

Edward McDonough  
Superintendent  
Portsmouth School Department  
1 Junkins Avenue, Suite 402  
Portsmouth, New Hampshire 03801

Re: OCR Complaint No. 01-13-1159  
Portsmouth School Department

Dear Superintendent McDonough:

This letter is to inform you that the United States Department of Education (Department), Office for Civil Rights (OCR) has completed its investigation of the above-referenced complaint. The Complainant alleged, on behalf of a student (Student), that the Portsmouth School Department (District) failed to respond to incidents of sexual harassment perpetrated by a teacher (Teacher) at the Portsmouth High School (School). The Complainant further alleged that, although he reported these incidents to School and District staff, the District did not take timely or effective action in response, so that the Student and her peers were subjected to additional sexual harassment. As described in more detail below, OCR identified compliance concerns from its investigation of this complaint, which the District has agreed to remedy by implementing the enclosed Voluntary Resolution Agreement (Agreement).

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 and its implementing regulation at 34 C.F.R. Part 106 (Title IX), which prohibit discrimination on the basis of sex. The District is subject to the requirements of Title IX because it receives Federal financial assistance from the Department.

Based on the Complainant's allegations, OCR investigated the following legal issue:

- Whether the District failed to promptly and effectively respond to the Complainant's reports of incidents of possible sexual harassment, in violation of 34 C.F.R. Section 106.31(a) and (b).

During the course of investigation, OCR also obtained information regarding the following legal issue:

- Whether the District failed to comply with the requirements of Title IX's implementing regulations, at 34 C.F.R. Sections 106.8 and 106.9, that it: designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX; adopt and publish grievance procedures to provide a prompt and equitable resolution to any complaints of non-compliance; and provide broad notice that it does not discriminate on the basis of sex in any of its programs or activities.

Regarding its investigation, OCR met with the Complainant and reviewed information that he provided. OCR also requested and reviewed information from the District, including all documentation relating to the incidents alleged above, as well as documentation regarding other incidents of possible sexual harassment, including the District's handling of such incidents. Additionally, OCR reviewed the District's policies and procedures for addressing sexual harassment allegations. Finally, OCR conducted an onsite to interview District staff including the Teacher, Assistant Principal, the Student's Guidance Counselor and the District's Title IX Investigator, on September 19, 2013. While onsite, OCR also conducted a student focus group to gauge the climate at the School with regards to the District's handling of allegations of sexual harassment.

### Legal Standards

The Title IX implementing regulation, at 34 C.F.R. Section 106.31(a), provides that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity operated by a recipient such as the District. Harassment on the basis of sex, i.e., unwelcome physical, verbal or other conduct of a harassing nature, is one such form of prohibited discrimination.

The Title IX regulations establish procedural requirements that are important for the prevention and correction of sex discrimination, including sexual harassment and retaliation for assertion of Title IX rights. At 34 C.F.R. Section 106.8(a), the regulation requires that recipients designate at least one employee to coordinate compliance with the regulations, including coordination of investigations of complaints alleging non-compliance. The regulations further require that recipients issue a policy against sex discrimination, at 34 C.F.R. Section 106.9, as well as adoption and publication of grievance procedures that provide for the prompt and equitable resolution of complaints of sex discrimination, including retaliation, as provided at 34 C.F.R. Section 106.8(b).

School districts may violate Title IX when peer harassment based on sex is sufficiently serious that it creates a hostile environment and such harassment is encouraged, tolerated, not adequately addressed, or ignored by school employees. Additionally, school districts are directly responsible for any sex-based discrimination perpetrated by their employees during the course of carrying out the employees' day-to-day job responsibilities for providing aid, benefits, or services to students, such as teaching.

Thus, school districts are responsible for addressing all possible incidents of peer-to-peer sexual harassment about which they know or reasonably should have known, regardless of whether a student who was allegedly harassed (or his/her parents) decides to file a formal complaint or otherwise requests action. School districts are further responsible for any sex discrimination perpetrated by employees while they perform their jobs, irrespective of whether other district staff are aware of the discrimination. These are a recipient's responsibility regardless of whether a student has complained, asked the school district to take action, or identified the harassment as a form of discrimination.

