



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGION IX
CALIFORNIA

50 UNITED NATIONS PLAZA
MAIL BOX 1200; ROOM 1545
SAN FRANCISCO, CA 94102

January 5, 2017

Dr. Gregory Plutko, Ed.D.
Superintendent
Placentia-Yorba Linda Unified School District
1301 E. Orangethrope Avenue
Placentia, CA 92870

(In reply, please refer to case # 09-16-1286.)

Dear Superintendent Plutko:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the Placentia-Yorba Linda Unified School District (District). The Complainant alleged that the District discriminated against her daughter (Student) on the basis of sex and perceived disability.¹ Specifically, OCR investigated:

1: Whether the District has: a) disseminated notice of nondiscrimination on the basis of sex as required by 34 C.F.R. § 106.9; b) appointed a Title IX coordinator as required by 34 C.F.R. § 106.8(a); and c) adopted policies and procedures that provide for prompt and equitable response to sexual harassment, including sexual violence complaints and reports as required by 34 C.F.R. § 106.8(b).

2: Whether the District failed to respond promptly and equitably to notice of the sexual harassment, harassment on the basis of sex, and/or harassment on the basis of perceived disability against the Student by her peers during the 2015-16 school year.

3: Whether the District retaliated against the Complainant and the Student after they engaged in a protected activity by notifying the District that a male classmate (Student 1) harassed the Student on the basis of her sex by: a) not investigating her subsequent allegations that Student 1 and his friends continued to harass her; b) the Principal making a false statement about the Complainant in her February XX, 2016 letter, making it sound like she was causing problems by exchanging text messages with

¹ OCR previously provided the District with the identity of the Complainant and Student. We are withholding their names from this letter to protect their privacy.

Student 3; and c) the Assistant Principal upsetting the Student by following her during the graduation party on June XX, 2016.²

OCR investigated this complaint pursuant to its authority under Title IX of the Education Amendments of 1972 and Section 504 of the Rehabilitation Act of 1973 and their implementing regulations. Title IX prohibits discrimination on the basis of gender in programs and activities operated by recipients of Federal financial assistance. Section 504 prohibits discrimination on the basis of disability by recipients of federal financial assistance. OCR also has jurisdiction as a designated agency under Title II of the Americans with Disabilities Act of 1990 and its implementing regulations over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The regulations implementing all of the statutes enforced by OCR also prohibit a recipient from retaliating against individuals because they engaged in a protected activity, such as filing a complaint that alleges discrimination on the basis of sex. The District receives Department funds, is a public education system, and is subject to these laws and regulations.

To investigate this complaint, OCR conducted interviews and reviewed documents and other information provided by the Complainant and the District. During the investigation of the case, OCR found that the District's Sexual Harassment Procedures did not comply with Title IX requirements with respect to allegation 1. The District, however, took immediate steps to revise its Sexual Harassment and related procedures and provided OCR with a draft of its revised procedures to address this issue of noncompliance. OCR is concurrently in the process of reviewing the District's procedures. Once the procedures are approved by OCR, the District agreed to update its notice of nondiscrimination and disseminate the procedures as required by 34 C.F.R. § 106.9

For allegation 2, OCR concluded the District's investigations into the two alleged incidents of harassment based on sex and perceived disability were thorough, impartial and prompt, and the District took steps to prevent the recurrence of the harassment. OCR also determined that the notice of finding that was provided to the Complainant on March XX, 2016 did not explain the District's rationale for its conclusion and, therefore, did not comply with Title IX, Section 504, and Title II requirements. In order to address this noncompliance, the District sent a letter to the Complainant on December XX, 2016 explaining its reasons for its conclusions. OCR reviewed the letter and determined that it resolved the noncompliance and there is no current allegation appropriate for investigation and resolution with respect to allegation 2. In addition, OCR concluded that there was insufficient evidence to establish a violation of the laws OCR

² The Complainant alleged to OCR that Student 1 harassed the Student on the basis of a perceived disability in her written OCR complaint. This allegation, however, was not included in OCR's notification letter which was sent to the parties on April 11, 2016 when the case was initially opened. In addition, during the investigation of this complaint, the Complainant raised new allegations, alleging that the District retaliated against her and the Student for engaging in a protected activity. Instead of addressing these allegations in a separate OCR complaint, OCR notified the parties in writing on November 1, 2016 that all of the Complainant's allegations will be addressed under docket number 09-16-1286.

enforces with respect to allegation 3. The facts gathered, the applicable legal standards, and the reasons for our determinations are summarized below.

Allegation 1: Whether the District has: a) disseminated notice of nondiscrimination on the basis of sex as required by 34 C.F.R. § 106.9; b) appointed a Title IX coordinator as required by 34 C.F.R. § 106.8(a); and c) adopted policies and procedures that provide for prompt and equitable response to sexual harassment, including sexual violence complaints and reports as required by 34 C.F.R. § 106.8(b).

Legal Standards

Notice of Non-Discrimination

The regulation implementing Title IX, at 34 C.F.R. § 106.9, requires the recipient to take specific and continuing steps to notify applicants for admission and employment, students and parents, employees, sources of referral of applicants, 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 its education programs and activities, including with respect to employment, and that it is required by Title IX not to discriminate in such a manner. The notice must include that inquiries concerning Title IX may be referred to the Title IX Coordinator or OCR and the contact information for the Title IX Coordinator, including the office and email address, title and telephone number. 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 that it makes available to the persons described above, or which is otherwise used in the recruitment of students or employees.

Title IX Coordinator (34 C.F.R. §§ 106.8(a) and 106.9(a))

The regulations, at 34 C.F.R § 106.8(a), require that recipients designate at least one employee to coordinate compliance with the regulations, including coordination of investigations of complaints alleging noncompliance. This provision further requires that the recipients notify all of its students and employees of the name (or title), office address, and telephone number of the employee(s) so designated. In addition, recipients should notify all students and employees of the email address of the Title IX Coordinator(s). The recipients must ensure that employees designated to serve as Title IX coordinators have adequate training or experience in handling sexual harassment complaints and in the operation of the recipient's grievance procedures. All persons involved in implementing a recipient's grievance procedures, including investigators, must have training or experience in handling complaints of sexual harassment, as well as training in the recipient's grievance procedures and applicable confidentiality requirements.

Complaint Procedures (34 C.F.R. § 106.8(b))

When responding to alleged sexual harassment, a recipient must take immediate and appropriate action to investigate or otherwise determine what occurred. To carry out these requirements, the recipient is required to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints of sex discrimination (34 C.F.R. § 106.8[b]). Title IX does not require a recipient to provide a separate grievance procedure for sexual

harassment complaints. A recipient may use student disciplinary or other separate procedures for these complaints; however, any procedures used to adjudicate complaints of sexual harassment, including sexual violence, including disciplinary proceedings, must afford a prompt and equitable resolution.

OCR examines a number of factors in evaluating whether a recipient's grievance procedures are prompt and equitable, including whether the procedures provide for the following: notice of the procedure to students, parents of elementary and secondary school students, and employees, including where to file complaints; application of the procedure to file complaints alleging harassment by employees, other students, or third parties; adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; designated and reasonably prompt timeframes for major stages of the complaint process; notice to the parties of the outcome of the complaint; and an assurance that steps will be taken to prevent recurrence of any harassment and to correct its discriminatory effects.

