

January 17, 2014

Daniel A. Teplesky
Superintendent
Monticello Central School District
237 Forestburgh Road
Monticello, New York 12701

Re: Case No. 02-12-1225
Monticello Central School District

Dear Superintendent Teplesky:

This letter is to notify you of the determination made by the U.S. Department of Education, New York Office for Civil Rights (OCR) regarding the above-referenced complaint filed against the Monticello Central School District (the District). The complainant alleged that the District's Athletic Director discriminated on the basis of sex, by consulting with the coach of the boys' varsity XXXX team, but not the coach of the girls' varsity XXXX team, when making the decision to have separate practices by gender for the modified XXXX teams in January 2012 (Allegation 1). The complainant also alleged that the District failed to adopt and publish grievance procedures that provide for the prompt and equitable resolution of complaints alleging discrimination under Title IX (Allegation 2). The complainant further alleged that the District failed to respond appropriately to complaints that he filed in XXXX and XXXX, alleging violations of Title IX (Allegation 3). The complainant also alleged that the Athletic Director retaliated against him for filing complaints alleging sex discrimination, by recruiting other individuals who were less qualified and less experienced to apply for (a) coach of the varsity XXXX team for school year 2012-2013; and (b) summer 2012 XXXX teacher (Allegation 4). Additionally, the complainant alleged that District personnel retaliated against him for filing complaints alleging sex discrimination, by issuing him "warning memos" regarding (a) speaking loudly in the hallway; (b) missing a staff meeting; and (c) improperly coaching students during a XXXX (Allegation 5).

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), as amended, 20 U.S.C. § 1681 *et seq.*, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in programs and activities receiving financial assistance from the Department. The District is a recipient of financial assistance from the

Department, and is a public elementary and secondary education system. Therefore, OCR has jurisdictional authority to investigate this complaint under Title IX.

The regulation implementing Title IX, at 34 C.F.R. § 106.71, incorporates by reference 34 C.F.R. § 100.7(e) of the regulation implementing Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., which provides that:

No recipient or other person shall intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by regulations enforced by OCR or because one has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding or hearing held in connection with a complaint.

In its investigation OCR reviewed documentation that the complainant and the District provided. OCR also interviewed the complainant, and current and former District staff and administrators.

OCR determined that the complainant was employed by the District as a XXXX teacher at XXXX (the School) during school year 2011-2012. The complainant was also employed as the XXXX coach of the girls' varsity XXXX team at the District's high school until he resigned from the position in XXXX.

Allegation 1

With respect to Allegation 1, the complainant alleged that the District's Athletic Director discriminated on the basis of sex, by consulting with the coach of the boys' varsity XXXX team (Coach 1), but not with him (the coach of the girls' varsity XXXX team), when making the decision to have separate practices by gender for the modified XXXX teams in January 2012.¹ The complainant acknowledged that the boys' and girls' modified XXXX teams were affected equally by this decision, but asserted that the Athletic Director should have also consulted with him prior to making the decision to change the teams' practice routines.

The Athletic Director informed OCR that in January 2012, Coach 1 expressed concern that the coaches of the modified XXXX teams were not keeping students encouraged and involved; thus he believed that students were not interested in remaining in the XXXX program when they reached the varsity level. Coach 1 proposed that he have more involvement with the boys' modified XXXX team during their practices; and that he and the coach of the boys' modified XXXX team (Coach 2) could work together with the boys' modified and varsity teams during practices, as opposed to having the boys' and girls' modified teams practicing together. The Athletic Director advised OCR that he thought this was good idea; and he thereafter spoke with Coach 2 and the coach of the girls' modified XXXX team (Coach 3) about the proposed change to their practices. The Athletic Director stated that neither Coach 2 nor Coach 3 objected to making the change.

¹ The District's modified XXXX teams include students in grades 7 and 8; the varsity XXXX teams include students in grades 9 through 12. Each team (girls' modified, boys' modified, girls' varsity, and boys' varsity) has its own coaching staff.

The Athletic Director informed OCR that he did not consult with the complainant at that time, because the proposed change would have had no effect on the girls' varsity team, as it already practiced independently and would continue to do so following the proposed action.² The Athletic Director further stated that when the XXXX XXXX season began in early XXXX XXXX, the boys' varsity and boys' modified teams practiced together with Coach 1 and Coach 2 for only one day, before the new practice schedule was discontinued.