Sexual harassment rises to the level of a hostile environment when sex-based, harassing conduct is sufficiently serious so as to deny or limit the ability of an individual to participate in or benefit

from the services, activities or privileges provided by a school. It is important to note that sexual harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents, to constitute prohibited discriminatory conduct. Also, some misconduct that may fall under a school's anti-bullying policy could also trigger responsibilities under Title IX; thus, districts must consider Title IX's requirements when responding to such conduct, even if the misconduct also is covered by an anti-bullying policy.

Accordingly, when responding to alleged harassment, a recipient must take immediate and appropriate action to investigate or otherwise determine what occurred and then respond appropriately. What constitutes a reasonable response to harassment will differ depending on the circumstance. However, in all cases where harassment is found to have occurred, if an employee is the harasser, or if a school district knows, or reasonably should have known, about possible peer-to-peer sexual harassment, Title IX requires the school district to take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and, where appropriate, its effects that were created by the harassment, and prevent the harassment from recurring.

Title IX also requires that a school take interim steps, as necessary, to protect the complainant before the final outcome of the investigation. The school should undertake these steps promptly once it has notice of a sexual harassment allegation, such as by notifying the complainant of his/her options to avoid contact with the alleged perpetrator and by allowing students to change academic situations as appropriate. In addition, schools should ensure that complainants are aware of their Title IX rights and any available resources, such as counseling, health, and mental health services.

Remedies to end the harassment may include disciplining the harasser, as well as training that person about sexual harassment. In some circumstances, training staff who are involved in processing, investigating, or resolving complaints of sexual harassment might be necessary, including providing training on how to conduct Title IX investigations. Remedies to address the effects of sexual harassment will depend on the specific nature of the problem. Such remedies could include, but are not limited to: ensuring that affected students and the alleged perpetrator are no longer in the same classes (with minimal burden on the affected student); providing counseling services; and providing tutoring or other academic support as needed.

While Federal privacy laws limit disclosure of certain information, so that schools should make every effort to prevent disclosure of the names of all parties involved (including witnesses), Title IX requires that both the complainant and accused be notified, in writing, about the outcome of a sexual harassment complaint and any appeal, *i.e.*, whether harassment was found to have occurred. Additionally, schools must provide the victim of harassment with information about the sanction imposed on the perpetrator to when the sanction directly relates to the victim, such as an order that the harasser stay away from the harassed student, that the harasser is prohibited from attending school for a period of time, or was transferred to other classes. This is part of eliminating a hostile environment for the victim, where such a hostile environment has been found.

### Findings of Fact

*Policies and Procedures*

OCR found that the District appropriately has a “Notice of Non-Discrimination” (Notice) that states that it does not discriminate on the basis of race, color, religion, marital status, national/ethnic origin, age, sex, sexual orientation, or disability in its programs, activities and employment practices.” The Notice is posted on the District’s website and is also published in both the School’s Handbook and the District’s Employee Manual.

The Notice described above states that the Director of Pupil Instruction and Support (Director) will handle all inquiries regarding the District’s non-discrimination policies. Her contact information, including mailing address and phone number, is included in the Notice.

OCR found that the District also has a Harassment Policy (Policy) to address sexual harassment allegations, which is widely disseminated via the District’s website, its school handbooks and its Employee Manual. The District told OCR that the Policy is the same for both students and faculty (although there are separately-numbered policies for students and for staff, policies JBAA and GBAA, respectively, they are otherwise identical). The Policy identifies the Director as the Title IX Coordinator for student matters, while listing the District’s Human Resources Director as the designated Title IX Coordinator for staff.

The Policy defines sexual harassment to include verbal, physical and non-physical conduct “of a sexual nature” when, among other instances, such conduct “has the purpose or effect of unreasonably interfering with an individual’s education or creating an intimidating, hostile or offensive educational environment.” The Policy further notes that sexual harassment “may be indirect and even unintentional” and can include “offensive jokes, stories and other sexually-oriented statements.”