Finding of Fact

Notice of Non-Discrimination

- The Parent Information Packet includes a summary of the District's policy on Sexual Harassment for Students (BP 5145.7), which states that complaints may be filed under the Uniform Complaint Procedures (AR 1312.2). The Parent Information Packet is provided to parents/guardians at the beginning of each school year and posted on the District's website along with the Uniform Complaint Procedures (AR 1312.3).
- The District told OCR that middle and high school students are notified at the beginning of each school year as to how they can report an incident of sexual harassment/assault, bullying, and other incidents of discrimination during school assemblies. The District also has a Text-A-Tip number where students can report any incidents of bullying, intimidation, discrimination, depression, abuse, suicide, drugs sales, fights/pre-fight, and safety concerns about a friend through a text message to the District. Students are also given a yellow laminated information sheet that summarizes the District's policy on discrimination, harassment, intimidation and bullying. The information sheet states that copies of the District's policies are available at the school office and online. The information sheet further states that students can report incidents to the principal or contact the Student Service Coordinator. In addition, school sites post notification against sexual harassment, bullying, and harassment in the front office, student government meeting room, and staff lounge.

Title IX Coordinator

- The District delegated the Director of Secondary Education as the Title IX Coordinator. The Director of Secondary Education is also the Compliance Officer who is responsible for addressing Uniform Complaints. The most recent training the Title IX Coordinator attended

on conducting an investigation under Title IX was in February of 2016. It was provided by District's legal counsel. OCR also found that the Parent Information Packet for the 2015-16 school year did not include the contact information for the Title IX Coordinator, however, the phone number for the Title IX Coordinator was included in the Parent Information Packet for the 2016-17 school year.

Complaint Procedures

- The Sexual Harassment Procedure for Students (AR 5145.7) states that the principal/designee will investigate an allegation of sexual harassment. If the complaint is not resolved to the satisfaction of the complainant at the school site level, then a written complaint may be filed under the Uniform Complaint Procedures (AR 1312.3). The timeline for investigating a Uniform Complaint is within 60 days of the receipt of the complaint.
- Although the Uniform Complaint Procedures (AR 1312.3) includes timeframes, the District's Sexual Harassment Procedure for Students (AR 5145.7) does not include timeframes for the investigation conducted at the school site level. In addition, the Procedure does not state that it applies to complaints alleging discrimination or harassment by third parties or during school related programs and activities that take place on or off campus. The Procedure further does not state that the parties have an equal opportunity to present witnesses and relevant evidence or that the parties will receive written notice of the outcome of the investigation. In addition, the Procedure does not state that steps will be taken to prevent the recurrence of harassment and to correct its discriminatory effects on the complainant and others as appropriate.

Analysis & Conclusions of Law

Notice of Non-Discrimination

OCR found that the District provided adequate notice of its notice of nondiscrimination as required by 34 C.F.R. § 106.9 to parents/guardians and students. However, because the District's sexual harassment procedures did not comply with Title IX requirements, the District agreed to update its notice of nondiscrimination once the revised procedures are adopted by the District and post it on its website and include the updated notice in the Parent Information Packet and Student Handbooks. In addition, because the District's information on Text-A-Tip does not specify that incidents of sexual harassment can also be reported using this number, the District agreed to remind students that such incidents can also be reported through this process.

Title IX Coordinator

OCR found that, pursuant to 34 C.F.R. § 106.8(a), the District properly designated a Title IX Coordinator, here the Director of Secondary Education. Based on OCR's interviews with the Title IX Coordinator and the training he has received, OCR found that he has adequate training to handle sexual harassment complaints and is knowledgeable about the District's grievance procedures. OCR also determined that the District was not in compliance with 34 C.F.R. §

106.8(a) during the 2015-16 school year, in that the Title IX Coordinator's contact information was not provided in the Parent Information Packet for that school year. The District, however, addressed this noncompliance by including the Title IX Coordinator's phone number in the Parent Information Packet for the current school year. In addition, because the District will be updating its notice of Nondiscrimination, the District agreed to include the Title IX Coordinator's name, title, phone number, address and email address in the notice of nondiscrimination and posted the information on the District's website's homepage.

Complaint Procedures

In evaluating whether the District's Sexual Harassment Procedure for Students (AR 5145.7) are prompt and equitable in this matter, OCR reviewed the procedure to determine whether it included notice of the procedure to parents, students and employees, including where to file complaints; application of the procedure to complaints alleging discrimination by employees, other students, or third parties; adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; designated and reasonably prompt timeframes for major stages of the complaint process; written notice to the parties of the outcome of the complaint; and an assurance that steps will be taken to prevent recurrence of any discrimination and to correct its effects.

Based on OCR's review, OCR found that the Procedure did not comply with 34 C.F.R. § 106.8(b) because it did not include timeframes for investigations conducted at the school site level. The Procedure also do not state that it applies to complaints alleging discrimination or harassment by third parties and to all school related programs and activities that take place on or off campus. The procedure further does not allow the parties an equal opportunity to present witnesses or relevant evidence nor does it state that the parties will receive written notice of the outcome of the investigation. In addition, the Procedure does not include assurance that the District will take steps to prevent the harassment from recurring and correct the discriminatory effects on the complainant and others as appropriate.

When OCR notified the District that its Sexual Harassment Procedure for Students (AR 5145.7) is not compliant with Title IX, the District revised its sexual harassment and related procedures and provided OCR with a copy of it on September 12, 2016 to address the noncompliance. OCR is currently in the process of reviewing all of the procedures. Furthermore, as part of the Resolution Agreement, the District agreed to adopt and publish the procedures within 90 days of OCR's review and approval.

Allegation 2: Whether the District failed to respond promptly and equitably to notice of the sexual harassment, harassment on the basis of sex, and/or harassment on the basis of perceived disability against the Student by her peers during the 2015-16 school year.

Legal Standards

Student-on-Student and Third-Party-on-Student Harassment

When a student or third party sexually harasses another student or harassed a student based on their gender, the harassing conduct creates a hostile environment if the conduct is sufficiently serious that it interferes with or limits a student's ability to participate in or benefit from the school district's program. If a district knows or reasonably should know about student-on-student or third party sexual or gender-based harassment that may create a hostile environment, Title IX requires the recipient to respond in a prompt and equitable manner by taking immediate action to eliminate the harassment, prevent its recurrence, and address its effects. These duties are a school district's responsibility, regardless of whether a student has complained, asked the recipient to take action, or identified harassment as a form of discrimination. If, upon actual or constructive notice, a school district delays responding to allegations of sexual harassment or gender-based harassment or responds inappropriately, the school district's own action may subject a student to a hostile environment.

Harassment on the Basis of Perceived Disability

The regulations implementing Section 504, at 34 C.F.R. §104.4(a) and (b), prohibit discrimination based on disability by recipients of Federal financial assistance. An individual with a disability is defined as any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such an impairment. 34 C.F.R. § 104.3(j)(1). The Title II regulations, at 28 C.F.R. §35.130(a) and (b), create the same prohibition against disability-based discrimination by public entities. A school district is responsible under Section 504, Title II and the regulations for providing students with a nondiscriminatory educational environment. Harassment of a student based on disability or perceived disability can result in the denial or limitation of the student's ability to participate in or receive education benefits, services, or opportunities.

Under Section 504, Title II, and the regulations, once a school district has notice of possible disability-based harassment or harassment on the basis of a perceived disability, it is responsible for determining what occurred and responding appropriately. The district is not responsible for the actions of a harassing student, but rather for its own discrimination in failing to respond adequately. A school district may violate Section 504, Title II and the regulations if: (1) the harassing conduct is sufficiently serious to deny or limit the student's ability to participate in or benefit from the educational program; (2) the district knew or reasonably should have known about the harassment; and (3) the district fails to take appropriate responsive action. These steps are the district's responsibility whether or not the student who was harassed makes a complaint or otherwise asks the school to take action.

Findings of Fact

- The Student was in the XXX grade and attended a District middle school during the 2015-16 school year. In November of 2015, the Student ended her friendship with Student 1 and

stopped responding to his phone calls and text messages. Eventually, the Student blocked Student 1's phone number on her cellphone so that he could no longer contact her.