Based on the above, OCR determined that the District provided a legitimate, nondiscriminatory reason for consulting with Coach 1, but not with the complainant, when making the decision to have the District's boys' modified XXXX team practice with the District's boys' varsity XXXX team and not the girls' modified XXXX team; namely, because Coach 1 was the person who proposed the change, and the change would not affect practices for the complainant's team (the girls' varsity XXXX team). Further, OCR determined that the District's proffered reason was not pretextual, because the Athletic Director consulted with Coach 3, who coached the girls' modified XXXX team and whose team would have been directly affected by the proposed change. Therefore, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the District's Athletic Director discriminated on the basis of sex, by consulting with Coach 1, but not the complainant, when making the decision to have separate practices by gender for the modified XXXX teams. Accordingly, OCR will take no further action regarding Allegation 1.

Allegation 2

With respect to Allegation 2, the complainant alleged that the District failed to adopt and publish grievance procedures that provide for the prompt and equitable resolution of complaints alleging discrimination under Title IX. In analyzing the information obtained, OCR reviewed whether the University had: (a) designated and provided notice of a Title IX Coordinator; (b) provided notice that it does not discriminate on the basis of sex; and (c) adopted and published grievance procedures providing for the prompt and equitable resolution of student and employee complaints of discrimination/harassment on the basis of sex.

A. Title IX Coordinator

The regulation implementing Title IX, at 34 C.F.R. § 106.8(a), requires that each recipient designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX (the Title IX Coordinator), and to notify all students and employees of the name or title, office address, and telephone number of the designated coordinator. In addition, OCR's 2011 Dear Colleague Letter on Sexual Violence states that recipients should notify all students and employees of the electronic mail (email) address of the Title IX Coordinator. The District identified the Assistant Superintendent for Curriculum and Instruction as its Title IX Compliance Officer. Accordingly, OCR determined that the District has designated at least one person to coordinate its efforts to comply with and carry out its

² The complainant asserted that he would have been negatively affected by the proposed change because he would have been "in charge" of both the girls' modified and varsity XXXX teams, which he did not want; however, OCR determined that the proposed change would not have resulted in the complainant being "in charge" of the girls' modified XXXX team, as Coach 3 was in charge of that team.

responsibilities under the requirements of Title IX, at 34 C.F.R. § 106.8(a). OCR determined that the District’s “Discrimination Grievance Procedures” and “Complaint Form” include the name and title, office address, and telephone number of the designated Title IX Compliance Officer; however, the person identified is no longer employed by the District.

B. Non-Discrimination Notice

The regulation implementing Title IX, at 34 C.F.R. § 106.9(a), requires that a recipient implement specific and continuing steps to notify applicants for employment, students, parents of elementary and secondary school students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of sex in the education programs or activities it operates; that the prohibition against discrimination extends to employment; and that inquiries to recipients concerning the application of Title IX and its implementing regulation may be referred to the Title IX coordinator or to OCR. The regulation implementing Title IX, at 34 C.F.R. § 106.9(b), requires recipients to include the notice of nondiscrimination in each announcement, bulletin, catalog, or application form which it makes available to the persons described above, or which is otherwise used in the recruitment of students or employees.

OCR determined that the District has a non-discrimination notice that appears in several publications, including the District Calendar and job application³, and in the “Employment Opportunities” section of its website. OCR determined that the non-discrimination notice properly states that inquiries concerning the application of Title IX and its implementing regulation may be referred to the District’s Title IX Coordinator, but does not state that inquiries may be referred to OCR, as required by Title IX at 34 C.F.R. § 106.9.⁴

C. Grievance Procedures

The regulation implementing Title IX, at 34 C.F.R. § 106.8(b), requires that each recipient adopt and publish grievance procedures providing for prompt and equitable resolution of student, employee, and third party complaints that allege any action which would be prohibited by the regulation. OCR has identified a number of elements in determining if grievance procedures are prompt and equitable, including whether the procedures provide for: (a) notice to students and employees of the procedures, including where complaints may be filed; (b) application of the procedures to discrimination by employees, students, and third parties; (c) adequate, reliable, and impartial investigation, including an opportunity to present witnesses and evidence; (d) designated and reasonably prompt timeframes for major stages of the grievance process; (e) written notice to parties of the outcome and any appeal; and (f) assurance that the institution will take steps to prevent further harassment and to correct its discriminatory effects if appropriate.⁵

³ These publications are also available on the District’s website.

