

VERMONT HUMAN RIGHTS COMMISSION  
14-16 Baldwin Street  
Montpelier, VT 05633-6301

**ADMINISTRATIVE COMPLAINT**

**COMPLAINANT**

“Ms. Birch” o/b/o “C.B.”  
c/o Lia Ernst and James M. Diaz  
ACLU Foundation of Vermont  
PO Box 277  
Montpelier, VT 05601

C.B. was a tenth-grade student at Twin Valley Middle High School, part of the Twin Valley School District (“Twin Valley”) in Windham County, Vermont, during the 2020-2021 school year. She was a new student that year and was the only Black student in the school. She experienced severe and racially motivated targeting, harassment, and discrimination by peers while at school—including derogatory racial slurs, references to white supremacy, and threats of physical violence.

Despite receiving multiple reports of the harassment—from C.B., C.B.’s mother Ms. Birch, and Twin Valley teachers—school administrators took no meaningful action. Instead, Twin Valley administrators conducted cursory investigations, attempted to rationalize and minimize the harassment, or ignored it altogether. With no action from the school, the perpetrators became emboldened, and the harassment escalated. Yet still, Twin Valley administrators, despite being on notice of the harassment, did nothing to protect C.B. Fearing for her safety, C.B. suffered—she dropped out of school sports, her grades started to plummet, she developed anxiety and depression, and ultimately, was forced to transfer schools.

In failing to take meaningful action to remediate the severe and known racial harassment and discrimination against C.B., Twin Valley unlawfully deprived C.B. of her right to have a school environment free of racial discrimination. *See* 1 V.S.A. § 4502(a). Twin Valley’s deliberate indifference to the numerous reports of discrimination and harassment of C.B., and its customs, policies, and practices for responding to reports of racial harassment and discrimination, were unlawfully discriminatory. *Washington v. Pierce*, 179 Vt. 318, 326 (2005); *see* 42 U.S.C. § 2000d, § 1983. Due to Twin Valley’s actions and failures to act, C.B. was forced to transfer from Twin Valley.

**COMPLAINANT’S COUNSEL**

Lia Ernst  
James M. Diaz  
ACLU Foundation of Vermont  
PO Box 277

Montpelier, VT 05601  
(802) 223-6304  
lernst@acluvt.org

Tamara Freilich  
Hausfeld LLP  
325 Chestnut Street  
Philadelphia, PA 19106  
tfreilich@hausfeld.com

## **RECIPIENTS**

Twin Valley Middle High School  
4299 VT Route 100  
Whitingham, VT 05361

Twin Valley School District  
Central Office  
211 Route 9 West  
Wilmington, VT 05363

## **PRELIMINARY STATEMENT**

1. This complaint is filed pursuant to the Vermont Public Accommodations Act, 9 V.S.A. § 4502 et seq. (“VPAA”), which prohibits discrimination in places of public accommodation on the basis of race, creed, color, national origin, marital status, sex, sexual orientation, or gender identity.
2. As detailed in the Factual and Legal Allegations below, the Twin Valley Middle High School and Twin Valley School District (collectively, “Twin Valley”) violated C.B.’s right to a school environment free of racial discrimination when it failed to take meaningful corrective action to address repeated reports of racial harassment. Additionally, C.B. alleges that Twin Valley’s customs, policies, and practices for responding to reports of racial harassment and discrimination have a disparate impact on Black students, like C.B.
3. In order to address the discriminatory acts and policy, C.B. requests that the Vermont Human Rights Commission investigate Twin Valley to determine whether the entities (1) violated C.B.’s right to a school environment free of racial discrimination, and (2) implemented customs, policies, and practices for responding to reports of racial harassment and discrimination that result in a disparate impact on Black students.

## **JURISDICTION**

4. The Vermont Human Rights Commission has jurisdiction to investigate and enforce complaints of discrimination in places of public accommodation in Vermont. 9 V.S.A. § 4552(b)(1).

5. This complaint is timely. From December 2020 through May 2021, the Twin Valley School District discriminated against C.B. and deprived her of a school environment free of racial discrimination by failing to take appropriate remedial measures.
6. C.B. files this complaint on December 21, 2021, less than one year from last alleged discriminatory act or practice.