- On XXXXXXXX, January X, 2016, the Complainant emailed the Assistant Principal to inform him that on the evening of XXXXXX, January X, 2016, the Student received text messages calling her "cunt", "mildly autistic" and other curse words. The Complainant stated in her email that she called the number from where the text messages originated and spoke to a male student (Student 2) who told her that Student 1 used his cellphone to text the messages to the Student. The Complainant also wrote in her email to the Assistant Principal that she did not believe Student 1 was a danger to the Student but that she wanted the harassment to stop.
- The Assistant Principal told OCR that he immediately investigated the allegation on XXXXXX, January XX, 2016 to determine what took place by individually interviewing the Student, Student 1, and Student 2. The Assistant Principal also had the Student complete an incident report. The Student wrote:

It occurred because [Student 1] was so negative and I tried to make him feel better but he put so much weight on my shoulders and wanted me to put his needs before my own. He texted all day and all night, he got attached to me, and a bit obsessive with me and got mad if I didn't text back in 2 min. He always said that he was going to kill himself and stuff....

Then like a week later I got a text from a number. It was [Student 1] pretending to be a person I met in the summer. Student 1 pretended to be a guy named [Student 1] kept saying how I suck and how I'm a bitch and a cunt and he kept saying the words cunt, fuck, bitch, shit, multiple times. He called me ugly and that every time he sees me he wants to drink bleach. He kept contacting me pretending to be... over and over. He said really mean things. I started to cry. Later, the next morning I told my mom I blocked the number because I didn't want to get those texts. My mom read the text the night when it happened, but after she read it I deleted it. We called the number and a guy [Student 2] answered the phone. [Student 1] and [Student 2] were having a sleepover and [Student 1] used [Student 2's] phone to text me all the rude things. [Student 2] confessed that [Student 1] did it and that [Student 2] let [Student 1] use his phone.

- The Assistant Principal told OCR that Student 1 admitted sending the inappropriate texts to Student on the evening of January X, 2016 because he was hurt that she cut him off from all communications. Based on his investigation, the Assistant Principal determined that Student 1's conduct was not sufficiently severe or pervasive to violate the Student Anti-

Bullying Procedure (AR 5131.1)³ because the texting incident was an isolated incident that took place one time, online, and during non-school hours without any connection to any school activities. The Assistant Principal also determined that the incident did not warrant any disciplinary action nor did he feel it was necessary to move Student 1 out of the Student's classes based on this one incident, which he considered to be minor. The Assistant Principal counseled Student 1 regarding his behavior, formally warned him to stay away from the Student, and documented the incident in his discipline file. He also contacted Student 1's parents about the incident and discussed the incident with them.

- Once the Assistant Principal completed his investigation on XXXXXX, January XX, 2016, he emailed the Complainant to inform her about his findings. The Assistant Principal also told the Complainant that he spoke to Student 1's parents and they were mortified by the comments he made and wanted to apologize.
- The Complainant disagreed with the Assistant Principal's determination and felt that Student 1 should have been suspended and not just given a warning. The Assistant Principal told OCR that he called the Complainant and explained to her that the texting incident was not sufficient to suspend Student 1 under the state education code. The Assistant Principal also told the Complainant that he would keep an eye on the situation and to inform him if anything else happens. The Assistant Principal did not inform the Complainant that she could file a complaint under the Uniform Complaint Procedures (AR 1312.2) because he believed the matter was resolved.⁴ In addition, because the Complainant raised the allegation as one of cyberbullying, the Assistant Principal did not recognize that the incident could also raise an issue of potential sex or perceived disability based discrimination.
- One month later, the Complainant alleged that the Student was cyberbullied by a different classmate (Student 3) at around 9 PM on XXXXXX, February X, 2016, while she was on a

³ The Student Anti-Bullying Procedures (AR 5131.1) states in part:

Bullying means any severe or pervasive physical or verbal act or conduct, including communications made in writing or by means of an electronic act, and including one or more acts committed by a student or groups of students as defined in California Education Code section 48900.2, 48900.3, or 48900.4, directed toward one or more students that has or can be reasonably predicted to have the effect of one or more of the following:

- a. Experience fear of harm to that student's or at those students' person or property.
- b. Experiences substantially detrimental effect on his or her physical or mental health.
- c. Experience substantial interference with his or her academic performance.
- d. Experience substantial interference with his or her ability to participate in or benefit from the services, activities, or privileges provided by school.

⁴ The District's BP 5145.7 on Sexual Harassment of Students states a student who feels that he/she is being harassed on the basis of sex may file a complaint through the Uniform Complaint Procedures (AR 1312.2). AR 1312.2 is also the District's grievance procedures for complaints of alleging unlawful discrimination on the basis of a perceived disability. In addition, the Student Anti-Bullying Procedures (AR 5131.1) states that any school level investigations may be appealed through the Uniform Complainant Process.

social app. The Complainant stated to OCR that the Student could see Student 3 and another male person on her phone while on the social appl. During the call, Student 3 placed the Student on hold and added another person onto the call. The Student could not see this person but could hear him. At some point during the call, Student 3 allegedly told the Student “you should die” and “go kill yourself.” Then the Student heard a male voice impersonating an Irish accent call her “mildly autistic” several times. The Complainant believes the person speaking with the Irish accent was Student 1. The Complainant emailed the Assistant Principal on XXXXXXXX, February X, 2016 and reported the incident. The Complainant told OCR that the Assistant Principal refused to investigate her allegation because the incident took place off campus and during non-school hours.

- The Assistant Principal denied telling the Complainant that the allegation could not be investigated because it did not take place at school. The Assistant Principal told OCR that he investigated the incident on XXXXXXXXXX, February XX, 2016, by meeting with the Student and having her send a screen shot of the call log. The Assistant Principal also interviewed Student 1, who denied making inappropriate statements to the Student while impersonating an Irish accent. The Assistant Principal told OCR that he warned Student 1 of the severe consequences that would be administered if the call was traced back to him and notified his parents about the incident.
- The Assistant Principal was unable to interview Student 3 until February XX, 2016 because Student 3 was absent from school on February XX to XX, 2016 and the Assistant Principal was absent on February XX, 2016. When the Assistant Principal interviewed Student 3, he denied saying anything inappropriate to the Student during the call. The Assistant Principal contacted Student 3’s parents and notified them about the incident. Based on his interviews, the Assistant Principal was unable to determine who made the inappropriate statements while impersonating an Irish accent.
- Later that day, the Assistant Principal spoke to the Student in the library and encouraged her to consider limiting her time on social media if she was going to be encountering repeated offensive treatment. According to the Assistant Principal, the Student responded to him in a disrespectful tone. On the same day, the Complainant sent the Assistant Principal an email regarding his interaction with Student in the library and accused him of not addressing the situation. The Complainant also stated in her email that the Assistant Principal was no longer allowed to meet with Student unless she was present.
- On February XX, 2016, the Complainant sent an email to the Superintendent stating she was frustrated that the school did not suspend Students 1 and 3 for their actions. The Superintendent referred the matter to the Principal.
- The Principal told OCR that she met with the Complainant on February XX, 2016 for approximately two hours to hear all of her concerns. During the meeting, the Principal agreed to reinvestigate the January X and February X, 2016 incidents. The Principal

reinvestigated the incidents by interviewing the Student, Student 1, and Student 3, and by having them all write statements regarding the incidents.

The Student wrote:

So on February X I got two missed calls from Student 3 at 8:55 PM. I called him back at 9:15 PM. He answered the call and there were three people on the face time call, me, Student 3 and another person from a different school. Student 3 said that I was ugly and I should kill myself and I should die. Then he (or someone else) did an Irish accent and called me mildly autistic. He was on hold so I couldn't see him, but I could hear him. I left the call after that. Then on XXXXXXXX, February XX, 2016, Student 3 called me twice on (a social app) at 10:05 PM and also at 10:15 PM. I was at a sleepover at that time with a friend so I didn't answer.

