145a(b) (describing the objectives of intergroup relation programs set forth under Connecticut law).

100. Consent Decree at 21, *United States v. New York*, No. 04-2248 (E.D.N.Y. June 1, 2004), available at <http://www.usdoj.gov/crt/edo/documents/lafayetteor.pdf>.

101. *Id.* (requiring “teachers, administrators, school aides, deans, guidance counselors and any [other] personnel” to attend training at least once per school year).

their audience” when writing or speaking, so educators must teach themselves to know their audience which increasingly consists of students from racially diverse backgrounds. Educators who are culturally competent can more readily respond to peer conflicts within their racially diverse audience.

b. Providing Training on Countering APA Racial Stereotypes

Cultural competency training helps school administrators and teachers understand that racial stereotypes exist, that they might be perceiving students through a racial stereotype, and that racial stereotyping harms students. However, to be effective, cultural competency training must move beyond mere general platitudes such as “everyone should get along” to focused training that counters specific racial stereotypes. For example, to counter the model minority stereotype, teachers and administrators should be trained to realize that one harmful effect is their creation of a “culture of competition” where there are perceived “winners” (the model minority APA students) and “losers” (the non-APA students), causing non-APA students to resent APA students.¹⁰² Administrators and teachers create this unhealthy competitive dynamic when they flaunt APA student success.¹⁰³ Flaunting is especially problematic when directed at non-APA students, such as when a teacher criticizes a non-APA student’s academic performance in front of the class and contrasts that student’s performance with an APA student’s high-achieving performance. To the non-APA student being criticized, school becomes a competition, one that he or she is losing to APA students. This further engenders resentment against APA students. To the APA student being given a favorable comparison, school becomes a battleground where he or she must fend off resentful peer attacks brought on by administrators and teachers who play “successful” APA students against “failing” students.

Effective cultural competency training helps administrators and teachers understand that they should not favor one group of students over another, and to avoid the appearance of favoritism. They should not use one group of students to encourage other students to do better. The successes of some APA students should not be used to denigrate other students. This does not mean that the successes of APA students should be ignored, rather that the successes of APA students and all other students should be recognized on an equal basis. Teachers and administrators must treat all students equally and view each student as an individual with the ability to succeed.

102. See generally STACEY J. LEE, UNRAVELING THE “MODEL MINORITY” STEREOTYPE: LISTENING TO ASIAN-AMERICAN YOUTH 90 (1996).

103. See generally *id.* at 100.

Ultimately, teachers and administrators need to be trained on how to recognize and address racial stereotypes if they wish to deal effectively with peer harassment against APA students and other students.

2. Countering the Perception of Peer Harassment as Mere Bullying

In addition to countering racial stereotypes, countering the perception of peer harassment as merely harmless bullying is also needed. Peer harassment is not just kids having fun; it is one person seeking to harm another, and the fact that this occurs in a school setting does not lessen the harm to the victim. The harm can be physical or psychological injury including, but not limited to, depression, anxiety, loneliness, or low self-esteem.¹⁰⁴

Moreover, “some of the behaviors described as bullying are in fact criminal conduct.”¹⁰⁵ In one study, researchers used the word “robbery” to describe the acts directed against APA students in one high school.¹⁰⁶ “Robbery” is the “unlawful taking . . . of personal property from the person . . . against his will, by means of actual or threatened force, or violence, or fear of injury . . . to his person”¹⁰⁷ APA students at Lafayette High School were victims of robbery when other students forcibly took their personal property.¹⁰⁸ One APA student was attacked at knifepoint.¹⁰⁹ As one Lafayette student explained, “[i]t’s about the money” and “Asians, they have money” so they are targeted.¹¹⁰

Such conduct, whether taking a student’s money, striking a student, or some other similar behavior, is deemed criminal when the victim is an

104. Stephen S. Leff, Thomas J. Power & Amy B. Goldstein, *Outcome Measures to Assess the Effectiveness of Bullying-Prevention Programs in the Schools*, in *BULLYING IN AMERICAN SCHOOLS: A SOCIAL-ECOLOGICAL PERSPECTIVE ON PREVENTION AND INTERVENTION* 269, 271 (Clara C. Park, A. Lin Goodwin, & Stacey J. Lee eds., 2004).

105. Nan Stein, *Bullying or Sexual Harassment? The Missing Discourse of Rights in an Era of Zero Tolerance*, 45 *ARIZ. L. REV.* 783, 795 (2003) (discussing the distinction between bullying and harassment which is misleading due to the seriousness of some bullying that is actually harassment).

106. Susan Rakosi Rosenbloom, *Experiences of Discrimination Among African American, Asian-American, and Latino Adolescents in an Urban High School*, 35 *YOUTH & SOC’Y* 420, 433–34 (2004).

107. 18 U.S.C.A. § 1951 (b)(1) (West 2008) (providing the law for acts of interference with commerce by threats).

108. Maki Becker, *Asian Students Hit In Rash of H.S. Attacks*, *N.Y. DAILY NEWS*, Dec. 8, 2002, at 7.

109. *Id.* (listing incidents that occurred targeting Asian students).

110. Carolyn Ji Jon Goossen, *You Can’t Snitch If You Can’t Speak: High School Bullies Target English Learners*, *NEW AM. MEDIA*, Dec. 28, 2005, http://news.ncmonline.com/news/view_article.html?article_id=88f6285f9901d688092979ac6831e221 (contending that lack of English speaking skills targets foreigners to robbery). The lack of English speaking skills is the primary reason students are targeted. *Id.*

adult; it should also be deemed criminal when the victim is a student.¹¹¹ A more accurate view of student-on-student harassment at school, then, is to regard it as more akin to criminal conduct rather than mere benign bullying. Not every peer harassment incident needs to be treated as a criminal matter, but for the victim's sake, every episode of peer harassment should be treated seriously, and appropriate steps must be taken to ensure the safety of the victim.

