



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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August 28, 2023

Sent by email only to: RLeon@NPS.K12.NJ.US

Roger León
Superintendent
Newark Public Schools
765 Broad Street
Newark, New Jersey 07102

Re: OCR Case No. 02-20-5001
Newark Public Schools

Dear Superintendent León:

This letter notifies you of the resolution of the U.S. Department of Education (the Department), Office for Civil Rights (OCR) compliance review of Newark Public Schools' (the District's) response to complaints and reports of sexual harassment, including sexual assault. This compliance review examined whether the District responded to such complaints and reports, regarding allegations against employees as well as students, as required by Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681-1688, and its implementing regulations at 34 C.F.R. Part 106. This examination included evaluating whether the District provided prompt and equitable grievance procedures and responses to possible sexual harassment under 34 C.F.R. §§ 106.31 and 106.8(b); whether the District fulfilled its obligation to have a Title IX coordinator who coordinated its efforts to comply with Title IX during investigations of sexual harassment complaints under 34 C.F.R. § 106.8(a); and whether the District adequately disseminated notice of its Title IX duty not to discriminate based on sex under 34 C.F.R. § 106.9.

To conduct this compliance review, OCR reviewed extensive documentation the District provided, including its policies, procedures, and notices regarding sexual harassment, as well as documentation of complaints and reports of conduct that could constitute peer or employee sexual harassment of students. OCR reviewed 80 complaints of student-to-student sexual harassment and five complaints of employee-to-student sexual harassment, including sexual assault, which the District received between school years (SY) 2017-2018, 2018-2019, and 2019-2020.¹ During SY 2021-2022, OCR interviewed 27 current and former District employees regarding 35 student-to-student complaints and five employee-to-student complaints at 11 schools. During this compliance review, OCR learned of another employee-to-student complaint reported in SY 2016-2017, and

¹ This letter refers to complaints and reports regarding allegations that students perpetrated incidents of student-to-student sexual harassment and to complaints and reports regarding allegations that employees perpetrated incidents of employee-to-student sexual harassment.

five additional employee-to-student complaints reported in SY 2021-2022. OCR also reviewed the District's policies and procedures regarding sexual harassment and interviewed the Title IX Coordinator about their implementation.

I. Summary of Findings

After a careful review of the documentary and witness evidence, OCR found nine violations of the District's obligations under Title IX and one compliance concern. Specifically, OCR found the following violations:

1. the District failed to coordinate its efforts to comply with and carry out its responsibilities under Title IX, including responding to sexual harassment and assault, through its designated Title IX Coordinator;
2. the District failed to consistently notify employees, students, and their parents,² of its designated Title IX Coordinator and that the District does not discriminate on the basis of sex, as required by the Title IX regulations in effect during SY 2017-2018 through 2019-2020;
3. the District failed to adopt and implement grievance procedures that complied with the requirements of Title IX in effect during SY 2017-2018 through 2019-2020; and the District's grievance procedures failed to comply with the 2020 Amendments to the Title IX regulations from August 2020 until August 2023;
4. the District failed to investigate and otherwise respond appropriately to incidents of employee-to-student sexual harassment, including by deferring its Title IX obligations to a state agency that did not fulfill them, in SY 2016-2017 through 2019-2020, and 2021-2022;
5. the District failed to investigate multiple incidents of alleged student-to-student sexual harassment reported to responsible employees during SY 2018-2019 and 2019-2020;
6. the District failed to provide adequate notice of the allegations or investigation outcomes to the targeted students and/or respondent students and their parents for multiple incidents of sexual harassment during SY 2017-2018 through 2019-2020;
7. the District failed to provide interim measures to the parties for multiple incidents of sexual harassment during SY 2017-2018 through 2019-2020;
8. the District failed to take appropriate action in response to substantiated complaints of sexual harassment, including to prevent the recurrence of sexual harassment; and
9. the District failed to train employees regarding the District's obligation to respond to sexual harassment, including sexual assault.

² The term parent refers to both parents and guardians throughout this letter.

In addition, OCR identified a compliance concern that the District may not have maintained adequate records of its responses to and investigations of complaints alleging violations of Title IX during SY 2017-2018 through 2019-2020 and continuing to the present.

The District voluntarily entered into a Resolution Agreement (the Agreement). The Agreement reflects the District efforts to implement needed terms to address the findings of OCR’s compliance review even before finalizing the terms of the Agreement. The implementation of the Agreement will build on the District’s efforts to date. Below OCR summarizes its methodology for this compliance review, the applicable legal standards, OCR’s investigative findings, legal analysis, and conclusions, and the terms of the Agreement.