- The Principal stated that she met at length with the Student to gather her side of the story. The Student told the Principal that while she was on a social app on February X, 2016, Student 3 told her to “go kill yourself” and called her “ugly.” Then a voice speaking in an Irish accent called her “mildly autistic” and the “c word.” The Student did not know who was speaking with the Irish accent. The Student also stated that she wanted nothing to do with Students 1 and 3 but that they kept encountering each other because they share the same social circles. The Principal told OCR that she counseled the Student on being clear about her boundaries and setting limits.
- The Principal and the Assistant Principal told OCR that Student 3 ultimately admitted to being on the social app and saying things like “fuck off” and “you should die,” even though he initially denied saying anything inappropriate to Student when the Assistant Principal first spoke to him on February XX, 2016. The administrators informed Student 3 about the laws prohibiting cyber bullying and warned him that if the behavior continued he could be suspended, subject to a District discipline meeting, and could be in trouble with law enforcement. Student 3 reassured the administrators that he understood the seriousness of his actions and would not contact the Student. Student 3 was disciplined with one day of in-house suspension for making the inappropriate comments to the Student and his parents were notified about the incident.
- The Principal and Assistant Principal also interviewed Student 1, who denied being the person who made the inappropriate statements while impersonating an Irish accent. Based on all their investigation, the administrators were unable to confirm who was speaking with the Irish accent during the social app call. The administrators instructed Student 1 to block the Student on his phone and to not have any contact with her. The administrators also contacted Student 1's parents and notified them about the allegation.
- The Complainant told OCR that she provided the Principal and Assistant Principal with evidence that proved Student 1 was the person impersonating the Irish accent during the social app call. According to the Complainant, the person speaking with the Irish accent said

the same things Student 1 texted to the Student on January X, 2016. The Complainant also stated to OCR that she confirmed with Student 1's mother that he likes to impersonate an Irish accent. The Complainant further stated to OCR that if the District used the preponderance of evidence standard as required by Title IX then the District would have concluded that Student 1 was the person who made the offensive statements. The Complainant also told OCR that the District's response was inadequate because Student 1 was not suspended for continuing to harass the Student during the social app call.

- The District provided OCR with a copy of an email that the Complainant sent to the Principal on February XX, 2016, specifically stating that the Student told the Complainant that it did not look like Student 1 was on the social app call because there are other students who also impersonate Irish accents. Based on this email and the fact that the person who was impersonating the Irish accent was not visible during the social app call, both administrators told OCR that they were not able to identify the person.
- The site administrators also told OCR that they concluded that the conversation that took place during the social app call between the Student and Student 3 had nothing to do with the fallout between the Student and Student 1 and that because the incidents took place one month apart, they determined the incidents were unrelated and involved two different students saying mean and inappropriate things to the Student. The administrators also told OCR that they did not find any evidence showing that the Student was being harassed at school. The administrators further stated that they did not have a basis to suspend Student 1 because the January X, 2016 incident was not sufficiently severe or pervasive to meet the definition of bullying under the California Education Code section 48900(r)(1) and they were unable to connect Student 1 to the February X, 2016 incident. However, because this was the second time the Student had problems on social media and because she shared the same social group with Students 1 and 3, the administrators decided to have Students 1 and 3 sign Behavior Contracts on February XX, 2016 prohibiting all forms of contact with the Student.
- On XXXXXX, February XX, 2016, the Complainant emailed the Principal alleging that Student 3 had a friend call the Student and when she answered her phone, Students 2 and 3 were also on the line. The Complainant told OCR that the Student hung up and blocked the person who called her. The Complainant also stated that she emailed the Principal a screen shot from Student's phone showing that Student 3 violated his Behavior Contract but the Principal did not take any action to address her complaint.
- The Principal told OCR that she received a number of emails from the Complainant on XXXXXXXX, February XX and XXXXXX, February XX, 2016. On XXXXXX, February XX, 2016 one of the first emails the Principal read from the Complainant included an attachment showing a text message exchange that took place between the Complainant and Student 3 over the weekend. The Complainant sent the attachment as evidence that Student 3 violated his behavior contract by contacting her. After reading the text exchange, the Principal emailed the Complainant asking her not to communicate directly with any student and to call her.

The Principal told OCR that she informed the Complainant later that day that she had not finished reading all of the emails but assured her that if there was any new information that she provided, it would be considered as part of her ongoing investigation.

- After reviewing the Complainant's emails, the Principal arranged a meeting with the Complainant, Administrator for Student Services, Crisis Counselor, and herself to address all of the Complainant's allegations and to offer counseling or other services to the Student if needed. The meeting was scheduled for February XX, 2016, however, the Complainant emailed the Principal to inform her that she would not attend.
- On XXXXXX, February XX, 2016, the Complainant emailed the Assistant Principal stating that Student 2 was trying to add the Student onto his social app account so he could call her directly. The Assistant Principal told OCR that he interviewed Student 2 on the same day to find out what was happening. Student 2 told the Assistant Principal that he was adding all of his friends, which included the Student, on to his social app account. The Assistant Principal contacted the Student 2's parents and advised Student 2 to avoid all calls and contact with the Student.
- On XXXXXX, February, XX, 2016, the Complainant sent an email to the Superintendent stating that the Principal and Assistant Principal failed to address her complaints that the Student was being harassed by her peers.
- The Director of Executive Services told OCR that he called the Complainant to discuss the concerns she raised in her email to the Superintendent, but that the Complainant hung up on him. Later that day, the Complainant sent another email to the Superintendent informing him that she does not want to speak to the Director of Executive Services and that she is not willing to have any meetings with the District.
- On February XX, 2016, the Complainant emailed the Assistant Superintendent, requesting that Student 1 be moved out of the Student's classes. On the same day, the Complainant alleged that when she and the Student went to the school office, Student 3 harassed her and the Student by holding his cellphone up to his temple to photograph or videotape them. The Assistant Principal stated to OCR that when the Complainant reported this incident to him, he checked Student 3's phone and did not find any pictures or videos of the Complainant or Student on it and was unable to substantiate the Complainant's allegation. The Complainant told OCR that there are many places picture and videos can be hidden on the phone and that the Assistant Principal probably did not thoroughly check the phone.
- In a letter dated February XX, 2016, the Principal informed the Complainant that she looked into her allegations against Student 1 and Student 3. The letter states that the Principal contacted the parents of the students involved and had a discussion with them regarding consequences. She also encouraged the students to not contact each other on social media or in person. The Principal further stated in her letter that she reviewed the District's policy regarding cyberbullying with her site team.

- In addition, Student 1 and Student 3 were taken out of Student’s classes effective February XX, 2016 and both boys expressed remorse and took responsibility for their part in any of the inappropriate contacts with the Student. The Principal also assured the Complainant that the situation would be continually monitored by school staff.
- On February XX, 2016, the Complainant emailed the Superintendent and Assistant Superintendent stating that the site administrators failed to investigate her allegations. The Title IX Coordinator, who is also the Compliance Officer, told OCR that the District decided to address the Complainant’s complaints under the Uniform Complaint Procedures (AR 1312.3). As part of his investigation, the Title IX Coordinator reviewed the investigations conducted by the site administrators to determine if they properly investigated all of her allegations.
- On March XX, 2016, the Title IX Coordinator provided the Complainant with his written notice of findings which states in part:

Allegation A: On January X, 2016, Student 1 sent a series of text messages to Student containing inappropriate language including the “cunt”, “mildly autistic” and “you should drink bleach and die.” Student 1 also demonstrated attention seeking behaviors in XXXX lab.