B. *Establishing a Duty to Protect Students Against Peer Racial Attacks*

School officials, rather than student victims or their parents, should have the burden of preventing peer racial attacks before they occur and of remedying the problem once attacks do occur. As the court in *Davis v. Monroe County Board of Education* stated, it is the school that has “substantial control over the context in which the harassment occurs” and “exercises significant control over the harasser.”¹¹² School officials, not parents, are in control of the school environment and have greater ability to prevent peer attacks. With control comes responsibility. School officials’ ability to control what occurs in their schools should create a duty on their part to provide a safe and secure learning environment. School officials should have a duty, even if only a limited duty, “to protect students whom they know, or should know, are being harmed by other students.”¹¹³ As stated by one court, schools have a “duty to provide a safe school” for students.¹¹⁴ Although a minority view among the courts,¹¹⁵ the reality of school violence makes such a duty necessary for the well-being of students.

111. See June L. Arnette & Marjorie C. Walsleben, *Combating Fear and Restoring Safety in Schools*, JUV. JUST. BULL., April 1998, <http://www.ncjrs.gov/pdffiles/167888.pdf>.

112. *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629, 646 (1999) (establishing that schools have the responsibility of controlling the harasser and preventing racial attacks by peers).

113. Alison Bethel, Note, *Keeping Schools Safe: Why Schools Should Have an Affirmative Duty to Protect Students from Harm by Other Students*, 2 PIERCE L. REV. 183, 200 (2004) (discussing the argument in favor of a limited duty to protect students from mistreatment).

114. *Porter v. Ascension Parish Sch. Bd.*, 393 F.3d 608, 611 (5th Cir. 2004) (“This case highlights the difficulties of school administrators charged to balance their duty to provide a safe school with the constitutional rights of individual students when violence in schools is a serious concern.”).

115. Alison Bethel, Note, *Keeping Schools Safe: Why Schools Should Have an Affirmative Duty to Protect Students from Harm by Other Students*, 2 PIERCE L. REV. 183, 191 (2004) (“A few courts have imposed a limited duty on schools, requiring school officials to protect students from harm inflicted by other students.”). As to protecting children from other children at school, this article contrasts the majority view of imposing no duty upon schools with the minority view of imposing a limited duty upon schools. *Id.*

The school's duty should be greater when the issue of race is involved in situations such as peer racial harassment. This heightened school duty is supported by other contexts where the issue of race has been analyzed. For example, in the constitutional law context, consideration of race has led to courts applying the highest standard of review—strict scrutiny—when reviewing governmental action involving racial classifications.¹¹⁶ In the criminal law context, consideration of race has led to the creation of hate crime legislation prosecuting those who victimize a person because of their race.¹¹⁷ In the sentencing context, consideration of race has led to increased sentences for those convicted of unlawful acts based on the victim's race as seen in *McAninch* where the court stated that “a defendant's racist motivation is a valid ground” for an upward departure to enhance the defendant's sentence.¹¹⁸ Similarly, in the educational context, consideration of race should lead to a heightened school duty to protect students who are victimized by others who act based on the victims' race.

Moreover, schools should have a heightened duty to protect racially harassed students as these students can be likened to vulnerable victims found in other situations. For example, in *Munger*, the court held that a vulnerable victim sentencing enhancement was proper in part because the Black victim was attacked at night and belonged to a racial minority in a rural area.¹¹⁹ Likewise, APA students who are a racial minority in a school are “vulnerable victims” because they are confined with their attackers throughout the day in the school building where they are easily cornered and attacked. Recently-arrived immigrant APA students may be especially vulnerable if they are not acquainted with the American educational system, do not speak English proficiently, and do not know where to turn to for help in an unfamiliar environment. Imposing a heightened duty on schools to protect racially-harassed students will force schools to take needed action to protect these vulnerable students.

C. *Taking Immediate Action to Separate the Harasser From the Victim*

Even absent a legal duty, schools must, take prompt action to protect that student when the student is racially harassed. Inaction or delayed

116. See e.g., *Adarand Constrs., Inc. v. Peña*, 515 U.S. 200, 201 (1995) (“All racial classifications, imposed by whatever federal, state, or local governmental actor, must be analyzed by a reviewing court under strict scrutiny.”).

117. See 18 U.S.C.A. § 245(b) (West 2008) (enjoining people from interfering and intimidating others because of their race from engaging in benefits provided by the United States, such as voting and attending school).

118. *United States v. McAninch*, 994 F. 2d 1380, 1388 (9th Cir. 1993), *cert. denied*, 510 U.S. 949 (1993).

119. *Munger v. United States*, 827 F. Supp. 100, 105 (N.D.N.Y. 1992) (discussing a case where a cross was burned in an African-American's yard).

action harms the victim by enabling the harasser to continue the attacks and to escalate the severity of the attackers. In one case of peer harassment, a student harassed another student for over a year.¹²⁰ Taunts turned into physical violence that resulted in the victim suffering a broken wrist.¹²¹ At trial, the harasser explained that the school never disciplined him for his harassing behavior.¹²² Thus, schools must take swift and decisive action to stop peer racial harassment.

Included in such swift and decisive action must be the immediate separation of the harasser from the victim. Physical separation should be the central consideration in any remedial post-attack plan to protect the victim. It need not be the only consideration, but it should be a primary consideration. Physically separating the attacker from the victim offers the most protection for the victim. Although physical separation does not guarantee total protection because a harasser can still use blog postings, email, or the telephone to harass the victim, physical separation effectively prevent face-to-face verbal harangues and direct physical attacks.