II. Jurisdiction

Because the District is a recipient of federal financial assistance from the Department, OCR has jurisdiction over the District under Title IX and its implementing regulations at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any education program or activity operated by a recipient of federal financial assistance.

III. Methodology

OCR’s compliance review examined the District’s response to notice of incidents of sexual harassment, including sexual assault, in SY 2017-2018, 2018-2019, and 2019-2020, under the Title IX regulations in effect during those school years. The District’s policies and procedures during these years refer to sexual harassment using the terms “sexual misconduct” or “sexual incidents involving misconduct” and define them as including “unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, such as sexual misconduct or acts of sexual violence.” Because the Department amended its Title IX regulation on August 14, 2020,³ OCR also reviewed the District’s current sexual harassment procedures to determine if the District had updated them, and OCR interviewed the current Title IX Coordinator about their implementation. In total, OCR interviewed 27 current and former District employees including the Title IX Coordinator, Director of Labor and Employee Relations, Anti-Bullying Coordinator, an Assistant Superintendent, principals, assistant principals, school Harassment, Intimidation, and Bullying (HIB) Specialists, social workers, and a teacher.

The District is in Northern New Jersey and enrolled approximately 36,000 students across 64 schools in SY 2017-2018, 2018-2019, and 2019-2020. For SY 2022-2023, the District operated 63 schools: four early childhood centers serving grades pre-kindergarten through kindergarten, 41 elementary schools, and 18 high schools.

OCR requested and analyzed information from the District regarding reports and complaints of sexual harassment involving students and employees at all schools for SY 2017-2018 through 2019-2020. In its response, the District reported 80 student-to-student complaints involving allegations

³ Amendments to the Title IX regulation went into effect on August 14, 2020, and can be viewed [here](#). For more information about Title IX, including the new Title IX regulation and related resources, visit OCR’s website at https://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html and <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/index.html>.

of sexual harassment, including sexual assault. Nine of the 18 high schools (HS) received 27 of the 80 complaints, and 23 of the 41 elementary schools (ES) received 53 of the 80 complaints. OCR decided to focus its compliance review on the District's responses to these complaints at 11 of these schools: seven high schools, HS 1-7, and four elementary schools, ES 1-4 (the "Selected Schools"). OCR's analysis of the 80 complaints showed that: two of these high schools received most (52%) of the high school complaints, approximately 26% each, Barringer High School (HS 1) and East Side High School (HS 2); and Weequahic High School (HS 3) received three complaints, two of them involving students with disabilities. OCR initially identified four of the seven high schools, HS 1, HS 2, HS 3, and West Side High School (HS 4), for close review through a randomized sample of the 80 complaints. OCR also decided to review two more high schools that restricted student admission by application: Science Park High School (HS 5), which reported only one incident of student-to-student sexual harassment, and Eagle Academy for Young Men (HS 7), which reported no incidents. OCR also decided to focus on Dr. E. Alma Flagg Elementary School (ES 1) because it received 19% of the complaints at elementary schools alleging student-to-student sexual harassment.

In addition to selecting schools with a high incidence of student-to-student sexual harassment, OCR also carefully reviewed the District's response to five complaints of employee-to-student sexual harassment, including sexual assault. The five included two complaints at Central High School (HS 6) and one each at Chancellor Avenue Elementary School (ES 2), Horton Elementary School (ES 3), and Peshine Avenue School (ES 4). During OCR's investigation, District employees reported another allegation of employee-to-student sexual harassment at HS 4 during SY 2016-2017, and five incidents of alleged employee-to-student sexual harassment by an Administrator at HS [redacted content] during SY 2021-2022. OCR analyzed the District's responses to these reports as well.

By focusing on these Selected Schools, OCR carefully reviewed 38 case files out of the 80 District complaints of alleged student-to-student sexual harassment in SY 2017-2018 through SY 2019-2020 ("Selected Student-to-Student Incidents") and all 11 case files of alleged employee-to-student sexual harassment in SY 2016-2017 through 2019-2020 and 2021-2022 ("Selected Employee-to-Student Incidents"). The Selected Student-to-Student Incidents involved the following conduct: sexual assault; coerced oral sex; forcible kissing; forcible groping of breasts, genital areas, and buttocks; sexual cyber-bullying; inappropriate sexualized "games" such as "the rape game" (groping during a game of tag on the playground); and filming or sharing footage of sexual acts at school. The Selected Employee-to-Student Incidents involved the following conduct: sexual assault; unwanted touching, including sexual touching of genital areas; kissing; sexually harassing comments; and online sexual harassment.