The investigation determined that the Assistant Principal investigated this allegation and notified the Complainant in an email dated January XX, 2016 that Student 1 admitted to texting the inappropriate messages. The investigation also determined that the Assistant Principal issued consequences in accordance with District policies and procedures, including parent notification, counseling and documentation of the incident in Student 1’s discipline file. With regard to the allegation of attention seeking behaviors in XXXX lab by Student 1, neither behavior issues nor intention to seek attention were confirmed through the investigation.⁵

Allegation B: During [a social media app] call on February X, 2016, Student 1 called the Student “mildly autistic” while speaking with an Irish accent and Student 3 told the Student “you should die” and “you should kill yourself.”

The investigation determined that Student 3 acknowledged that he made the statements to the Student during the [social media app] call and was placed on one day in-house suspension for his actions. Student 1 and Student 3 were also placed on Behavior Contracts on February XX, 2016 and taken out of the Student’s classes effective February XX, 2016. The report also states that the site administrators were unable to confirm who made the statements with the Irish accent.

⁵ The Complainant told OCR that the District did not interview the Student as to how Student 1 behaved in a disruptive manner during XXXX Lab. OCR, however, does not have jurisdiction to review this allegation because it does not state a claim under Title IX, Section 504, Title II or any other antidiscrimination laws enforced by OCR.

Allegation C: On February XX and XX, 2016, Student 1, Student 2 and Student 3 tried to communicate with the Student online.

The investigative report states that the Principal investigated this allegation and called the parents of the students involved to have a discussion about consequences and appropriate support. The Principal also directed all of the students to refrain from contacting the Student on social media or in person.

Allegation D: On February XX, 2016, Student 3 videotaped the Complainant and Student in the office.

The investigation determined that the Assistant Principal searched Student 3's phone and not finding any pictures or videos of the Complainant or the Student.

- The notice of finding also listed the actions the District would take to ensure the Student felt safe at school:
 - The school will continue to closely monitor the situation between the Student and her peers;
 - The Student's social studies teacher will check in with the Student starting on March XX, 2016;
 - Behavior expectations will continue to be reinforced through morning announcements and through the efforts of the school's Positive Behavior Intervention and Support Committee;
 - A parent night will be organized in coordination with the sheriff's department to inform parents of cyberbullying, social media, and Internet safety.

- The Title IX Coordinator told OCR that he concluded that the incidents that took place on January X, 2016 (Allegation A) and February X, 2016 (Allegation B) did not create a hostile environment based on sex or perceived disability as both incidents were not sufficiently severe, pervasive or persistent so as to interfere with the Student's ability to participate in the services offered by the District. In reaching this conclusion, the Title IX Coordinator determined that each incident took place online, off-campus, and during non-school hours. In addition, the incidents were unrelated, involved different students and took place one month apart. Furthermore, there was no evidence that the harassment was widespread or continued on campus and the Student was coming to school and doing well in her classes. The Title IX Coordinator also stated that based on his review of the site administrators' investigations, he concurred with their conclusion that the identity of the person who made the inappropriate comments to the Student with the Irish accent could not be identified and that Student 3 was properly disciplined for his behavior during the February X, 2016 social media app call.

- OCR reviewed the Title IX Coordinator’s March XX, 2016 notice of findings solely in regards to the incidents based on sex and perceived disability (Allegations A and B), and found that that the Title IX Coordinator’s reasons for reaching his conclusions were not included in the notice to the Complainant. The notice only states under the “conclusion of law” section that the “District has determined that the law/policy in question has not been violated” for each allegations. The District addressed the noncompliance by sending a letter to the Complainant on December XX, 2016 explaining the reasons for its conclusions. OCR also noted that allegations C and D did not raise an allegation of discrimination based on sex or perceived disability, but that the District promptly investigated both of these allegations.
- The Student’s social studies teacher, stated to OCR that starting on March XX, 2016, she met with the Student weekly to check in with her to make sure she was doing well at school. The teacher kept a weekly log of her meetings with the Student which she shared with the school site administrators. OCR reviewed the logs, which include detailed notes of what the Student told the teacher, the teacher’s observations of the Student, and a summary of any complaints that the Complainant raised with the teacher regarding Student 1 and Student 3. Based on the teacher’s observations and meetings with the Student, the teacher felt the Student was fine and not feeling threatened by Students 1 and 3.
- On April XX, 2016, the Complainant emailed the Student’s teacher alleging that a student from another school district told the Student that someone called the Student a “bitch” online and posted a derogatory comment about the way she walks. The Complainant informed the District that she believed Student 2 posted these comments online. On the same day, the Principal and Assistant Principal interviewed Student 2, who denied posting these comments. The administrators told OCR that they were unable to determine who posted the comments online which were done anonymously during non-school hours.
- The Complainant told OCR that the Student notified the Principal on April XX, 2016 that Students 1 and 3 and their friend (Student 4) were standing in the hallway in front of the classroom where she was eating her lunch. The Complainant alleged to OCR that the site administrators took no action even though the boys were outside of the classroom during the entire lunch period.
- The Assistant Principal stated to OCR that he immediately investigated the incident once the school was notified about it by interviewing Students 1, 3 and 4 individually. Each boy stated that they did not know that the Student was in the classroom eating her lunch and that they were standing by the classroom because Student 3 had art/study skills in the same classroom right after lunch. The Assistant Principal reminded the boys to be extra aware of their proximity to the Student during passing periods. The Student’s social studies teacher also told OCR that when she checked in with the Student during the week of April XX-XX, 2016, the Student reported to her that things were fine at school.
- On April XX, 2016, the Complainant reported to the social studies teacher that during a fire drill on April XX, 2016, Student 1 and his friends made loud noises to get the Student's

attention and that when she did not look at them, they threw a backpack that landed by a few students who were standing in front of the Student. The Complainant alleged that the boys were continuing to harass the Student.

- The Assistant Principal told OCR that the Student was in the classroom next to Student 1's classroom when the fire drill took place. Student 1 admitted making some noises with his classmates, but that it was not done to get the Student's attention. Student 1 also did not know anything about a backpack being thrown on the ground. The Assistant Principal told OCR that he interviewed other student witnesses, but no one saw Student 1 doing anything to the Student during the fire drill. The social studies teacher also stated to OCR that she spoke to the Student on April XX, 2016 about the alleged incident that took place during the fire drill. The Student reported to the teacher that the boys threw a backpack in her direction and were making noises to get her attention. The Student stated that she ignored the boys and felt safe at school.
- On May X, 2016, the Complainant sent the social studies teacher an email alleging that Student 3 was having his friends, who do not attend the Student's school, call the Student twice on May X, 2016 and eight times on May X, 2016. According to the Complainant, when the Student answered one of the calls, Student 3 was one of the people on the social media app call, but hung-up once the Student came on the line. The Complainant stated in her email to the teacher that nothing bad happened but that she believes Student 3 is up to something. According to the Complainant, the District would not look into this incident.
- The Assistant Principal told OCR that when he learned about this allegation, he interviewed Student 3, who denied asking his friends to call the Student. Student 3 also told the Assistant Principal that he and the Student have the same group of friends and they call the Student on their own. The Assistant Principal told Student 3 to ask his friends to stop calling the Student because of his connection to them. Student 3 stated that he is avoiding the Student and hangs-up the phone whenever Student comes on the same line. The social studies teacher also told OCR that the Student reported to her that everything was fine at school when this incident took place.
- On May X, 2016, the Complainant emailed the Assistant Superintendent and informed her that no one from the District, except her social studies teacher, could talk to the Student.
- The Complainant told OCR that from May X to XX, 2016, the Student saw Students 1, 2 and 3 several times on campus on her way to catch the bus afterschool. The Complainant alleged to OCR that the District did not do anything when she notified them that the boys were following the Student.
- The Assistant Principal and Principal told OCR that they spoke to Students 1, 2, and 3 individually about the route they take when they leave campus. According to the administrators, each boy gave consistent statements as to path they took and none of the boys saw the Student or were near the bus stop where she catches the bus. Since there

were no witnesses who saw the boys were near the Student, the administrators were unable to confirm that the boys were following the Student.