1. *Yap* Highlights the Need for Physical Separation

Physical separation appears to be an obvious solution that needs no elaboration, yet the *Yap* case indicates otherwise. Edward Yap was the Chinese-American student whose harassment by White students began in the fourth grade and included being slapped, punched, and called a “Chinese asshole.”¹²³ The principal made a series of failed attempts to stop the harassment including talking with the harassers, asking one of the harasser’s father to help prevent future incidents, talking with the parents of the other harassers, temporarily suspending recess for the harassers, taking Yap to individual classrooms to discuss the harassment issue with

120. Dan Barry, *About New York; a Boy, a Bully and Cries Unheard*, N.Y. TIMES, May 1, 2004, at B1.

121. *Id.*

122. *Id.* (“According to Joey Bari’s lawyer, Philip J. Rizzuto, the case was never about the Bully, and that is why the two families settled out of court. For Joey, the case was always about the failures of those in authority to stop the abuse and help both boys.”).

123. *Yap*, 303 F. Supp. 2d at 288 (introducing an instance of how “physical separation” is not an obvious solution).

In September 1998, Edward began the fourth grade at the School. At this time, Edward began to experience difficulty with certain other students. According to Edward’s mother, Rhodora Yap, beginning in September “some of the other students were calling him names, cursing at him, making fun of him because he is Chinese and hitting him.”

Id.

the students and temporarily suspending the harassers from riding the school bus.¹²⁴ Nevertheless, the racial harassment continued.

Edward Yap's parents sought to physically separate him from his attackers by requesting their son be transferred to another school.¹²⁵ Initially, their request was denied.¹²⁶ In fact, in one instance, instead of physically separating Yap from his harasser, the school continued to place a student who had previously harassed Yap in his class.¹²⁷ Only after Yap's parents complained did the school shift the harasser to another class.¹²⁸ In the end, Yap's parents placed him in a private school.¹²⁹

2. "Classroom" Separation by School Officials

As *Yap* shows, schools need to physically separate the peer harassers from the victims.¹³⁰ Different methods exist. One method is classroom separation where the school places the victim and the harasser in different classrooms. Between the two, the harasser rather than the victim should have to move to a new classroom because the victim as the innocent party should be accommodated. When instituted, classroom separation may sufficiently narrow opportunities for the harasser to attack the victim. Regardless, determined harassers will find opportunities to attack the victim outside the classroom, including before and after school, during recess, during lunch, and in hallways when students shift from one class to another. School officials must be aware of these additional opportunities to harass the victim and plan accordingly. If peer harassment continues, perhaps progressing from classroom separation to school separation is required.

3. "School" Separation Under the Federal No Child Left Behind Act of 2001 and State Statutes

School separation is where the victim and harasser are placed in different schools. The No Child Left Behind Act requires states receiving federal educational funding to establish a policy allowing students to transfer to a "safe" public school in two situations.

124. *Id.* at 288–91 (giving background information of one specific instance of unobvious physical separation).

125. *Id.*

126. *Id.*

127. *Id.*

128. *Yap*, 303 F. Supp. 2d at 288–91.

129. *Id.* at 293 ("Edward now attends a private school.").

130. *Id.* at 288–91.

First, a student may transfer if the student is attending a “persistently dangerous” public school.¹³¹ Many states provide for a lengthy time period ranging from two to three years, but federal non-regulatory guidelines argue for a shorter duration of *one* year in which to tally incidents so that students are “not subjected to violent offenses and activities over a period of years before a transfer option is made available.”¹³² Further, although many states like Utah count disciplinary responses by the school such as the number of expulsions or suspensions to establish “persistently dangerous,” federal non-regulatory guidelines instead argue for counting the number of incidents committed by students, even when the school did not respond to those incidents by expelling or suspending those students.¹³³

The federal non-regulatory guidelines define persistently dangerous more broadly than the states, meaning it is easier to declare a school as “persistently dangerous” under federal criteria. Accordingly, the federal guidelines are more desirable because they offer more protection to victimized students by making it easier for them to transfer to a safer school. This “transfer” option certainly was needed at Lafayette High School as Lafayette appears to be a prime example of a “persistently dangerous” school where APA students were abused and harassed for years.¹³⁴ The Department of Justice’s finding of “severe and pervasive” harassment further supports this assertion.¹³⁵

Second, the student may transfer if the student “becomes a victim of a violent criminal offense” while on school grounds, with “violent criminal offense” determined by state law.¹³⁶ Non-regulatory guidelines by the U.S. Department of Education add to this and other state definitions by

131. No Child Left Behind Act of 2001, 20 U.S.C.A. § 7912(a) (West 2008) (providing options for disadvantaged minority students in public schools).

132. U.S. DEP’T OF EDUC., UNSAFE SCHOOL CHOICE OPTION: NON-REGULATORY GUIDANCE 8 (May 2004), <http://www.ed.gov/policy/elsec/guid/unsafeschoolchoice.doc> (“While many States have defined ‘persistently dangerous’ schools as schools that meet State-established criteria over a period of two to three years, we strongly encourage States to define persistently dangerous schools based on the number of incidents over a shorter period, specifically one school year.”).

133. *Id.* (“Many current State definitions utilize suspension and expulsion data, which measure disciplinary responses to an incident. We urge SEAs to use data that relate to incidents (numbers of offenses) even when an offender is not apprehended and subsequently disciplined.”).

134. Press Release, U.S. Dep’t Just., Justice Department Settles Civil Rights Allegations Concerning Violence-Plagued Brooklyn High School (June 1, 2004), http://www.usdoj.gov/opa/pr/2004/June/04_crt_381.htm.