⁴ OCR further determined that the version of the statement that appears on the job application misstates the name of the Title IX Coordinator and does not include a telephone number. Additionally, the “Discrimination Grievance Procedures” incorrectly identify OCR as the “Federal Office for Civil Rights”, and has an incorrect address for OCR.

⁵ See also OCR’s Revised Sexual Harassment Guidance: Harassment of Students by School Employees, other Students, or Third Parties (2001).

The District advised OCR that it uses its “Discrimination Grievance Procedures” (the Procedures) to investigate all complaints of sex discrimination. OCR determined that the Procedures state that they apply to complaints made by a student or employee; however, the District does not have grievance procedures to handle complaints of sex discrimination made by a third party. OCR determined that the Procedures are published on the District’s website, and hard copies are available in the District’s central office, school office, and in the bus garage. OCR further determined that the Procedures direct complainants to submit complaint forms to the Title IX Compliance Officer; however, the Procedures misstate the name of the Title IX Compliance Officer and do not provide a telephone number. OCR further determined that the Procedures state that the Title IX Compliance Officer will “investigate the circumstances of the complaint,” but they do not include any guidelines for the investigation, including the opportunity to present evidence and witnesses. The Procedures also do not include timeframes for the investigation. OCR determined that the Procedures do not state whether the complainant is notified of the outcome of the investigation orally or in writing, and the Procedures do not provide for notification of the outcome to the accused. The Procedures include appeal rights for the complainant, but not for the accused.⁶ In addition, OCR determined that the Procedures do not contain an assurance that the District will take steps to prevent recurrence of harassment and to correct the effects of the discrimination on the complainant and others, if appropriate.

Based on the foregoing, OCR concluded that the District has not adequately notified all students and employees of the name of the Title IX Coordinator. Further, OCR concluded that the notice of non-discrimination does not state that inquiries may be referred to OCR. Additionally, OCR determined that the District has not adopted and published grievance procedures providing for the prompt and equitable resolution of student, employee, and third party complaints of discrimination based on sex.

The District agreed to implement the enclosed resolution agreement to resolve OCR’s concerns with respect to Allegation 2. OCR will monitor the implementation of the resolution agreement. If the District fails to comply with the terms of the resolution agreement, OCR will resume its investigation.

Allegation 3

With respect to Allegation 3, the complainant alleged that the District failed to respond appropriately to complaints he filed in XXXX (Complaint 1) and XXXX (Complaint 2), alleging violations of Title IX.

OCR determined that the complainant filed Complaint 1 with the District’s Title IX Compliance Officer (Compliance Officer) on XXXX. In Complaint 1, the complainant alleged that the Athletic Director discriminated against him, by: (a) failing to consult with him when making the decision to have the District’s modified XXXX teams practice separately by gender, as described in Allegation 1, above; and (b) by permitting Coach 1 to propose a practice schedule that would enable the boys’ varsity XXXX team to use the District’s more desirable facilities during inclement weather.

⁶ The Grievance Procedures describe the Title IX Compliance Officer’s investigation as a “Level One Procedure,” and the appeal to the Superintendent as a “Level Two Procedure.”

OCR determined that on XXXX, the Compliance Officer notified the complainant that he had received Complaint 1, had spoken with the Superintendent, and was investigating the matter.⁷ Subsequently, the Title IX Coordinator initiated an investigation and determined that the Athletic Director had not yet adopted the practice schedule about which the complainant was complaining. OCR determined that the Compliance Officer then sent emails to the complainant on XXXX, and XXXX, suggesting that the complainant contact the Athletic Director to discuss the concerns set forth in his complaint. OCR determined that the Athletic Director subsequently asked the complainant to meet with him to discuss the proposed changes; however, the complainant refused to meet. On XXXX, the Compliance Officer sent the complainant a memorandum stating that it was premature to ask for a determination regarding his Title IX complaint, as the change had not yet been implemented and the complainant had not yet met with the Athletic Director to attempt to resolve the situation; and, the Compliance Officer again urged the complainant to meet with the Athletic Director. In a third memorandum, dated XXXX, the Compliance Officer again requested that the complainant meet with the Athletic Director, and explained that further investigation was premature because the proposed schedule change that was the subject of the complainant's Title IX complaint had not yet been adopted (i.e., the complaint was not ripe). OCR determined that the complainant resigned from his position as girls' varsity coach on or about XXXX.