- On May XX, 2016, the Complainant sent an email to the District informing them that she was reporting the boys to the police and that the Student would not return to school unless the District prevented the boys from being near her.
- On May XX, 2016, the Complainant emailed the District and requested that the boys not be allowed to attend the graduation trip, dance and promotion ceremony. The administrators told OCR that there was no basis to prevent the boys from participating in any of the graduation activities.
- On the same day, the Administrator of Student Services, and the Crisis Counselor, met with the Complainant to address her concerns. During the meeting, the Complainant agreed to allow the Crisis Counselor to talk to the Student. On May XX, 2016, the Crisis Counselor met with the Student individually and then later with both the Student and the Complainant. After the meeting, the Complainant alleged that the Crisis Counselor asked the Student inappropriate questions and requested that he no longer talk to the Student.
- The teacher's log states that on May XX, 2016, the Student reported that when she left her second period class she saw Student 1 and his friend (Student 4) standing outside of her classroom. At that time, there were many students leaving their classrooms and the boys were standing in the Student's way and did not pick up their belongings and leave until she was standing right next to them. The boys did not say anything to the Student or make any gestures or facial expressions toward her, but she believed the boys were trying to intimidate her and should have seen her before they were standing next to her. The Student also reported that her two friends were with her when this occurred.
- The Assistant Principal told OCR that he immediately investigated this incident by interviewing Student 1, Student 4, the Student's two friends, and a student teacher who was present at the time of the alleged incident. According to the Assistant Principal, Students 1 and 4 were standing in a major thoroughway where many students pass to go to and from their classes. Both Students 1 and 4 stated that they were waiting for Student 3 to come out of his second period class and that they immediately left the area when they saw the Student. The Student's two friends and the student teacher told the Assistant Principal that they did not witness the boys doing anything to the Student. The Assistant Principal reminded the boys to leave the area if they see the Student nearby and to stand by the basketball court to meet their friend. After this incident, Student 3 requested that he be taken out of all of the classes he had with the Student because he no longer wanted to be accused of following the Student when he was not. The Assistant Principal agreed to change Student 3's class schedule.
- On XXXXXX, May XX, 2016, the Complainant emailed the District stating that Student will not be returning to school on Monday for her safety. The Director of Executive Services told

OCR that the District investigated each allegation the Complainant raised against the boys but were unable to substantiate any of her contentions that the boys were following or harassing the Student at school.

- On XXXXXX, May XX, 2016, the Student began independent study. The Director of Executive Services also emailed the Complainant to recommend that the private therapist working with the Student assess her level of suicide risk given the recent statements the Complainant reported about her emotional state. He further stated that the District counselor could offer the same assessment and that there are two licensed mental health clinicians available in the District. The Complainant declined the assessments.
- On June X, 2016, the Student attended the graduation trip with her XXXXXX grade class. The social studies teacher told OCR that she saw the Student having a good time on the trip and the boys were not near her.

Analysis & Conclusions of Law

Under Title IX, Section 504, Title II and their implementing regulations, once the District has notice of possible harassment between students on the basis of sex or perceived disability, it is responsible for determining what occurred and responding appropriately. OCR evaluates the appropriateness of the responsive action by assessing whether it was prompt and equitable. The school district must promptly conduct an impartial inquiry and if harassment is found, take immediate action to eliminate the harassment, prevent its recurrence, and address its effects.

The incident that took place on the evening of XXXXXX, January X, 2016, when Student 1 sent the Student inappropriate text calling her a series of harmful sexual insults and “mildly autistic” raised an issue of harassment based on sex and perceived disability. Although this incident occurred off-campus during non-school hours, the Assistant Principal promptly investigated the allegation on XXXXXX, January XX, 2016 by interviewing the Student and having her write a statement as to what allegedly took place. The Assistant Principal also interviewed Student 1, who admitted sending the text messages with the words “cunt” and “bitch” and “mildly autistic,” and there was no dispute that he called her these names. Since Student 1 admitted to sending the text messages, there was no further investigation that was required at that time.

After determining what took place, the Assistant Principal emailed the Complainant on the same day to inform her that Student 1 confessed to sending the inappropriate texts and that his parents were notified and that the Student and parents apologized. The Assistant Principal also took reasonable steps to prevent the harassment from recurring by counseling Student 1 about his behavior and formally warning him to stay away from the Student. The incident was also documented in Student 1’s behavior file.

The Complainant, however, felt that the District’s response was not adequate because Student 1 was not suspended for violating the state education code for cyberbullying. As previously stated, OCR’s assessment of whether a District took sufficient steps focuses on whether the

District promptly conducted an impartial inquiry and took steps to eliminate the harassment, prevent its recurrence, and address its effects. Although OCR does not enforce state education code, OCR noted that the District took steps consistent with its cyberbullying policy for a first offense, which is counseling and a warning. The Assistant Principal told OCR that Student 1 was not suspended because the texting incident was an isolated incident that took place one time, online, and during non-school hours and was not sufficiently severe or pervasive to warrant a suspension under the state education code. Based on OCR's review of this incident, OCR determined that the Assistant Principal conducted a prompt, thorough and equitable investigation and took steps to prevent the recurrence of harassment.

One month after the initial incident, the Student reported another incident of cyberbullying. The Student alleged that on the evening February XXX, 2016, Student 3 allegedly said she was ugly and that she should kill herself and die during a social media app call. During this same call, the Student alleged that someone impersonating an Irish accent called her "mildly autistic" and the "c-word." Although the person speaking with the Irish accent was not visible on the Student's cellphone, the Complainant alleged that the person was Student 1.

OCR found that the Assistant Principal began investigating the incident the day after he received notice of the allegation. After conducting one set of interviews with the Student, Student 1 and Student 3, the Principal and Assistant Principal re-interviewed the students and obtained written statements from them on February XX and XX, 2016. Student 3 initially denied making any inappropriate statements to the Student, but subsequently admitted to saying "you should die" and "fuck off." Although Student 3's statements were not based on sex or perceived disability, and therefore would not fall under Title IX, Section 504 or Title II, OCR noted that he was disciplined for his behavior.

The site administrators, however, were unable to identify who made the statements with the Irish accent, which were based on sex and perceived disability. In reviewing the site administrator's investigation, OCR determined that the District properly applied the preponderance of the evidence standard in reaching its conclusion. Although the Complainant believes that Student 1 was the person speaking with the Irish accent because he previously texted the same words to the Student on January X, 2016 and she confirmed with his mother that he liked to impersonate an Irish accent, the Complainant's February XX, 2016 email to the Principal also stated that the Student did not think Student 1 was on the February X, 2016 call on the social media app because there are other boys who like to talk with an Irish accent. In addition, the person speaking with the Irish accent was not visible during the social media app call. Thus, OCR did not find that the District applied an improper standard in reaching its conclusion.

The site administrators also interviewed all witnesses before determining that there was no evidence suggesting that the harassment that took place during non-school hours was taking place on campus. Although the site administrators did not find sufficient evidence to connect Student 1 to the February X, 2016 incident, the administrators took precautionary measures by having Students 1 and 3 sign Behavior Contracts on February XX, 2016 directing them to avoid all forms of contact with the Student. Thus, OCR determined that the site administrators

conducted a prompt, thorough, and equitable investigation and took steps to prevent any recurrence of harassment.