Regarding the process for complaints of sexual harassment, the Policy provides that teachers or staff who become aware of harassing conduct, and/or a complaint of harassment, must report it immediately, to the Superintendent of Schools, Assistant Superintendent, School Principal or Assistant School Principal, who shall immediately notify the Title IX Coordinator(s) for the School Department. Complaints may also be made directly to the Title IX Coordinator(s).

According to the Policy, complaints will then be promptly investigated by the Title IX Coordinator(s); it makes no mention of the Title IX Investigator. The Policy states that investigations will be conducted as discreetly and as confidentially as possible, “consistent with the need to conduct a prompt and thorough investigation.” They are to be completed within five school days after the District receives a complaint, “unless unique circumstances prevent completion of the investigation in that time period, “in which case, it “shall be completed as promptly as reasonably possible.”

The Policy provides that “appropriate action will be taken, which will depend on the nature and severity of any incident.” Although the investigation is allowed to take five school days, the Policy states that the Principal will decide the “status of the alleged harasser within two (2) school days after receiving a complaint,” pending the completion of the investigation. Specifically, the alleged harasser(s) may be suspended or other actions taken to facilitate the investigation and/or to

minimize the possibility of retaliation or reoccurrence of the harassment. Depending on whether the alleged harasser(s) is/are students or employees, the appropriate procedures for suspensions in School District policies or collective bargaining agreements shall be observed, to the extent that they are not in conflict with State and Federal civil rights laws.

Regarding actions taken as a result of any investigation, the Policy provides that the Superintendent, Assistant Superintendent or building Principal will start action to “resolve the complaint,” within two school days of receiving the outcome of the investigation. While the Policy notes possible consequences for the alleged harasser, up to expelling students or dismissing employees, it does not include any actions to support the complainant/victim either during, or upon completion of, any investigation. The Policy provides that the complainant and alleged harasser will be “kept informed of the status of the investigation and will be provided timely notice of its conclusion,” but does not include notice of the result of the investigation. Finally, the Policy explicitly provides that retaliation will not be tolerated and that retaliatory actions could constitute a new complaint.

During the 20XX-20XX school year, the operative year for this complaint, the Student was in XXX XXXXX XXXX of high school. The Teacher has been a teacher at the School for more than XXX XXXXXXXX. The Student was in one of the Teacher’s classes, which included students from all four grades at the School.

The parties provided similar accounts of the “XXXX/XXXX” game that occurred in early XXXXXXXX 20XX. The game consisted of the Teacher asking the class XXXXXXXX language vocabulary questions. Students who answered correctly could choose between a reward of a “XXXX,” i.e., to kiss the Teacher, or a “XXXX” (a XXXXXXXX coin). OCR learned that the Teacher had been playing the game for years, and in fact had played it in other classes during that fall, including in classes that he covered for other teachers, though the Teacher told OCR that no one had previously chosen the XXXX option. After one student did so in this class, and kissed the Teacher on the cheek, three other students did likewise, while the class laughed and some students took videos of the students kissing the Teacher on the cheek.

When he learned of the game, the Complainant called the School and reported it to the Assistant Principal. She immediately went to the classroom, pulled the Teacher out and asked if he was making students kiss him. He said no and described the game. The Assistant Principal told him that a parent had called, so he needed to stop playing it. The Teacher did stop the game; he told the Assistant Principal that he would welcome having the parent call him to discuss any concerns.

According to emails, which OCR reviewed, the Assistant Principal thanked the Complainant for bringing the matter to her attention. She wrote that “the matter had been addressed and the Principal informed,” for which the Complainant thanked her. School administrators did not take any further action at that time.

Both the Teacher and Assistant Principal told OCR, however, that the Teacher sought out the Assistant Principal and Principal later that day, to understand why the game was inappropriate; he also spoke to other teachers about the game. While everyone with whom he spoke told him it was “inappropriate,” or “crossed the line,” interviews with District staff confirmed that no staff

person communicated to the Teacher that the game could constitute sexual harassment in violation of the District's sexual harassment policies and Title IX.