OCR determined that on XXXX, the complainant filed Complaint 2, alleging that the Athletic Director's proposed facility-use schedule for boys' and girls' XXXX for XXXX 2012 was "haphazard, restrictive, and against past practice for other athletics teams". OCR determined that on March 26, 2012, the Compliance Officer interviewed the complainant, Coach 1, Coach 3 and the Athletic Director regarding Complaint 1(b) and Complaint 2, both of which related to the facility-use schedule. Based on his investigation, the Compliance Officer determined that there was no evidence to support the complainant's allegations that the District violated Title IX with respect to Complaint 1(b) and Complaint 2; specifically, the proposed facility-use schedule did not treat teams inequitably on the basis of sex.⁸ OCR determined that the Compliance Officer notified the complainant of the outcome of his investigation in writing in a memorandum dated XXXX.

OCR determined that the complainant subsequently requested that the Superintendent conduct a "Level Two" review of the Compliance Officer's determination.⁹ OCR determined that the

⁷ The complainant alleged that the Compliance Officer should not have consulted with the Superintendent while investigating the complaint because the Superintendent is designated as the individual responsible to hear appeals of complaints pursuant to the District's Grievance Procedures. OCR was unable to interview the Compliance Officer, who is no longer employed at the District; however, the Superintendent informed OCR that he did not discuss the substance of the complainant's complaint with the Compliance Officer. Rather, their discussions were limited to the proper procedures for investigating the complaint.

⁸ In an email to the District, dated XXXX, the complainant explained that he did not believe that the proposed schedule was inequitable; rather, he believed that it violated Title IX because it "fail[ed] to follow past practice for sharing facilities and...does not meet the standards set by the Department of Justice for Regulation C."

⁹ The complainant acknowledged to OCR that the Compliance Officer conducted an investigation of Complaint 1(b) and Complaint 2, but stated that he disagreed with the determination, in part because the Compliance Officer had failed to investigate Complaint 1(a). The complainant also noted that the memorandum dated XXXX, was signed by the Superintendent instead of the Compliance Officer. The District resent the same memorandum, signed by the Compliance Officer, on XXXX.

complainant met with the Compliance Officer, the Superintendent, and the District's attorney on April 12, 2012, to discuss his complaint. OCR further determined that following the meeting, the Superintendent confirmed the Compliance Officer's finding that the facility-use schedule did not violate Title IX, as it did not treat teams inequitably on the basis of sex. The Superintendent notified the complainant of this finding in a letter dated XXXX.

The complainant acknowledged to OCR that the District ultimately responded appropriately to Complaint 1(b) and Complaint 2; however, he asserted that the District did not respond to Complaint 1(a), which alleged that the Athletic Director discriminated based on the gender of the team he coaches, by failing to consult with him when making the decision to have the District's boys' and girls' modified XXXX teams practice separately by gender. OCR determined that the District initiated an investigation of Complaint 1(a); however, the Compliance Officer determined that the complaint was not "ripe" because no actual change in practice schedules had occurred when the complainant filed the complaint. As detailed in the discussion of Allegation 1 above, OCR determined there that there was insufficient evidence to substantiate the complainant's allegation that the Athletic Director's failure to consult with the complainant was discriminatory, because the proposed change affected both boys' and girls' teams; the Athletic Director consulted with the girls' modified XXXX coach (the only girls' team affected by the proposed change); and the Athletic Director was not obligated under Title IX to consult with the complainant prior to implementing a change in practice schedules. Further, OCR determined that the change in practice schedules only occurred on one day and was subsequently dispensed with.

Based on all of the above, OCR determined, and the complainant ultimately acknowledged, that the District conducted a prompt and equitable investigation of Complaints 1(b) and 2. Further, OCR determined that the District investigated Complaint 1(a) and determined that the allegation was not "ripe" for further investigation because no change in practice schedules had occurred at the time of the complaint. Instead, the District requested that the complainant meet with the Athletic Director to voice his concerns because the allegation was that the complainant had not had an opportunity for input regarding the schedule changes; however, the complainant refused to meet with the Athletic Director. Therefore, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the District failed to respond appropriately to Complaints 1 and 2, which alleged violations of Title IX. Accordingly, OCR will take no further action regarding Allegation 3.