## **COMPLAINANT**

*C.B. is a Former Student of Twin Valley High School and Former Resident of Vermont*

7. C.B., a minor, by and through her parent and natural guardian, Ms. Birch, moved to Vermont with her parents, both Army veterans, in September 2020.
8. C.B. enrolled in Twin Valley Middle High School and began tenth grade in September 2020.
9. C.B. was the only Black student in her school.
10. At all times relevant to this Complaint, C.B. was in tenth grade.
11. C.B. fled Twin Valley in the spring of 2021, after months of bullying and discrimination on the basis of her race.
12. Beginning shortly after she began school at Twin Valley, C.B. was targeted by other students and verbally abused and threatened physically on the basis of her race.
13. C.B., and her mother, Ms. Birch, repeatedly told school officials, including teachers and Twin Valley's Assistant Principal Andrew Oyer and Principal Anna Roth, about the bullying.
14. Twin Valley eventually conducted two investigations under the Twin Valley Unified Union School District's Policy for the Prevention of Harassment, Hazing, and Bullying of Students and accompanying Procedures, but no remedial action was ever taken. C.B. was forced to remain in classes with her student perpetrators.
15. In fact, Twin Valley's actions only caused C.B. further harm, leaving her vulnerable to more severe bullying and threats to her physical safety.
16. C.B. was trapped in an environment where her mental and physical safety were constantly put at risk, with no help or assistance from Twin Valley administrators. Unsurprisingly, C.B. began to struggle: her grades suffered, she stopped playing school sports, she was afraid to be alone, she became so anxious she developed severe scabs on her head from scratching, and eventually she started taking Zoloft for anxiety and depression.
17. In spring of 2021, after months of begging for substantive changes, and with only a few

weeks left in the school year, Ms. Birch transferred C.B. to Brattleboro Union High School.

18. At the end of the school year, C.B. left Vermont and is currently attending high school in Arizona. She has slowly recovered from the trauma of being trapped in an unsafe environment—joining sports teams, making friends, and feeling safe enough to be alone—but she still struggles from social and generalized anxiety.

## **RECIPIENTS**

19. Twin Valley Middle High School is a public accommodation in Windham County, Vermont.
20. The Twin Valley School District is a public accommodation in Vermont.
21. The following individuals, though not parties, work or worked for the Recipients:
  - a) Anna Roth was the Principal of Twin Valley.
  - b) Andrew Oyer was the Assistant Principal of Twin Valley.

## **FACTS**

### **I. Race Harassment and Discrimination Plagued C.B.’s Experience at Twin Valley**

22. C.B. moved to Vermont in September 2020 and subsequently began the tenth grade at Twin Valley. With two parents in the Army, C.B. had been to a lot of new schools before and was excited to finally settle into what her family anticipated would be a long-term stay. While she was nervous when she first enrolled, she quickly made friends and joined the basketball team.
23. But soon, C.B. became the target of racial discrimination and bullying from her peers.
24. In December 2020, one of C.B.’s peers directed an extreme racial slur (the “N-word”) at C.B., the only Black student in the Twin Valley school, in front of her teacher and a classroom of students. After the teacher informed the Twin Valley principal, Anna Roth, of the incident, Principal Roth initiated an investigation.
25. Ms. Birch, C.B.’s mother, found out about the incident only after Principal Roth sent her an official letter notifying her that an investigation had been initiated. When Ms. Birch reached out to Principal Roth to discuss the incident, Roth stated that she was “deeply concerned by the situation and absolutely committed to addressing it[,] [w]hether this is an isolated incident or part of a larger cultural issue.” Exhibit 1. With this, Ms. Birch and C.B. hoped action would be taken.