Subsequently, the Complainant reported additional incidents of possible sexual harassment by the Teacher. In an email to the Assistant Principal dated November 1, 20XX, the Complainant first alleged that throughout the school year, the Teacher was continually joking to a specific student about showing pornography, while showing the class movies that included nudity and graphic sex such as the HBO series "Rome" and the movie "Casa de Mi Padre."

The Teacher acknowledged to OCR that he showed the entirety of a season of "Rome," (in XXXXXXXX), as well as "Casa de Mi Padre" and other films, in 5-10 minute increments at the end of each class. He said that he did this to encourage student engagement by showing well-known shows. As the Complainant alleged and the Teacher confirmed, at the beginning of the year, a student in the Student's class (Student A) asked the Teacher if he showed "porn" in his class, because other kids had said that he did. After that, when nudity or a sex scene occurred in shows or films, the Teacher would sometimes comment, "Here's your porno, [Student A]."

Additionally in his November 1 email, the Complainant reported, and the Teacher and District staff confirmed, that the Teacher recently joked to the class that he kept trick-or-treaters away from his home on Halloween by posting a sign that he was a convicted sex offender. The Teacher further drew an illustration of a house and the sign on the whiteboard in front of the class.

The Assistant Principal provided the Complainant's email to the Title IX Investigator on XXXXXXXXXX X, 20XX, the same day she received it. The Assistant Principal also forwarded the Complainant's email to the Principal, who met with the Teacher that afternoon, and suspended him pending the outcome of the investigation. Finally, the Assistant Principal arranged to meet with the Complainant and Student early the following morning, before school started.

According to the Assistant Principal's notes, after the Assistant Principal spoke to him following the XXXX/XXXX game, the Teacher returned and told the class that they had to stop "because ... a parent...complained." The following day, the question for the daily opinion quiz that the Teacher usually gave was: "what did you think of the kissing game?" The Teacher told the class that he had talked to other teachers about the game but was confused as to why he couldn't play it anymore and wanted their input. The Teacher told OCR that this was his motive in asking the question; the Complainant told OCR that he felt these two actions suggested that the Teacher was trying to find out who had reported the game.

The Assistant Principal provided her notes of this meeting to the Title IX investigator, who investigates all allegations of sexual harassment, as well as allegations of bullying. The Title IX investigator is an independent contractor for the District, though she used to be its Special Education Director and had other roles in the District before retiring and taking on these investigations. Although she is not the Title IX Coordinator for the District, at least two staff interviewed by OCR reported that she is.

Shortly thereafter, the Title IX Investigator interviewed the Student, Complainant, Teacher and Guidance Counselor. She did not interview any other students from the class, however, nor any of

the teachers that were cited by the Teacher as having knowledge of his years of playing the XXXX/XXXX game. For instance, OCR noted that Student A, at whom the Teacher directed the porn comments, had not been interviewed. The Title IX investigator said she did not interview any other students from the class because she did not want to make the Student a target.

Following the interviews, the Title IX Investigator drafted a "Title IX Investigative Report," (Report), dated Monday, XXXXXXXX X, 20XX. She wrote, "I find true that [the Teacher] created a hostile classroom environment in connection with certain classroom activities that violated the school department sexual harassment policy," citing the kissing game, R rated movies and the sex offender comment. The Report stated that those activities "had no place in the curriculum and though [the Teacher's] intentions might have been in the right place, the activities proved damaging to a student." OCR noted that the Report inaccurately states that the incidents all occurred on one day, XXXXXXXX X, 20XX (the day after the Title IX Investigator received the complaint), rather than as a series of multiple incidents that occurred throughout the fall of 20XX.

The Report recommended in-depth sexual harassment training for the Teacher; X XXXXXXXX XXXXXX for the Student, which occurred shortly thereafter; that no retaliatory actions be taken towards reporting parties; and appropriate disciplinary action as determined by the District's administration.

While the Teacher was immediately apprised of the results of the investigation, the District did not initially inform the Complainant or Student that the investigation was complete, nor that the District had found that a hostile environment had been created. The Complainant continued providing information for the investigation to the Assistant Principal up through XXXXXXXXXX XXX; even though the investigation had already been completed by then, and the Assistant Principal responded that she would forward the emails to the Title IX Investigator.