Allegation 4

With respect to Allegation 4, the complainant alleged that the Athletic Director retaliated against him for filing complaints alleging sex discrimination, by recruiting other individuals who were less qualified and less experienced to apply for (a) coach of the varsity XXXX team for school year 2012-2013; and (b) summer 2012 XXXX XXXX teacher. In analyzing whether retaliation occurred, OCR must first determine: (1) whether the complainant engaged in a protected activity; (2) whether the recipient was aware of the complainant's protected activity; (3) whether the complainant was subjected to an adverse action contemporaneous with, or subsequent to, the recipient's learning of the complainant's involvement in the protected activity; and (4) whether there is a causal connection between the protected activity and the adverse action from which a

retaliatory motivation reasonably may be inferred. When there is evidence of all four elements, OCR then determines whether the recipient has a legitimate, non-retaliatory reason for the challenged action or whether the reason adduced by the recipient is a pretext to hide its retaliatory motivation.

OCR determined that the complainant engaged in protected activities when he filed complaints with the District's Title IX Compliance Officer on XXXX and XXXX, alleging discrimination on the basis of sex; and when he filed a grievance with the teachers' union on XXXX, regarding the adequacy of the District's Grievance Procedures. OCR determined that the District was aware of the complainant's protected activities.

With respect to Allegation 4(a), the complainant alleged that the Athletic Director retaliated against him for filing complaints alleging sex discrimination, by recruiting other individuals who were less qualified and less experienced to apply for coach of the varsity XXXX team for school year 2012-2013. OCR determined that in June 2012, the complainant applied for the position of varsity XXXX coach for school year 2012-2013. OCR further determined that in several prior school years, the complainant had applied and been selected for the position. The complainant alleged that he had been the sole applicant for the position of varsity XXXX coach for several years; however, for school year 2012-2013, there was one other applicant, whom the Athletic Director recommended for the position. The complainant asserted that the Athletic Director recruited this applicant in retaliation for the complainant's protected activity.

The Athletic Director denied that he "recruited" the other applicant for the position for school year 2012-2013, as the complainant alleged. The other applicant for the position of varsity XXXX coach confirmed that he approached the Athletic Director to discuss concerns about the XXXX program and inquire about the position. The complainant did not provide, and OCR did not find any evidence to support that the Athletic Director recruited the other applicant to apply for the position of varsity XXXX coach for school year 2012-2013. OCR further determined that although the Athletic Director recommended the other candidate for the position during the selection process, the District ultimately selected the complainant for the position of varsity XXXX coach in September 2012.

Based on the above, OCR determined that there was insufficient evidence to substantiate the complainant's alleged adverse action regarding Allegation 4(a); i.e., that the Athletic Director recruited other individuals to apply for the position of varsity XXXX coach for school year 2012-2013. Absent an adverse action, OCR will not proceed further with retaliation analysis. Accordingly, OCR will take no further action regarding Allegation 4(a).

With respect to Allegation 4(b), the complainant alleged that the Athletic Director retaliated against him for filing complaints alleging sex discrimination, by recruiting other individuals who were less qualified and less experienced to apply for summer 2012 XXXX teacher. The complainant asserted that another applicant told him that she had been asked by an unidentified District employee to apply. The complainant further alleged that the District ultimately selected a candidate for the position who was less experienced than he was.

OCR determined that five candidates applied for the summer teaching position in or around May 2012. The complainant did not provide, and OCR found no evidence to substantiate the complainant's allegation that the Athletic Director, or anyone else at the District, recruited individuals to apply for the position of summer school XXXX XXXX teacher for summer 2012.

OCR determined that following an initial round of interviews, the District selected two finalists, including the complainant.¹⁰ OCR determined that District administrators, including the two summer school co-principals¹¹ and a middle school assistant principal, interviewed the two finalists; the Athletic Director was not involved in the selection process. Based on references and the finalists' performance during the second round of interviews, the interview panel recommended the other applicant (Candidate 2) for the position.¹² In making this decision, the District administrators considered the applicants' references, rates of disciplinary referrals of students, passing rates from previous summer(s), and ideas they presented on how to motivate students and handle disruptive or difficult students. The finalists were also asked how they planned to decrease disciplinary referrals and increase passing rates, as the Superintendent had expressed a desire to have a passing rate of 100%.