135. *Id.*

136. No Child Left Behind Act of 2001, 20 U.S.C.A. § 7912(a) (West 2008) (implementing regulations designed to improve the academic achievement of minorities and the disadvantaged).

explaining that a victimized student may transfer to a safer school despite the absence of a conviction.¹³⁷ The victim should not be required to remain in an unsafe school merely because of the lack of a conviction, a situation which is beyond the control of the victim due perhaps to the prosecutor declining prosecution, a delayed trial, or an inability to identify the perpetrator.¹³⁸ Whatever the reason, the victimized student should not be penalized for the absence of a conviction and should be allowed to transfer to a safer school. APA students who were racially harassed at Lafayette High School would have benefited from transferring to another school because they were victims of “violent criminal offenses” including being robbed and physically assaulted.

Seemingly, one deficiency with the federal law on student transfers is that it transfers the *victim* rather than the perpetrator. In contrast, some state laws prescribe transfer of the *perpetrator* rather than the victim. California, for example, provides for the involuntary transfer of a student who misbehaves,¹³⁹ by, among other acts, causing “physical injury” to or using “force or violence” on another person, committing “robbery or extortion,” or “harass[ing], threaten[ing], or intimidat[ing] a pupil who is a complaining witness.”¹⁴⁰ Oklahoma does the same for a student convicted of certain felony offenses who “shall, upon the request of the victim, not attend any school attended by the victim.”¹⁴¹

Federal law appears dissimilar in stating that a “*student . . . who becomes a victim . . . [should] be allowed to attend a safe . . . school*” elsewhere.¹⁴² But there is no conflict between federal and state laws according to the U.S. Department of Education’s non-regulatory guidelines.¹⁴³ The guidelines recognize that “some States have laws that re-

137. U.S. DEP’T OF EDUC., UNSAFE SCHOOL CHOICE OPTION: NON-REGULATORY GUIDANCE 15 (May 2004), <http://www.ed.gov/policy/elsec/guid/unsafeschoolchoice.doc>.

138. *Id.*

States are encouraged to permit victims of violent criminal offenses to transfer to a safe public school, whether or not the offenses eventually result in convictions. Judicial officials may decline to prosecute a case, a prosecution may be delayed for some period of time, or no perpetrator may be identified. Allowing victims to transfer prior to a conviction ensures that the victim is able to attend a safe school rather than continuing in a school where the victim feels unsafe.

Id.

139. CAL. EDUC. CODE § 48432.5 (West 2007) (detailing the rule and regulations in regards to the involuntary transfer of pupils).

140. *Id.* § 48900(a) (explaining the grounds for suspension or expulsion).

141. OKLA. STAT. ANN. tit. 70, § 24-100.6C (West 2007) (explaining the “right of student victims to be separated from offender”).

142. No Child Left Behind Act of 2001, 20 U.S.C.A. § 7912(a) (West 2008) (emphasis added).

143. U.S. DEP’T OF EDUC., UNSAFE SCHOOL CHOICE OPTION: NON-REGULATORY GUIDANCE 15 (May 2004), <http://www.ed.gov/policy/elsec/guid/unsafeschoolchoice.doc>.

quire the transfer of the perpetrator,” and that federal law “*does not* override those State laws, but should be read in a manner consistent with those laws.”¹⁴⁴ The federal non-regulatory guidelines appropriately allow states to transfer the perpetrator rather than the victim to prevent the victim from being victimized again by having to move, and to place the burden of having to shift to a new school on the perpetrator.

4. Suspension or Expulsion by the School

Suspension and expulsion are familiar disciplinary tools that can also be used by school officials to physically separate the harasser from the victim. Oregon’s student discipline statute states that the “use of threats, intimidation, harassment or coercion against any fellow student” is sufficient to suspend (up to ten days typically) or expel (up to one year typically) the offending student.¹⁴⁵ Pennsylvania’s student discipline statute uses broader language that permits a principal or teacher to “temporarily suspend any pupil on account of disobedience or misconduct,” and after a hearing, the board of school directors may “suspend such child for such time as it may determine, or may permanently expel him.”¹⁴⁶ Suspension and expulsion are additional methods of protecting victimized students.

5. A Temporary Restraining Order Sought by the Parent and Issued by the Court

If a school fails to physically separate the victim from the harasser (through classroom separation, school separation, suspension, or expulsion), the victim’s parents may seek a court-issued temporary restraining order (TRO). A TRO’s purpose is to “provide the domestic violence victim [or student victim] with a buffer zone of safety and shield the victim from the risk of contact with the abuser.”¹⁴⁷ In a case involving elementary school students, two TROs were issued against a fifth grader, one for allegedly making threats against a student and another for allegedly assaulting another student.¹⁴⁸ In a case involving peer sexual harassment at

144. *Id.* at 8 (emphasis added).

145. OR. REV. STAT. ANN. § 339.250(4) (West 2005) (describing the duties of students).

146. 24 PA. CONS. STAT. ANN. § 13-1318 (West 2008) (discussing the suspension and expulsion of students at public schools).

147. *State v. Dispoto*, 913 A.2d 791, 798 (N.J. 2007) (citing *State v. Reyes*, 769 A. 2d 879 (N.J. 2002)).

148. *DNK v. Douglas County Sch. Dist.*, No. 04-CV-02513-MSK-CBS, 2006 WL 2331086 at 3–4 (D. Colo. Aug. 10, 2006) (finding that although plaintiff was subject to two concurrent restraining orders which prevented him from returning to his elementary school, the plaintiff was still free to choose between three other schools, thus, resulting in summary judgment in favor of the defendants).

a high school, the parents of the victim obtained a TRO against the sexual harasser.¹⁴⁹

D. *Developing a Written Anti-Racial Harassment Policy*

Another step schools should take to prevent peer racial harassment is to develop an anti-racial harassment policy. Although not required under federal law,¹⁵⁰ state laws differ. New Jersey requires each school district to adopt a policy prohibiting “harassment, intimidation or bullying,”¹⁵¹ that is “motivated either by any actual or perceived characteristic” including “race,” “color,” “ancestry,” or “national origin.”¹⁵² Similarly, Washington state requires each school district to adopt a policy prohibiting the “harassment, intimidation, or bullying of any student” that is motivated by any characteristic,¹⁵³ including “race,” “color,” “ancestry,” or “national origin.”¹⁵⁴

New Hampshire’s “pupil safety” statute suggests what sort of specific requirements to include in any anti-harassment policy including requiring school employees to (1) report peer harassment,¹⁵⁵ (2) notify the affected

149. *Michelle M. v. Dunsmuir Joint Union Sch. Dist.*, No. 2:04-cv-2411-MCE-PAN, slip op. at 3 (E.D. Cal. Oct. 12, 2006) (resulting in a proceeding whereby a juvenile court imposed a restraining order upon a student accused of sexually harassing a fellow classmate on numerous occasions).