## II. Twin Valley Ignored the Racial Harassment and Discrimination and Failed to Take Adequate Steps to Address It.

26. Yet, in what soon became an apparent pattern, Twin Valley did nothing to protect C.B. Principal Roth's "investigation" did not include C.B. or Ms. Birch, resulted in no actual or tangible action, and, ultimately, put the onus on C.B. to avoid the harassment. The outcome: the student-perpetrator of the racial slur was not punished, no action was taken to protect C.B. from future harm (*e.g.*, neither classes nor seating assignments were adjusted), and C.B. was told that it was *her* responsibility not to talk to the student-perpetrator.
27. With no protection from the school, the student-perpetrator became emboldened.
28. In February 2021, C.B. was again subjected to racial harassment, this time at the hands of multiple students. While C.B. was walking in the halls of Twin Valley, a group of male students, including the student-perpetrator from the December incident, directed the Nazi salute at C.B., while yelling the "N-word" at her. A Twin Valley employee working in the front office witnessed this incident and, on information and belief, reported it to the principal. It became a consistent practice of these boys to direct the Nazi salute towards C.B. (and only C.B.) when they saw her in the halls of Twin Valley.
29. C.B. went to the Assistant Principal, Andrew Oyer, who claimed there wasn't enough evidence for him to take any action. And so, as was Twin Valley's pattern, Twin Valley changed nothing for C.B. and allowed her to continue to be the victim of racial harassment.
30. With again no intervention from the school, the harassment continued to escalate. Just a few days after the first Nazi salute incident, one of the same boys "flinched" at C.B., *i.e.*, lunged at C.B. in a sudden and threatening manner, invading C.B.'s personal space and causing her to become scared for her physical safety.
31. Later that month, at a school event, C.B. confided in two teachers about the multiple incidences of racial harassment against her and the lack of response from the school. The teachers reached out to Ms. Birch about the racial harassment against C.B.—the first time Ms. Birch was contacted by the school since the December 2020 incident, despite Assistant Principal Oyer having learned about further harassment earlier that month—saying that while as teachers they "can't promise what the principal will do, [they] will really push her to have some ***real punishment*** . . . that's something that needs to happen." (emphasis added). Exhibit 2.
32. "Disturb[ed]" by the racial harassment and the lack of response from the school ("nothing happened [in response] to the first offense"), the teachers reached out to the school's diversity group with a draft letter to send to Principal Roth "to make sure something is done [to address the harassment] in a timely manner," and ensure "that the school will act on this." Exhibit 3.
33. The teachers understood what needed to be done: "Going forward, the school should ensure that [C.B.] is safe and that [the students] don't come after her with any harassment . . . that should definitely be part of the plan the principal puts together." See Exhibit 4.

34. Yet still, Principal Roth failed to take any actual, tangible, or meaningful steps to protect C.B.
35. Meanwhile, trapped at school and forced to attend class with and see those who continued to harass her, with no help from the school, C.B.'s health suffered. She never wanted to leave her house, afraid she might run into other students. She feared for her physical safety, scared to be alone. She developed an anxious tic, scratching her head until it bled. Her anxiety and depression got so bad she sought professional help and started taking medication. Her grades started dropping and she left the sports team.

### **III. Twin Valley Allowed the Racial Harassment and Discrimination to Exist and Continue Against C.B., Ignoring the Problem and Failing to Take Adequate Steps to Address It**