Since OCR concluded that the site administrators conducted an appropriate inquiry into the January X, 2016 and February X, 2016 incidents, OCR did not conduct its own independent investigation into these allegations.⁶ However, OCR noted two concerns, which are not violation findings under Title IX, Section 504 and Title II, but are noted in this letter as a matter of technical assistance to the District. First, the site administrators did not initially recognize the January X and February X, 2016 incidents as raising a potential sex or disability discrimination allegation. Some student misconduct that falls under a school's anti-bullying policy may also trigger responsibilities under federal antidiscrimination laws if the allegation is based on sex, disability, race, national origin, or age. By limiting its response to a specific application of its anti-bullying procedures, a school may fail to properly consider whether the student misconduct also resulted in discriminatory harassment. Therefore, when responding to an incident of misconduct, school districts should keep in mind that the label used to describe an incident (e.g. bullying, cyberbullying, teasing) does not determine how a school is obligated to respond. The nature of the conduct must be assessed for civil rights implications, so that the school district responds in accordance with the applicable civil rights statutes and regulations.

Second, the school site administrators did not provide the Complainant with an opportunity to file a complaint under the Uniform Complaint Procedures (AR 1312.2) if she disagreed with the outcome of their investigation, which was conducted at the school site level. The Uniform Complaint Procedures is the District's grievance procedure for complaints of harassment and discrimination under Title IX, Title II and Section 504. The District agreed to address these concerns as part of the staff training that will be held to: (1) review the District's revised sexual harassment and related procedures, (2) provide information as to when parents/guardians should be informed of their right to file a complaint under the Uniform Complaint Procedures, and (3) explain how to identifying allegations that could raise potential civil rights violations.

On February XX, 2016, the Complainant emailed the Superintendent stating that the school site administrators failed to respond to her allegations that the Student was harassed by her peers. The Title IX Coordinator addressed the Complainant's allegation under the Uniform Complaint Procedures. On March XX, 2016, the Title IX Coordinator provided the Complainant with the notice of findings. The Title IX Coordinator concluded that the site administrators investigated each of the Complainant's allegations and took reasonable steps to ensure the Student's safety at the school by directing all students from having any contact with each other; notifying the parents of the students involved about the allegations; having a discussion about consequences

⁶ During the weekend of February XX to XX, 2016, the Complainant sent a number of emails to the Principal alleging that Students 1, 2 and 3 tried to contact the Student through social media. Then on February XX, 2016, the Complainant alleged that Student 3 harassed her and the Student by videotaping and/or photographing them with his cellphone while they were in the school office. OCR reviewed each of the alleged incidents and found that none of the allegations were based on sex or perceived disability or any other federal civil rights laws enforced by OCR.

and appropriate support; and removing Students 1 and 3 from the Student's classes effective February XX, 2016.

OCR found that while the Title IX Coordinator could explain the rationale for the insufficiency conclusion, the notice of findings actually provided to the Complainant did not explain the rationale for such conclusions for Allegations A and B, which were based on sex and perceived disability. Thus, OCR determined that the District did not comply with Title IX, Section 504 and Title II requirements because the Complainant was not given an adequate basis for its conclusion. However, during the resolution of this case, the District sent the Complainant a letter on December XX, 2016 including an analysis as to how it reached its conclusions for these two allegations under applicable legal standards. OCR reviewed the letter and determined that it resolved the noncompliance and there is no current allegation appropriate for investigation and resolution with respect to allegation 2.

From April to June of 2016, the Complainant raised a number of allegations with the District alleging that Students 1, 2, 3 and 4 harassed the Student by following her, engaging in attention seeking behavior at school, and by having mutual friends call the Student. OCR thoroughly reviewed each of these incidents and determined that none of the allegations raised an issue of harassment based on any anti-discrimination statute enforced by OCR, and that the District promptly and thoroughly investigated each incident. OCR also noted that on May XX, 2016, the District offered to provide the Student an assessment with one of their licensed mental health clinicians after the Complainant notified the District that the Student had thoughts of suicide. The Complainant, however, declined the District's offer and indicated that the Student was being treated by a private therapist. OCR's understands that the District's offer with respect to counseling and assessment still stands for the 2016-17 school year.

Allegation 3: The Complainant alleged that the District retaliated against her and the Student after she notified the District that Student 1 harassed the Student on the basis of sex by: a) not investigating her subsequent allegations that the Student continued to be harassment by her peers; b) the Principal making a false statement about the Complainant in her February XX, 2016 letter by making it sound like she was causing problems by exchanging text messages with Student 3 and; c) the Assistant Principal upsetting the Student by following her during the graduation party on June XX, 2016.

Legal Standard

The Title IX regulations, at 34 C.F.R. §106.71, incorporate 34 C.F.R. §100.7(e) of the regulations implementing Title VI of the Civil Rights Act of 1964 and prohibits school districts from intimidating, coercing, or retaliating against individuals because they engage in activities protected by Title IX. When OCR investigates an allegation of retaliation, it examines whether the alleged victim engaged in a protected activity and was subsequently subjected to materially adverse action by the school district, under circumstances that suggest a connection between the protected activity and the adverse action. If a preliminary connection is found, OCR asks whether the school district can provide a nondiscriminatory or non-retaliatory reason for the

adverse action. OCR then determines whether the reason provided is merely a pretext and whether the preponderance of the evidence establishes that the adverse action was in fact retaliation.

Finding of Fact

- The Complainant alleged the District retaliated against her and the Student by refusing to investigate any of her allegations that Students 1, 2, 3 and 4 harassed the Student from April to May 2016. The site administrators told OCR that they investigated all of her allegations and notified her of the outcome of each allegation. The allegations the Complainant raised are as follows:

April XX, 2016: A student from another school district told the Student that someone called the Student a “bitch” online and posted a derogatory comment about the way she walks. The Complainant informed the District that she believed Student 2 posted these comments online. On the same day, the Principal and Assistant Principal interviewed Student 2, who denied posting these comments. The administrators told OCR that they were unable to determine who wrote the comments because it was posted anonymously online.

April XX, 2016: Student 1, Student 3 and their friend (Student 4) were standing in the hallway in front of the classroom where the Student was eating her lunch. The Complainant alleged the site administrators took no action even though the boys were outside of the classroom during the entire lunch period. The Assistant Principal stated to OCR that he investigated the incident by interviewing Students 1, 3 and 4. Each boy stated that they did not know that the Student was in the classroom eating her lunch and that they were standing by that particular classroom because Student 3 had art/study skills in the same classroom right after lunch. The Assistant Principal reminded the boys to be extra aware of their proximity to the Student during passing periods.

April XX, 2016: Student 1 and his friends made loud noises to get the Student's attention during a fire drill and when she did not look at them, they threw a backpack that landed by a few students standing in front of the Student. The Assistant Principal told OCR that Student's class was located next to Student 1's class when the fire drill took place. Student 1 acknowledged to the Assistant Principal that he made some noises during the fire drill with his classmates, but that it was not done to get the Student's attention. Student 1 also stated that he did not know anything about a backpack being thrown on the ground. The Assistant Principal interviewed other student witnesses in the area, but no one saw anything unusual or anything intentionally done to the Student.

May X, 2016: The Complainant alleged Student 3 had his friends, who do not attend the Student's school, call the Student twice on May X, 2016 and eight times on May X, 2016. When the Student answered one of the calls, Student 3 was on the social media app call

with other people, but hung-up once the Student came on the line. The Assistant Principal told OCR he interviewed Student 3, who denied asking his friends to call the Student. Student 3 also told the Assistant Principal that he and the Student have the same group of friends and they call the Student on their own. The Assistant Principal told Student 3 to ask his friends to stop calling the Student because of his connection to them. Student 3 stated that he is avoiding the Student and hangs-up the phone whenever Student comes on the same line.