150. OFFICE OF CIVIL RIGHTS, U.S. DEP’T OF EDUC., PROTECTING STUDENTS FROM HARASSMENT AND HATE CRIME: A GUIDE FOR SCHOOLS 47–48 n.5 (Jan. 1999), <http://www.ed.gov/offices/OCR/archives/Harassment/harassment.pdf>.

While federal anti-discrimination laws make school districts responsible for remedying harassment of students, these laws do not specifically require written policies specifically addressing harassment. However, the adoption, dissemination, and enforcement of such policies is likely to deter harassment and will help to show that the district does not tolerate or condone such harassment. In addition, federal regulations promulgated under Title IX, Section 504, and Title II of the Americans with Disabilities Act (ADA) specifically require schools to regularly notify students, parents, and employees that the school does not discriminate on the basis of sex and disability, to implement and disseminate prompt and equitable complaint procedures for handling allegations of discrimination, and to designate an employee responsible for coordinating compliance with these laws. Discrimination under these laws includes harassment as outlined in this Guide. *Id.*

151. H.R. 1874, 210th Leg., Assemb. No. 1874 (N.J. 2002) (discussing the adoption of a policy by school districts in New Jersey that is designed to prevent harassment and bullying).

152. *Id.* (defining harassment or bullying in regards to the implementation of bullying prevention policies under New Jersey state law).

153. WASH. REV. CODE ANN. § 28A.300.285 (West 2008) (referencing a similar provision under Washington state law that prohibits student harassment and bullying).

154. *Id.* § 9A.36.080 (citing a Washington statute that criminalizes malicious harassment).

155. N.H. REV. STAT. ANN. § 193F (2008).

parents of an incident within forty-eight hours by phone or first-class mail,¹⁵⁶ and (3) notify the parents of any proposed remedy.¹⁵⁷

Regarding remedies, the anti-harassment policy should contain “clear, enforced standards mandating remedial action or penalties for students who commit harassment and school personnel who do not comply with the law.”¹⁵⁸ Creating a written anti-harassment policy and then disseminating and enforcing it sends a clear message to students and school employees that peer harassment is prohibited.¹⁵⁹

E. *Providing Translator, Interpreter, and Other Outreach Services*

Schools need to provide interpreter (spoken), translator (written), and other outreach services to ensure APA students and parents can communicate their concerns about racial harassment to school officials. One such case is Lafayette High School where translation services were inadequate,¹⁶⁰ and school officials blamed a lack of interpretation services as a reason for not investigating harassment against APA students.¹⁶¹

Any school employee, or employee of a company under contract with a school or school district, who has witnessed or has reliable information that a pupil has been subjected to insults, taunts, or challenges, whether verbal or physical in nature, which are likely to intimidate or provoke a violent or disorderly response that violates the school bullying policy shall report such incident to the principal, or designee, who shall in turn report the incident to the superintendent and the school board. *Id.*

156. *Id.* (“The principal, or designee, shall by telephone and in writing by first-class mail, report the occurrence of any incident described in this paragraph to the parent or legal guardian of all pupils involved within 48 hours of the occurrence of such incident.”).

157. *Id.* (“The remedy required in paragraph I shall be defined by the local school board and the local school board shall, in writing, notify all parties involved of its decision.”).

158. ADVISORY COMM. TO THE U.S. COMM’N ON CIVIL RIGHTS, RACIAL HARASSMENT IN VERMONT PUBLIC SCHOOLS: A PROGRESS REPORT, at iv (2003), <http://www.usccr.gov/pubs/sac/vt1003/vt1003.pdf> (adding that the committee also recommends designating and training employees in each school to receive and investigate harassment complaints, in addition to, “continued coordination between civil rights groups, educators, and the public”).

159. OFFICE OF CIVIL RIGHTS, U.S. DEP’T OF EDUC., PROTECTING STUDENTS FROM HARASSMENT AND HATE CRIME: A GUIDE FOR SCHOOLS 47 n.5 (Jan. 1999), <http://www.ed.gov/offices/OCR/archives/Harassment/harassment.pdf>.

160. Erin Teixeira, *Asian Youths Suffer Harassment in Schools*, ASSOC. PRESS ONLINE REGIONAL, Nov. 14, 2005, http://www.amren.com/mtnews/archives/2005/11/asian_youths_suffer_harassment.php (exemplifying how Lafayette’s “school administrators seemed reluctant to intervene, [and] translation services for parents and students was spotty and teachers who reported the problems may have been punished”).

161. ASIAN AM. LEGAL DEF. & EDUC. FUND, ANNUAL REPORT 6 (2005 http://www.aaldef.org/docs/2005_AALDEF_AnnualReport.pdf) (“Asian students also complained about lack of access to guidance counselors, interpretation, and Regents’ courses.”).

These services are needed for APA students because those with limited English proficiency may be reluctant, due to embarrassment or frustration, to speak with a teacher about being harassed if the teacher does not speak the student's native language. Moreover, even if the student discusses the problem with their teacher, miscommunication may occur due to language barriers.