The District informed OCR that although Candidate 2 had fewer years of teaching experience than the complainant, overall she was a stronger candidate. Specifically, the District asserted that Candidate 2 had "overwhelmingly positive" references, and that she presented innovative ideas for motivating students.¹³ In comparison, the District asserted that the complainant had a previous graduation rate of XXXX from summer 2010; that he appeared to mock the Superintendent's goal of 100% by calling it "lofty and admirable"; and that during his interview he did not present any new ideas on how to increase graduation rates.¹⁴ The District also noted that the complainant did not have all positive references.¹⁵ The complainant did not provide, and OCR did not find any evidence to support that the complainant was treated differently from other applicants in the application process.

Based on the above, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the Athletic Director or anyone else in the District recruited candidates for the position. Therefore, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the Athletic Director retaliated against him for filing complaints alleging sex discrimination, by recruiting other individuals who were less

¹⁰ Two candidates withdrew from consideration, and a third was eliminated following the first round of interviews because he did not have positive professional references.

¹¹ One assistant principal from the middle school and one from the high school served as co-principals of the summer school.

¹² All applicants were asked the same questions during their interviews.

¹³ The District informed OCR that Candidate 2's references noted that she excelled in motivating and engaging students. Candidate 2 was also receptive to using technology to engage students. Additionally, Candidate 2 stated that if a student used inappropriate language, she would use the situation as a learning opportunity, rather than take a punitive approach.

¹⁴ The District stated that the complainant was critical of students because they did not want to attend summer school; that he admitted to "butting heads" with students; that he was not open to using technology such as Wii or Kinect to engage or motivate certain students; and that if a student used inappropriate language he would seek to discipline the student.

¹⁵ The District stated that the complainant's references indicated he was unable to build relationships with students; he was occasionally involved in conflicts with students; and he had difficulties with classroom management.

qualified and less experienced to apply for summer 2012 XXXX teacher. Further, OCR determined that the District had a legitimate, non-retaliatory reason for not selecting the complainant for the position; specifically, Candidate 2 was a stronger candidate. OCR determined that the proffered reason was not a pretext for retaliation, because the District provided reasonable, specific support for its position that Candidate 2 was stronger than the complainant. Accordingly, OCR will take no further action regarding Allegation 4(b).

Allegation 5

With respect to Allegation 5, the complainant alleged that in retaliation for filing complaints alleging sex discrimination, District personnel issued him “warning memos” regarding (a) speaking loudly in the hallway; (b) missing a staff meeting; and (c) improperly coaching students during a XXXX XXXX during school year 2011-2012.

With respect to Allegation 5(a) the complainant alleged that the Assistant Principal retaliated against him by sending him a “warning memo” for speaking too loudly to his students in the hallway on February 22, 2012. The Assistant Principal advised OCR that on February 22, 2012, other staff members had complained to him that the complainant was disrupting nearby classes by speaking in a very loud voice to his students in the XXXX. The Assistant Principal stated that he went to the XXXX and observed the complainant speaking loudly and in a disrespectful tone to students. He stated that he therefore counseled the complainant on speaking in a more respectful tone and using better classroom management techniques. OCR determined that the Assistant Principal then memorialized the interaction in an email he sent to the complainant on February 22, 2012; but, OCR determined that the email was not included in the complainant’s personnel file.

OCR determined that the Principal had previously counseled the complainant on multiple occasions about concerns regarding the language and/or tone used when communicating with students during school year 2010-2011, and earlier in school year 2011-2012, prior to the complainant’s protected activities. The Principal and Assistant Principal asserted that because the complainant continued to exhibit the same behaviors, it was appropriate to document their concern in an email. OCR determined that during school year 2011-2012, the Principal sent emails to two other staff members with whom she had previously spoken about arriving late to school. The complainant did not provide and OCR did not find any evidence to indicate that the Assistant Principal treated the complainant differently from other staff members who had not engaged in protected activity.