As a result of the investigation, the District further disciplined the Teacher. OCR also confirmed from multiple sources that he completed the recommended training, conducted by the District's attorney, on XXXXXXXXXX XXX and XXX. From its interview of the Teacher, OCR noted that the Teacher displayed knowledge of sexual harassment and the District's policies and procedures related to it.

The Teacher returned to School on XXXXXX, XXXXXXXXXX XX, 20XX. The District did not notify the Complainant or Student when the Teacher would be returning; instead, she found out on the day that he returned, from other students who had seen him in school.

In addition to failing to provide the results of the investigation or informing the Complainant or Student when the Teacher was returning to school, the District did not provide any formal assessment of the impact of the harassment, or any follow-up services for the Student. When OCR asked about this, District staff said that the Guidance Counselor was always available for assistance, but that the Student "seemed fine" and had not asked for help.

The Complainant repeatedly called and emailed the District requesting the outcome of the investigation. Finally, on XXXXXX X, 20XX, the District provided a summary copy of the Title IX

Investigator's report (Summary Report). This was the first time that the Complainant and Student learned that the District had found that a hostile environment had been created.

To learn about the District's investigation process in general, OCR requested that the District provide all informal and formal complaints of sexual harassment and/or inappropriate behavior that had been raised by students and/or staff for the 20XX-20XX school year, along with any investigative materials and findings for each. The District provided documents on 30 such complaints, which OCR reviewed.

From reviewing the reports, OCR learned that, for each complaint, the Title IX Investigator would first review the information she received, usually from an assistant principal, before she spoke to the alleged victim and perpetrator(s) of bullying or harassment. Although the Title IX Investigator told OCR that she would also interview anyone mentioned by either party, OCR noted that for the investigation into the incident that gave rise to this complaint, the individuals mentioned by either the Teacher or Student, such as other students or teachers, were not interviewed.

After conducting interviews, the Title IX Investigator would draft a report that summarized those interviews, provided her determination of whether bullying and/or harassment had occurred, and included her recommendations.

The recommendations usually consisted of a mediation of the parties for initial incidents, followed by a recommendation that the involved students be separated, including changing their schedules. The Title IX Investigator stated, and other District staff confirmed, that she did not have any authority to implement the recommendations. Rather, she would provide a copy of the reports to the Assistant Principal, who would then determine whether any additional measures needed to be taken, such as further discipline. In one instance where mediation was recommended, the harassed individual did not wish to participate with the harasser; it does not appear that any other remedies or steps were taken to address the harassment. In this matter, the Assistant Principal told OCR that she did not initially receive a copy of the investigation, because it was a personnel matter involving a teacher; thus, only the Principal would be able to see it.

OCR observed that although all of the reports were titled "Title IX Investigative Report," many involved misbehavior that was not sexual, i.e., did not involve any sexual language or conduct. In contrast, some of the incidents investigated were not found to constitute possible sexual harassment, even though they clearly involved sexual conduct. For instance, one investigation found that that, on social media and in school, one student had repeatedly called another a "slut" and a "whore," and alleged that she had engaged in various sex acts. The investigation did not include any inquiry into sexual harassment, however.

Accordingly, OCR asked the Title IX Investigator to describe the standards that she used to differentiate between bullying and harassment. She was unable to do so, stating only that it was difficult to define them separately because they were interconnected. When OCR asked about the above investigation involving repeated sexual language on social media and in school, the Title IX Investigator explained that it was a "boy-girl" thing involving students who XXX XXXXXX XX a few weeks prior, and thus did not constitute sexual harassment.