Parents with limited English proficiency also require translator and interpreter services. They cannot adequately advocate for their children if they do not receive notice of harassment in their language. Even if they do receive adequate notice, they still cannot effectively advocate their concerns if they are unable to communicate with school officials because of misunderstandings created by language barriers. Immigrant parent, Susan Huang, shared how the lack of a school interpreter prevented her from fully understanding the teacher's account of her daughter being bullied and injured.¹⁶² "I feel that my child's well-being was affected by my inability to communicate with the teacher," explained Huang.¹⁶³ "[H]ad I been able to intervene at an earlier point, the situation would not have become as bad as it did," she added.¹⁶⁴ Huang's experience underscores the critical need to provide translators and interpreters for ELL parents in situations involving their children's safety.

1. Providing Translator Services

One state that recognizes the reality of language barriers in schools is California. In a school where "fifteen percent or more of the pupils . . . speak a single primary language other than English," California law requires "all notices, reports, statements, or records sent to the parent . . . be written in the primary language" in addition to English.¹⁶⁵ The parents may respond "either in English or the[ir] primary language."¹⁶⁶

California's law, however, is far from perfect. Unfortunately, California's law only applies to those schools where fifteen percent or more of the students speak a primary language other than English.¹⁶⁷ ELL students in schools below the fifteen percent criterion will not receive translator services.¹⁶⁸ Providing translator services to these isolated students

162. LUNA YASUI, CHRISTINA WONG & WINNIE LAU, *LOST WITHOUT TRANSLATION* 13 (2006), available at <http://www.caasf.org/PDFs/Lost%20Without%20Translation%20%5BCAA%5D.pdf>.

163. *Id.*

164. *Id.*

165. CAL. EDUC. CODE § 48985(a) (West 2008) (describing the process California public schools use when notifying parents).

166. *Id.*

167. *Id.*

168. *Id.*

and parents will help reduce their marginalization and help connect them to the larger school community.

Furthermore, an exception should be made for any ELL student who is racially harassed. An ELL student who is racially harassed in a school that does not meet the fifteen percent criterion should nonetheless be provided translation services so that the student and the parents can read translated policies, notices, transcripts of disciplinary proceedings, or other written documents relevant to the peer harassment situation.

2. Providing Interpreter Services

Schools should also provide interpreter services. An ELL parent whose child is being racially harassed needs interpreter services to understand what is occurring at school. During face-to-face meetings or telephone conferences, an interpreter is needed to (1) notify ELL parents that their child has been racially harassed, (2) involve the parents in creating a remediation plan to prevent further racial harassment, and (3) update the parents on how well the remediation plan is being carried out. The lack of an interpreter in these situations would severely impair a parent's ability to protect his or her child from racial harassment at school.

Requirements to include in an interpreter policy are provided by a case involving a complaint against the Tucson Unified School District filed with the U.S. Department of Education, Office of Civil Rights, alleging the district discriminated against "national-origin language-minority parents . . . by failing to communicate with them in a language they understand."¹⁶⁹ The school district resolved the interpreter issue by updating its list of interpreters, informing school staff of the availability of interpreters, being prepared to hire other interpreters if the regular interpreters are not available, ensuring the interpreters are competent, and keeping a log of interpreter services requested and provided.¹⁷⁰

Other requirements that may be added to an interpreter policy include providing free interpreter services liberally for all situations concerning school matters,¹⁷¹ notifying ELL students and parents about free interpreter services by various means including creating handouts and posting

169. Letter from J. Aaron Romine, Supervisory Team Leader, Office for Civil Rights, to Dr. Estanislado Y. Paz, Superintendent, Tucson Unified School District (June 18, 2002), available at <http://www.ed.gov/about/offices.list/ocr/letters/tucsonusd08011157.html>.

170. *Id.*

171. See N.Y. CITY, DEP'T OF EDUC., REGULATION OF THE CHANCELLOR A-663, 1-2 (2007), available at <http://docs.nycenet.edu/docushare/dsweb/Get/Document-151/A-663%20Translation%203-27-06%20.pdf>.

signs in reception areas,¹⁷² allowing students or parents who decline the free school interpreter to instead use adult family members or adult friends (but not minors) who can interpret and maintain confidentiality,¹⁷³ and permitting interpreter services where needed “either at the location where the parent is seeking to communicate or by telephone.”¹⁷⁴

3. Providing Affirmative Outreach Services

One example of a program which affirmatively reaches out to immigrant ELL parents is the English for Speakers of Other Languages (ESOL) program in Montgomery County, Maryland. According to outreach worker Carol Chen, “If you need to go to the home, you do.”¹⁷⁵ The plan is to use “every single possible way to reach the parents” including going to the church, the community center, the grocery store and putting up fliers.¹⁷⁶ Additionally, the program recruits bilingual parents to volunteer as school liaisons who can reach out to new immigrant families in the neighborhood.¹⁷⁷

This type of affirmative outreach to immigrant parents is consistent with the Office for Civil Rights anti-harassment guide instruction for school officials to use to identify student and parent concerns by “seek[ing] out information about underlying conflicts” in various areas

172. N.Y. CITY, DEP’T OF EDUC., BILL OF PARENT RIGHTS AND RESPONSIBILITIES 1 (2006), available at http://schools.nyc.gov/NR/rdonlyres/78DA2E99-E3EA-40CD-B209-4E07A0CB5BA8/13284/EnglishParentBillofRights_rev10Aug06.pdf.

173. See N.Y. CITY, DEP’T OF EDUC., REGULATION OF THE CHANCELLOR A-663, 2 (2007), available at <http://docs.nycenet.edu/docushare/dsweb/Get/Document-151/A-663%20Translation%203-27-06%20.pdf>.