May X to May XX, 2016: The Complainant alleged the Student saw Students 1, 2 and 3 several times on campus on her way to catch the bus afterschool. The Assistant Principal and Principal told OCR that they spoke to Students 1, 2, and 3 individually about the route they take when they leave campus. According to the administrators, each boy gave consistent statements as to path they took and none of the boys saw the Student or were near the bus stop where she catches the bus. Since there were no witnesses who saw the boys were near the Student, the administrators were unable to confirm that the boys were following the Student.

May XX, 2016: The Student reported to her teacher that when she left her second period class she saw Student 1 and his friend (Student 4) standing outside of her classroom. At that time, there were many students leaving their classrooms and the boys were standing in the Student's way and did not pick up their belongings and leave until she was standing right next to them. The boys did not say anything to the Student or make any gestures or facial expressions toward her, but she believed the boys were trying to intimidate her and should have seen her before they were standing next to her. The Student also reported that her two friends were with her when this occurred.

The Assistant Principal told OCR that he investigated this incident by interviewing Students 1 and 4, the Student's two friends, and a student teacher who was present at the time of the alleged incident. According to the Assistant Principal, Students 1 and 4 were standing in a major thoroughway where many students pass to go to and from their classes. Both Students 1 and 4 stated that they were waiting for Student 3 to come out of his second period class and that they immediately left the area when they saw the Student. The Student's two friends and the student teacher told the Assistant Principal that they did not witness the boys doing anything to the Student. The Assistant Principal reminded the boys to leave the area if they see the Student nearby and to stand by the basketball court to meet their friend.

- The Complainant also alleged that the Principal retaliated against her by including a paragraph in her February XX, 2016 letter which gave the impression that the Complainant was the one causing problems by texting a message to Student 3, when it was Student 3 who was the one who contacted the Complainant first.
- The Principal's February XX, 2016 letter states in part:

On XXXXXXX, February XX, I received your many concerned e-mails regarding additional interaction that occurred over the previous weekend. You sent me screen shots of text messages between you and Student 3. After reading those text messages where Student 3 attempted to apologize to you and you responded back and forth with him, I requested in an e-mail that you refrain from communicating with any of these students directly. When we talked on the phone on XXXXXXX, February X, I again reassured you how serious we take these matters and that we had not finished our investigation. I assured you that I would review any new information you presented and that an investigation may take a few days.

- The Principal told OCR that she wrote this paragraph in the letter because she did not want the Complainant communicating directly with students.
- The Complainant further alleged that the Assistant Principal retaliated against the Student by following her during the school dance and upsetting her. The Director of Executive Services told OCR that he interviewed the Assistant Principal about the Complainant's allegation. The Assistant Principal told the Director that the community center where the dance was held had three rooms that were used for dancing, games, and food. As one of the chaperones for the dance, the Assistant Principal walked through each room and watched all of the students, including the Student and the boys. During the dance, the Assistant Principal witnessed the Student dancing, laughing, and talking to her friends.
- The Principal wrote a statement dated June XX, 2016 stating that she, the Assistant Principal, Campus Supervisor, two teachers, and the school counselor supervised the school dance which was held at the community center. The Principal stated that they all observed the Student having a good time at the dance and that she was interacting with her friends. She did not look sad, upset or distraught, or distressed at any time. None of the boys ever hung around her vicinity and kept their distance.

Analysis & Conclusions of Law

The Complainant engaged in a protected activity on January X, 2016 by filing a complaint on Student's behalf alleging discrimination on the basis of sex. OCR next considered if the District engaged in a materially adverse action against the Complainant and the Student. The Complainant alleged that the District engaged in an adverse action by refusing to investigate any of her allegations that Students 1, 2, 3 and 4 harassed the Student from April to May 2016. OCR reviewed each incident the Complainant raised during this time period and found that the District promptly investigated each incident and informed the Complainant of the outcome of its investigation. For this reason, OCR determined that there was insufficient evidence to show that the District engaged in an adverse action against the Complainant or the Student in this instance. Without an adverse action, OCR concluded that there was insufficient evidence that the District retaliated against the Complainant or the Student.

The Complainant also alleged that the Principal engaged in an adverse action by including a paragraph in her February XX, 2016 letter that gave the impression that the Complainant was the one causing problems with Student 3. A materially adverse action is an action that could well dissuade a reasonable person from making or supporting a charge of discrimination. In reviewing the letter, OCR found that the Principal only requested that the Complainant refrain from contacting students directly. Nothing was written in the letter to dissuade the Complainant from filing a discrimination complaint with the District and the Complainant continued to raise a number of allegations with the District despite receiving the letter. Therefore, OCR concluded that the Principal's letter was not a materially adverse action. For this reason, OCR concluded that the preponderance of the evidence did not establish that the Principal retaliated against the Complainant.

The Complainant further alleged that the Assistant Principal engaged in an adverse action by following the Student during the school dance and upsetting her. Assuming that the Assistant Principal's action was an adverse action and that there was a connection between the protected activity and the adverse action, OCR next considered if the Assistant Principal had a legitimate nondiscrimination reason for following Student. The District told OCR that the Assistant Principal was supervising the dance with the Principal and other staff members and that it was his responsibility to watch all of the students, including the Student. OCR determined that it was reasonable for the Assistant Principal to be in the same area as Student especially because the Complainant raised concerns about her safety at the school dance. In addition, OCR did not find any evidence to suggest that the District's reason was pretextual. Therefore, OCR concluded that the preponderance of the evidence did not establish that the Assistant Principal retaliated against the Student.

Conclusion

This concludes the investigation of this complaint. Without admitting to any violation of law, the District entered into the enclosed Resolution Agreement, which is aligned with the complaint allegations and the findings and concerns based on OCR's investigation. As part of the Resolution Agreement, the District agreed to:

- 1) adopt and publish its revised Title IX related procedures;
- 2) update its Notice of Nondiscrimination to include information regarding the revised Title IX related procedures and the contact information for the Title IX Coordinator, including name, title, phone number, address, and email address, on the District's website home page.
- 3) distribute its revised Title IX related procedures and the Notice of Nondiscrimination by including a link on the homepage of the District's website to the procedures, the Notice of Nondiscrimination, the Title IX Coordinator's contact information and updating the information in the Parent Information Packet and the Student Handbook;

- 4) distribute a Guidance Memorandum that includes a description of the District's revised Title IX related procedures, information about the Title IX Coordinator, and what to do if a Title IX concern comes to a staff member's attention;
- 5) provide training for those staff members who are responsible for responding to an allegation of sex discrimination on the District's revised procedures; when parents/guardians should be informed of their right to file a complaint under the District's Uniform Complaint Procedures; how to conduct an adequate, prompt, reliable, and impartial investigation and the appropriate legal standards that is to be used in reaching its determinations; provision of interim and other remedies for affected students; how to adequately provide written notice of the outcome of the District's investigation; and clarification that some student misconduct that falls under the District's anti-bullying policy may also violate civil rights statutes if the harassment is based on sex, disability, race, color, or national origin; and
- 6) continue to provide information specifically designed to inform students at the middle and high school about appropriate social and relationship boundaries, how to recognize, prevent, and avoid sexually harassing interactions and relations, how to report such incidents to the school.

Based on the commitments made in the enclosed resolution agreement, OCR is closing the investigation of this complaint as of the date of this letter, and notifying the Complainant and District concurrently. When fully implemented, the Resolution Agreement is intended to address all of OCR's compliance concerns in this investigation. OCR will monitor the implementation of agreement until the District is in compliance with the statutes and regulations at issue in the case.

OCR's determination in this matter 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. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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.

Please be advised that the Recipient 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 the law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

OCR thanks you and especially XXXXXXXX XXXXXXXXXXXX, XXXXX XXXXX, XXXX XXXXXXX and XXXX XXXXXXX for their continued assistance in resolving this case. If you have any questions regarding this letter, please contact me at (415) 486-5555.

Sincerely,

/s/

James Wood
Team Leader