36. On March 1, 2020, after the teachers reported the harassment to Ms. Birch, Ms. Birch met with Principal Roth and Assistant Principal Oyer to discuss C.B.'s safety at school. It became clear that the school administrators were not taking C.B.'s continued harassment seriously. In discussing the boys' harassment in directing a Nazi salute at C.B., Assistant Principal Oyer asked Ms. Birch if C.B. "identified as Jewish," trying to rationalize the students' aggressive and hostile conduct and minimize its impact on C.B. Principal Roth too tried to minimize the effect on C.B., telling Ms. Birch that the Nazi salute was "just something the kids did here," that it had happened the previous year, and that was not about C.B.
37. After the meeting with Ms. Birch, that same day, the school did, finally, initiate an official investigation. However, once again, the "investigation" went nowhere. Four days later, on March 5, 2021, the school completed its investigation and "found no substantiation of a violation of our policy." The school refused to provide any further details about how the investigation was conducted, keeping C.B. and Ms. Birch completely in the dark and allowing C.B. to remain a target of continued racial harassment.
38. As before, with no action from the school to protect C.B., C.B.'s perpetrators became emboldened, and more students started joining in on the harassment. Various students started threatening C.B., calling her a "snitch," saying they won't ever stop calling her the "N-word" and that she should move out of Vermont.
39. On or around March 23, 2021, a Snapchat video captured the same group of male students at the school yelling the "N-word" and "Burn, Burn, Burn!" and that they "hope [C.B.] burns in hell."
40. The school initiated another investigation, informing Ms. Birch by letter the same day. While the final investigation found a "substantiation of a violation of the school's policy," the school provided no actual, tangible plan to protect C.B. Once again, no meaningful action was taken to protect C.B. despite Ms. Birch's suggestions—no teachers were put in the hallways for extra monitoring, neither C.B. nor her perpetrators were reassigned classes, and none of the perpetrators were removed from school or class.
41. Instead, the school, without conversation with C.B. or Ms. Birch, initiated a group counseling circle, where C.B. and her classmates were meant to discuss the harassment. But this turned

into another avenue for students to target C.B., with students laughing the entire time and failing to take it seriously. C.B.'s school psychologist witnessed this counseling circle. Despite openly acknowledging to C.B. that the counseling circle only worked to cause C.B. further harm, Principal Roth took no other action to protect C.B.

42. Despite repeated requests and ample notice of the racism and harassment against C.B., Twin Valley took no meaningful action to protect C.B. or remediate the rampant racism in its school.
43. Any alleged *current* efforts by Twin Valley to address racism do not mitigate its repeated failure to investigate the complaints of racial harassment and discrimination against C.B. and adequately train its employees on how to properly handle racial discrimination in its schools, despite repeated pleas from C.B., Ms. Birch, and teachers.

#### **IV. C.B. Suffered Harm As a Result of Twin Valley's Failure to Take Meaningful Action**

44. Twin Valley's repeated failure has resulted in injury to C.B.
45. After watching her daughter be subjected to racial harassment for months, with no action from the school, Ms. Birch was forced to take matters into her own hands and requested to transfer C.B. to another school. When she discussed this with Principal Roth and Assistant Principal Oyer, she was told it likely wouldn't be approved because one of the student-perpetrator's parents was a member of the School Board.
46. Finally, understanding that Twin Valley would do nothing to help her or C.B. and that further outreach to the school would be futile, Ms. Birch reached out to the Windham County Chapter of the National Association for the Advancement of Colored People, who helped C.B. get approval to transfer to Brattleboro High School.
47. The deliberate indifference of Twin Valley to the racially hostile educational environment in which C.B. was forced to learn caused her to transfer schools with only a few weeks left in the calendar year.

#### **LEGAL ALLEGATIONS**

##### **COUNT I: VPPA – DELIBERATE INDIFFERENCE TO PEER HARASSMENT**

48. Complainant realleges and incorporates by reference the preceding paragraphs as if fully set forth herein.
49. The Vermont Public Accommodations Act ("VPPA") states that any person who is aggrieved by discrimination in a place of public accommodation may file a complaint with the Human Rights Commission or they may bring an action in the Superior Court. 9 V.S.A. § 4506(a).
50. Under the VPPA, a place of public accommodation shall not "because of the race . . . of any person, refuse, withhold from, or deny to that person any of the accommodations,

advantages, facilities, and privileges of the place of public accommodation.” 9 V.S.A. § 4502(a).