174. *Id.* at 3.

175. Jennifer Lenhart, *Language Program’s Aid Doesn’t Stop with Kids*, WASH. POST, Mar. 17, 2005, at G12, available at http://www.washingtonpost.com/wp-dyn/content/article/2005/03/26/AR2005032601423_pf.html (illustrating the level of outreach that the Montgomery County ESOL program seeks to achieve).

176. *Id.* (“You go to the church, you go to the community center, you go to the grocery and put up fliers. If the teachers refer them, you’ve got the telephone numbers. You track them down.”).

177. *Id.*

In recent weeks, Chen has dashed around trying to pull together a two-day training seminar for more than 45 bilingual parents interested in volunteering in a program called PALS, in which parents serve as liaisons for schools. The idea is to give parents the training and opportunity to bring new immigrants in their communities into the county’s programs for children and adults learning English. With a constant flow of immigrants into the county, Chen said that raising awareness is a job that never ends. “So we train bilingual parents to do outreach in the community,” Chen said. “This way, whenever there’s a newcomer into the community, these will be the knowledgeable people who are there and who are bilingual.” Last year, the county’s ESOL staff members trained 23 people for the PALS program. *Id.*

including “antipathy toward recent immigrants” and “pervasive racial stereotypes.”¹⁷⁸

Affirmative outreach to immigrant parents is also consistent with the No Child Left Behind Act’s emphasis on parental involvement.¹⁷⁹ The Act requires school districts to “implement an effective means of outreach to parents of limited English proficient students to inform parents regarding how the parents can be involved in the education of their child”¹⁸⁰ Also, school districts must develop a written “parental involvement policy” with notice of the policy, “to the extent practicable, provided in a language the parents can understand.”¹⁸¹ Further, school districts must attempt to “provide full opportunities for the participation of parents with limited English proficiency . . . including providing information . . . to the extent practicable, in a language such parents understand.”¹⁸²

Affirmatively reaching out to APA parents and communicating with them in a language they understand is one part of the solution to preventing peer harassment of APA students. APA parents can better help prevent peer harassment when they can read a translated version of an anti-harassment policy or notice of a peer harassment problem concerning their child, or when they can communicate through an interpreter their suggestions for a plan on how to stop the peer harassment of their child. Clear communication between APA parents and the school is needed to protect APA students from peer racial harassment.

F. *Seeking a Remedy Through the Courts*

Regrettably, past experience shows that litigation is sometimes necessary to protect APA students from peer racial harassment. Parents of racially-harassed APA students may need to pursue litigation against the school or the offender (or the offender’s parents) when the school fails to take preventive measures to prevent the harassment or when the of-

178. OFFICE OF CIVIL RIGHTS, U.S. DEP’T OF EDUC., PROTECTING STUDENTS FROM HARASSMENT AND HATE CRIME: A GUIDE FOR SCHOOLS 8 (Jan. 1999), *available at* <http://www.ed.gov/offices/OCR/archives/Harassment/harassment.pdf> (“Without an effort to identify student and parent concerns, school officials may not realize the extent of harassment that occurs in their schools.”).

179. 20 U.S.C.A. § 6313(b)(1) (West 2002) (requiring schools to notify parents of the plans to implement statute mandated improvements for academic achievement).

180. *Id.* § 6213(g)(4) (requiring local educational agencies receiving funds under No Child Left Behind to implement an effective method of contacting and communicating with parents whose students have limited proficiency in English in order to inform the parents of how they may be involved in their child’s education).

181. *Id.* § 6313(b)(1).

182. *Id.*

fender continues to harass the victim despite the preventive measures undertaken.

1. Litigation Against the School and the Harasser or Harasser's Parents

Filing a lawsuit against the school (and school district and related parties) may be necessary when the school fails to protect students against harassment. At Lafayette High School, community pressure led to litigation by the DOJ that finally persuaded Lafayette school officials to enter into a consent decree to protect APA students.¹⁸³

Filing a lawsuit against the harasser or harasser's parents may also be necessary especially when the harasser's parents issue denials, rather than controlling their child's harassing conduct.¹⁸⁴ In *Yap*, parents of harassers who repeatedly harassed an APA middle schooler told the principal "to stop blaming their children,"¹⁸⁵ and in fact accused the APA middle schooler of "starting up with their children."¹⁸⁶ The harassers' parents also objected to disciplinary measures imposed on their children.¹⁸⁷ In such situations where the harasser's parents deny that their child is harassing others or where the school fails to take remedial action, litigation may be needed to ensure the safety of the racially-harassed victim.

2. Remedies Through Federal and State Courts

Aggrieved parents may file suit in federal court. Just as the U.S. Department of Education filed a lawsuit against Lafayette High School under Title IV of the Civil Rights Act of 1964, parents of a victimized student may also file a federal lawsuit under Title IV prohibiting discrimination based on "race, color, or national origin."¹⁸⁸ In another case, a parent filed suit in federal court against a school district when his Korean-American child was sent home to be schooled due to peer harassment that including being assaulted and called "slant-eyed commie," "gook", "

183. Erin Texeira, *Asian Youths Suffer Harassment in Schools*, ASSOC. PRESS ONLINE REGIONAL, Nov. 14, 2005, http://www.amren.com/mtnews/archives/2005/11/asian_youths_suffer_harassment.php.

184. *See, e.g., Yap*, 303 F. Supp. 2d at 284 (illustrating how speaking to the parents of the harasser may not always be appropriate solution).

185. *Id.* at 291.

186. *Id.* ("The students' parents told [Siris] to stop blaming their children and accused Edward of starting up with their children.")

187. *Id.* ("Over many, if not all of the parents' objections, [Siris] disciplined the children by requiring that they eat lunch in the principal's office; [Siris] suspended them from recess for five days and [Siris] also suspended [the named attackers] from riding on the school bus for five days.")