OCR also asked the Title IX Investigator what standard she had used to determine that a hostile environment had been created by the Teacher's classroom activities, and whether that meant that a hostile environment *based on sex* had been created. The Title IX Investigator volunteered that, despite what she had written in the Report, she didn't feel "like this was a hostile environment," though it was "definitely not a best practice," because the Teacher "did not intend to be mean or intimidating." OCR asked why her report stated that there was a "hostile classroom environment;" she responded that she felt limited by the policy, because the three incidents fit the description of the policy, but she didn't think that the Teacher was "inappropriate, sexually - he wasn't being unsafe." This sentiment that the Teacher was unorthodox but not "inappropriate, sexually," was also echoed by two other staff members whom OCR interviewed.

OCR asked the Title IX Investigator if intent was necessary to find a sexually hostile environment; the Title IX Investigator responded "I would think so." She further clarified that she did not think there had been a hostile environment for any other students in this case. OCR asked how she knew that no other students had been affected, since she had not interviewed any other students. The Title IX Investigator responded that no one else had reported any concerns with the Teacher's behavior.

### Analysis

OCR found a number of concerns with the District's specific response to the Complainant's reports of sexual harassment, as well as systemic concerns regarding staff understanding of sexual harassment and the District's Policy and procedures for addressing such harassment.

First, OCR found that the District failed to comply with Title IX's obligation to address all possible incidents of sexual harassment, by failing, at first, to treat the XXXX/XXXX game as an incident of possible sexual harassment. It was clearly sexual conduct (kissing), invited by District staff in the course of providing the District's educational program. Although two administrators and some teachers told the Teacher that the game was inappropriate, no District staff informed the Teacher that his actions could violate the District's sexual harassment policies by potentially creating a hostile or offensive educational environment. OCR found that District staff did not understand that the XXXX/XXXX game was possible sexual harassment; instead, the Assistant Principal stopped the game only because someone had complained and because she viewed the conduct as inappropriate. The incident was not further addressed until the Complainant reported additional incidents.

Second, once the District did begin an investigation of the Teacher's conduct, it failed to thoroughly investigate to determine the extent of possible sexual harassment by the Teacher. Specifically, the investigation did not include inquiries into whether other individuals were affected, nor whether there were other incidents of potential sexual harassment, even though the facts gathered through the District's investigation warranted further investigation. For instance, Student A, who was the target of the Teacher's "porn" comments, was not interviewed about how often such comments were made, nor whether the conduct upset her or any other students. Similarly, regarding the XXXX/XXXX game, the Teacher volunteered in his interview with the Title IX Investigator that he had played the game in other classes, but she did not investigate any other instances of the game. Additionally, the investigation did not include interviews with any other

students in the class, even though the entire class had been subjected to the Teacher's behavior, to determine if others were similarly affected by the game, comments and movies with nudity and sex. District staff told OCR that they did not believe any other students had been affected, because no other students or parents raised any concerns and the Teacher had said students were laughing about the incidents. As a result of failing to fully investigate, however, the District did not actually determine the extent of the hostile environment, in particular, whether any other students *had* been affected.

The District also failed to provide the Student and Complainant with timely notice of the outcome of the investigation, as required by Title IX. While the Teacher was immediately informed about the investigation's result, the District did not inform the Complainant or Student of the outcome until XXXXX XXX (and then only because the Complainant repeatedly requested, then demanded to know the outcome) - three months after the District had found that the Teacher had created a hostile environment. As discussed in the legal standards, notifying the victim of harassment of the outcome of a sexual harassment investigation, and of the actions taken toward the accused that affect the victim, is part of helping to eradicate any hostile environment.

Finally, the District did not at any point determine the impact of the harassment on the Student or others, nor consider whether any supports (e.g., counseling, tutoring) or other remedies were needed. Rather, District staff told OCR that they believed the Student was "fine" and that the availability of the Guidance Counselor was sufficient, because the Student did not raise any additional concerns.

### *Systemic Issues*

OCR found that the Policy lacks certain elements of a grievance procedure that are required by Title IX. First, it does not require that complainants (as well as individuals accused of harassment) be provided the opportunity to present witnesses or information for the investigation. Additionally, it does not include notification to the complainant and alleged harasser of the outcome of an investigation, as required by Title IX. Instead, the Policy notes only that both individuals will be informed of the status of the investigation and will receive timely notice of when the investigation is complete. Additionally, it does not include any assurance that steps will be taken to address the effects of the harassment on the victim, where appropriate. As discussed in the legal standards above, all of these elements are required by Title IX. OCR noted that in this case, issues of notice to the Complainant and victim of the outcome, as well as steps to address the effects of the harassment were also lacking in practice.