51. Schools are considered places of public accommodation. 9 V.S.A. § 4501. As such, Twin Valley had a duty to provide C.B. with a school environment free of racial discrimination.
52. Twin Valley violated C.B.’s right to a school environment free of racial discrimination when it failed to take meaningful corrective action to address reports of racial harassment and discrimination. Twin Valley’s failure to take appropriate action included, without limitation:
  - a) Ignoring or minimizing racial slurs repeatedly used by white students against C.B.;
  - b) Refusing to take meaningful action to address reports of race-based, violent threats against C.B.;
  - c) Ignoring reports of racial harassment and discrimination made by teachers and Ms. Birch on behalf of C.B.;
  - d) Creating a hostile educational climate that tolerates racial harassment and discrimination, including the threat of bodily harm;
  - e) Failing to appropriately discipline students who subjected C.B. to racial harassment and discrimination;
  - f) Failing to take meaningful action to correct the conditions causing the racial harassment and discrimination and to prevent its recurrence; and
  - g) Failing to provide adequate training for its administrators and employees to prevent and address racial harassment and discrimination despite having notice that its procedures were inadequate and resulting in a violation of C.B.’s rights.
53. Twin Valley’s actions and decisions have deprived C.B. of the advantages and privileges guaranteed to her under the laws of Vermont, in violation of V.S.A. § 4502.
54. As a direct result of the actions and conduct of Twin Valley, C.B. suffered and continues to suffer loss of educational opportunities, advantages, and privileges, along with injuries, damages, and losses, including, but not limited to: emotional distress, fear, anxiety and trauma; and other damages.

#### COUNT II: VPPA – DISPARATE IMPACT

55. Complainant realleges and incorporates by reference the preceding paragraphs as if fully set forth herein.
56. In addition to constituting individual disparate treatment of C.B. by depriving her, specifically, of a school environment free of racial discrimination, Twin Valley’s policy and practice of failing to investigate or address peer harassment has a disparate impact on

students of color in violation of the VPPA.

57. To make a prima facie case of disparate impact under analogous federal standards, “a plaintiff must show a preponderance of the evidence that a facially neutral practice has a racially disproportionate effect.” *Ga. State Conf. of Branches of NAACP v. Georgia*, 775 F.2d 1403, 1417 (11th Cir. 1985) (applying Title VI).
58. Similarly, to establish a prima facie case of disparate impact in Vermont employment law, the plaintiff need only show “that the [] practice has a discriminatory impact on a protected class.” *Lavalley v. E.B. & A.C. Whiting Co.*, 692 A.2d 367, 371-72 (Vt. 1997).
59. Under a disparate impact standard as prohibited by the VPPA, Twin Valley’s official policy of responding to reports of racial harassment and discrimination is facially neutral but results in a discriminatory impact upon students of color.
60. At all relevant times, Twin Valley’s unwritten customs, policies, or practices of (a) failing to appropriately investigate and respond to reports of racial harassment and discrimination against C.B., including reports by C.B., Ms. Birch, and Twin Valley teachers; (b) failing to enforce its policies prohibiting discrimination and harassment; and (c) failing to adequately train Twin Valley administrators and employees on how to recognize, address, and prevent racial discrimination against its students, are also unlawfully discriminatory under the VPAA because they have a disparate impact on Black students.
61. As a direct and proximate result of the pattern and practice of Twin Valley, C.B. has suffered and continues to suffer losses of educational opportunities and benefits, along with injuries, damages and losses, including, but not limited to: emotional distress, fear and anxiety and trauma; and other damages.

### **RELIEF REQUESTED**

62. Complainant respectfully requests that the Human Rights Commission:
  - a. Declare that Twin Valley deprived C.B. of an education environment free of racial discrimination;
  - b. Declare that Twin Valley’s customs, policies, and practices for responding to reports of racial harassment and discrimination are unlawfully discriminatory;
  - c. Demand just compensation and other relief as appropriate for Complainant; and
  - d. Demand that Twin Valley reimburse Complainant for her reasonably incurred costs and attorney fees in filing and pursuing this complaint.

/s/ C.B.

---

C.B.

/s/ Ms. Birch

---

Ms. Birch

Date: December 21, 2021

Lia Ernst  
James M. Diaz  
ACLU Foundation of Vermont  
PO Box 277  
Montpelier, VT 05601  
(802) 223-6304  
[lernst@acluvt.org](mailto:lernst@acluvt.org)  
[jdiaz@acluvt.org](mailto:jdiaz@acluvt.org)

Tamara Freilich  
Hausfeld LLP  
325 Chestnut St.  
Philadelphia, PA 19106  
[tfreilich@hausfeld.com](mailto:tfreilich@hausfeld.com)

*Counsel for Ms. Birch o/b/o C.B.*