188. 42 U.S.C.A. § 2000d (West 2007).

and “chink” by White students.¹⁸⁹ The parent’s suit was based on 42 U.S.C. § 1983 prohibiting the deprivation of a person’s “rights, privileges, or immunities secured by the Constitution and laws.”¹⁹⁰

Aggrieved parents may also file suit in state court. In one case, parents of the victimized student prevailed in an assault and battery lawsuit against students who threw erasers in class, with one eraser striking the victim student and shattering her eyeglasses, causing her to lose the use of an eye.¹⁹¹ In another case, the court held that the parents of four high school defendants were jointly and severally liable under Connecticut statutory law,¹⁹² for the high schoolers’ attack of another high schooler. All five high schoolers were released from their high school’s detention hall when four of them encircled the victim and began to push, punch, and kick him.¹⁹³ The court concluded in part that the attackers “willfully and maliciously” injured the victim.¹⁹⁴

At times, litigation pressure may induce the harasser’s parents to settle. In one instance, the harasser’s parents settled a lawsuit against their son whose harassment included kneeling the student victim and breaking the victim’s wrist while on school grounds.¹⁹⁵ In another instance, the har-

189. *Engle v. Indep. Sch. Dist. No. 91*, 846 F. Supp. 760, 760–762 (D. Minn. 1994) (“Parent brought suit against school district and officials on behalf of student, alleging violation of constitutional rights and Minnesota Human Rights Act when student was excluded for last ten days of school year for his own protection after he was threatened by other students.”).

190. 42 U.S.C.A. § 1983 (West 2008).

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer’s judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. *Id.*

191. *Keel v. Hainline*, 331 P.2d 397, 398–400 (Okla. 1958) (affirming judgment against a defendant for engaging in the throwing of blackboard erasers which ultimately injured the plaintiff’s eye). The court refused to believe that the deliberate throwing of blackboard erasers, though done without intent to injure, was an innocent pastime and, thus, held the conduct as wrongful. *Id.* at 339.

192. *Id.*

193. *Lamb v. Peck*, 441 A.2d 14, 16 (Conn. 1981).

194. *Id.* (“Where, as here, the evidence supports the conclusion that there was concerted action, each participant is vicariously liable for the entire injury caused by the concerted action.”).

195. Dan Barry, *About New York; A Boy, a Bully and Cries Unheard*, N.Y. TIMES, May 1, 2004, at B1.

asser's parents settled a lawsuit against their son who beat another boy to death at a bus stop.¹⁹⁶

In addition to civil litigation, aggrieved parents may seek a criminal prosecution. In one case, a mother sought an arrest warrant for a student who had special education classes with her son and who struck her son in the eye; subsequently, the student was arrested and plead guilty to hitting her son.¹⁹⁷

Some racial harassment situations might even permit parents to seek a hate crime prosecution. In 2006, Illinois authorities charged three high schoolers with hate crimes for spray painting anti-Semitic messages and swastikas on school property. One student plead guilty to the hate crime, while the other two went to trial and were found guilty of criminal damage charges, but acquitted of the hate crime charges. All three, however, apologized to the local Jewish family believed to be the target of the crime.¹⁹⁸

V. CONCLUSION

Schools reflect society, and just as racial tension exists in American society, racial tension exists in schools, manifesting itself all too often in peer racial attacks against APA students. Schools should be enriching learning environments, but are instead houses of horror for many APA students, a description applicable to Lafayette High School because of severe peer racial harassment against APA students amidst school administration indifference. The problem extends beyond Lafayette High School to schools around the nation, and the problem has been exacerbated by the 9/11 terrorist attacks that have subjected South Asian students to racial harassment by those who view them as terrorists.

Joey Bari is getting so many stomachaches that the school nurse thinks he has a problem. He is also writing distress signals in his journal, which Mrs. Bari hands to the principal as evidence of her son's suffering. She says the principal suggests that this is all part of growing up. *Id.*

196. Christopher Quinn, *Teen Bully's Family Settles Suit Brought By Victim's Parents*, ATLANTA J. CONST., Nov. 20, 1999, at G1 ("In a case that helped change state law, Josh Belluardo, 13, died last year after Jonathan Miller, now 15, hit him in the back of the head. John and Vickie Belluardo, Josh's parents, sued Alan and Robin Miller, Miller's parents, for \$2.5 million.").

197. *Walton v. Montgomery County Bd. of Educ.*, 371 F. Supp. 2d 1318, 132-1323 (M.D. Ala. 2005) (stating that she also sued the former superintendent and school board members for state law claims of not only assault and battery, but also negligent training and supervision).

198. Art Barnum, *Sentences Meted Out For Anti-Semitic Vandalism*, CHI. TRIB., Oct. 19, 2006, at 7 ("All three admitted participating in the Feb. 21 incident, but each also claimed he didn't scrawl the most offensive language.").

Peer racial harassment against APA students will continue as fear of terrorism remains, racial stereotypes endure, and school administration indifference persists. But steps can be taken to protect students victimized by peer harassment. Racial stereotypes can be countered, harassers can be separated from their victims, anti-racial harassment policies can be written and enforced, and schools and harassers can be held legally accountable for their actions or inactions.

The United States educational system during the period of segregation promoted racially discriminatory policies that sowed seeds of racial disension in schools. Consequently, racial tension exists in schools today. The educational system has an obligation to fix its past mistakes. Accordingly, the educational system now, through school administrators and teachers, must be an active participant in preventing racial violence and promoting racial tolerance in schools. It must turn from indifference towards racial harassment to active opposition against racial harassment; ensure school administrators and teachers are culturally competent and able to deal effectively with students from diverse backgrounds; and assume responsibility for providing all students a safe and secure environment in which to learn and excel.