Based on the above, OCR determined that the Assistant Principal provided legitimate, non-retaliatory reasons for sending the complainant an email on February 22, 2012, regarding the volume and tone of his voice; namely, other teachers were complaining about the complainant’s loud tone, the Assistant Principal witnessed the complainant using a loud tone, and prior attempts at correcting the complainant’s behavior through discussion had not been effective. OCR determined that the proffered reasons were not pretextual, as the issuance of a warning was consistent with the Assistant Principal’s and Principal’s approach to addressing similar problematic behavior with staff who had not engaged in protected activity.

With respect to Allegation 5(b), the complainant alleged that the Assistant Principal retaliated against him by sending him “warning memos” on March 5, 2012, and April 2, 2012, reprimanding him for missing two regularly-scheduled staff meetings for XXXX XXXX teachers.¹⁶ The complainant confirmed that he missed the meetings; however, he asserted that he had previously missed similar meetings, but never received a written warning. The Assistant Principal informed OCR that although he had previously spoken with the complainant about missing meetings and reminded him that he had to attend, the conversations were not effective and the complainant continued to miss meetings. The Assistant Principal subsequently sent the complainant emails after he missed meetings again on March 5, 2012, and April 2, 2012, in an attempt to correct the problem. The Assistant Principal stated that none of the other XXXX XXXX teachers missed the meetings, so he did not have to send similar emails to them.

Based on the above, OCR determined that the Assistant Principal provided a legitimate, non-retaliatory reason for sending the complainant emails on March 5 and April 2, 2012, regarding missing staff meetings; namely, prior attempts at correcting the complainant’s behavior through discussion had not been effective, so the Assistant Principal followed-up with written reminders. OCR determined that this reason was not pretextual, as the complainant acknowledged that he missed the meetings, and it was consistent with the Assistant Principal’s and Principal’s approach to addressing similar problematic behavior with staff who had not engaged in protected activity.

With respect to Allegation 5(c), the complainant alleged that the Athletic Director retaliated against him by sending him a memo dated May 17, 2012, stating that he could not enter the XXXX XXXX or speak with student athletes at XXXX or practices because he was not an XXXX XXXX coach. OCR determined that on May 17, 2012, two current XXXX coaches informed the Athletic Director that the complainant, who was no longer a XXXX coach, had entered the XXXX XXXX during a XXXX and attempted to coach a student athlete. The Athletic Director informed OCR that such conduct is prohibited by the interscholastic athletic association; only coaches, athletes and officials are permitted on the XXXX during a XXXX. The Athletic Director stated that he spoke with the complainant about the incident, and followed up with a memo because he wanted a record of the conversation. The complainant acknowledged to the Athletic Director that his conduct had been inappropriate.

Based on the above, OCR determined that the Athletic Director provided a legitimate, non-retaliatory reason for sending the complainant a memo dated May 17, 2012, regarding his conduct at a XXXX XXXX; namely, the Athletic Director wanted to memorialize that he had spoken with the complainant about his inappropriate conduct. OCR determined that this reason was not pretextual, as the complainant admitted engaging in the conduct alleged and acknowledged that it was prohibited by the interscholastic athletic association which governs coaching conduct at the District’s XXXX XXXX.

Based on all of the above, OCR determined that there was insufficient evidence to substantiate the complainant’s allegation that in retaliation for filing complaints alleging sex discrimination, District personnel issued him “warning memos” regarding speaking loudly in the hallway,

¹⁶ OCR determined that the Assistant Principal held the meetings every XXXX XXXX at XXXX for XXXX XXXX teachers, i.e., XXXX, XXXX, XXXX, XXXX and XXXX, to discuss concerns regarding student discipline.

missing a staff meeting, and improperly coaching students during a XXXX XXXX. Accordingly, OCR will take no further action regarding Allegation 5.

As stated above, the attached resolution agreement addresses Allegation 2. OCR will monitor the implementation of the resolution agreement. If the District fails to comply with the terms of the resolution agreement, OCR will resume its investigation.

This letter should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement 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.

The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the complainant may file another complaint alleging such treatment.

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

If you have any questions regarding OCR's determination, please contact Félice A. Bowen, Compliance Team Leader, at (646) 428-3806 or felice.bowen@ed.gov.

Sincerely,

Timothy C.J. Blanchard

Encl.

cc: XXXX XXXX, Esq. (w/encl.)