OCR also identified a compliance issue in the fact that staff in general did not have a sufficient understanding of what constitutes sexual harassment, in order to report or respond to such possible harassment. Some staff interviewed by OCR felt that although the Teacher's actions were inappropriate, they were not sexual harassment because the Teacher had not been "inappropriate, sexually" with the Student, i.e., had not propositioned any student or engaged in any physical contact. Additionally, although staff interviewed by OCR articulated that sexual harassment did not require intent or targeting a specific person, the same staff were reluctant to call the Teacher's actions sexual harassment *because of* the lack of intent and targeting. This included the Title IX

Investigator and the Assistant Principal (who is noted in the Policy as the School's Title IX Coordinator).

Relatedly, OCR further found that the Title IX Investigator lacked sufficient knowledge of Title IX's requirements, which impacted her ability to conduct a thorough and informed investigation of allegations of sexual harassment, as required by Title IX. In addition to her confusion regarding the role of intent noted above, her inability to identify a clear difference between bullying and sexual harassment impacted other investigations that she conducted, wherein "bullying" investigations had involved incidents of possible sexual harassment that were not investigated and responded to as such. Additionally, in investigations that clearly indicated sexual harassment, the Title IX investigator's proposed remedy often included mediation. While there are rare cases where mediation could be an appropriate approach, generally, it is not appropriate to require a person who alleges sexual harassment to mediate his/her concerns with the alleged harasser.

Finally, despite clear policies indicating that the Director is the Title IX Coordinator, some staff interviewed by OCR believed that the Title IX Investigator held that role.

### Resolution

To address these concerns, the District agreed to implement the enclosed Agreement. Specifically, the District agreed to retain an Equity Consultant, who will work with the District to determine what additional measures the District needs to take to effectively address, prevent, and respond to harassment based on sex at District schools. Additionally, the District agreed to revise its Title IX policies and procedures as described in the enclosed Agreement, and to broadly disseminate them upon OCR's approval. School and District staff, and students, will also receive training about sexual harassment. Finally, the District agreed to provide remedies for the Student.

### Conclusion

Based on the preponderance of the evidence gathered during this investigation, OCR found that the District failed to promptly and effectively respond to the Complainant's reports of incidents of possible sexual harassment, in violation of 34 C.F.R. Sections 106.31(a) and (b). OCR further found that the District failed to comply with some of Title IX's procedural requirements. The enclosed Agreement reflects the steps that the District has agreed to take in order to address these compliance concerns.

OCR's findings only address the specific allegations and legal issue identified in this complaint and do not pertain to the District's compliance with other aspects of Title IX or any other laws enforced by OCR. Additionally, this letter is a letter of findings issued by OCR to address an individual OCR case. Letters of findings contain fact-specific investigative findings and dispositions of individual cases, are not formal statements of OCR policy, and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. We also wish to advise you that the Complainant may have the right to file a private suit in Federal court, whether or not OCR finds a violation.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, OCR will seek to protect all personal information, to the extent provided by law, that, if released, could constitute an unwarranted invasion of privacy.

We wish to thank you and District staff, particularly Attorney Kathleen Dwyer, for your cooperation with OCR in this matter. If you have any questions concerning this letter, please contact Civil Rights Attorney Meighan McCrea at (617) 289-0052, or by email at [meighan.mccrea@ed.gov](mailto:meighan.mccrea@ed.gov) or Senior Civil Rights Investigator Fred Dow at (617) 289-0025 or [fred.dow@ed.gov](mailto:fred.dow@ed.gov). You may also contact me at (617) 289-0120, or by email at [allen.kropp@ed.gov](mailto:allen.kropp@ed.gov).

Sincerely,

Trina Ingelfinger  
Acting Regional Director

Enclosure

cc: Kathleen Dwyer