IV. Legal Standards

In conducting this compliance review and evaluating the District's compliance with Title IX, OCR applied the regulations implementing Title IX in effect during SY 2017-2018 through 2019-2020. Citations in this section are to the prior regulation and the legal standards discussed below were in effect during the school years subject to this compliance review.

The regulations implementing Title IX contain a number of procedural requirements, including a requirement that recipients designate at least one employee to coordinate the recipient's efforts to

comply with Title IX, including the investigation of any complaint communicated to such recipient alleging its noncompliance with Title IX or any actions that Title IX would prohibit. The Title IX regulations also require each recipient to notify all of its students and employees of the name, office address, and telephone number of the employee or employees so designated. *See* 34 C.F.R. 106.8(a). In addition, the Title IX regulations require recipients to publish a notice of nondiscrimination covering Title IX, and to adopt and publish procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any actions prohibited by Title IX and its implementing regulations. *See* 34 C.F.R. § 106.9(a); *see also* 34 C.F.R. § 106.8(b).

Sexual harassment is a form of sex discrimination prohibited by Title IX. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, such as sexual assault or acts of sexual violence. Sexual harassment can create a hostile educational environment based on sex when the harassment is sufficiently serious to deny or limit the individual's ability to participate in or benefit from the recipient's education program or activity.

In determining whether sexual harassment exists and has created a hostile environment based on sex for students, OCR looks at the totality of the circumstances, and considers a variety of factors, including whether the conduct was unwelcome to the student(s), the degree to which the conduct affected one or more students' education; the type, frequency, and duration of the conduct; the identity of and relationship between the alleged harasser and the subject or subjects of the harassment; the number of individuals involved; the age and sex of the alleged harasser and the subject of the harassment; the size of the school, location of the incidents and the context in which they occurred; other incidents at the school; and whether there were also incidents of gender-based but non-sexual harassment. OCR examines the conduct from an objective perspective and a subjective perspective.

When an employee sexually harasses a student outside of their daily job responsibilities, OCR evaluates if the harassment created a hostile environment for the student, using the factors discussed above with respect to hostile environment harassment. When an employee engages in sexual harassment in the context of carrying out their day-to-day job responsibilities for providing aid, benefits, or services to students and that harassment denies or limits a student's ability to participate in or benefit from the school's program on the basis of sex, the recipient is deemed responsible for the harassment and remedying its effects. This type of sexual harassment includes "quid pro quo" harassment, which occurs if a teacher or other employee conditions an educational decision or benefit on the student's submission to unwelcome sexual conduct. Whether the student resists and suffers the harm threatened by the employee or submits and avoids the threatened harm, the employee's harassment is attributed to the District and OCR deems the District to have treated the student differently on the basis of sex. OCR considers the following factors in determining whether an employee has engaged in harassment in the context of the employee's provision of aid, benefits, or services to students: 1) the type and degree of responsibility given to the employee, including both formal and informal authority, to provide aid, benefits, or services to students, to direct and control student conduct, or to discipline students generally; 2) the degree of influence the employee has over the particular student involved, including the circumstances in which the harassment took place; 3) where and when the harassment occurred; 4) the age and educational level of the student involved; and, 5) as applicable, whether, in light of the student's age and educational level and the

way the school is run, it would be reasonable to believe that the employee was in a position of responsibility over the student, even if the employee was not.

Under the Title IX regulation in effect for the period reviewed in this investigation, when the recipient has actual or constructive notice of sexual harassment, it must take appropriate steps to investigate or otherwise determine what occurred, and it may be appropriate for a school to take interim measures prior to or during the investigation of a complaint. Interim measures are individualized services offered as appropriate to either or both the reporting and responding parties involved in an alleged incident of sexual misconduct. Interim measures include counseling, extensions of time or other course-related adjustments, modifications of work or class schedules, campus escort services, restrictions on contact between the parties, changes in work locations, leaves of absence, increased security, and monitoring of certain areas of campus, and other similar accommodations.

If a school's investigation or other appropriate steps to determine what occurred identify employee involved sexual harassment or student involved sexual harassment that creates a hostile environment, schools are responsible for taking prompt and effective action to stop the harassment and prevent its recurrence. A school also may be responsible for remedying the effects of the harassment on the student or employee who was harassed.

V. Investigative Findings, Legal Analysis, and Conclusions

In each of the sections below V.A – V.I, OCR summarizes its findings regarding the District's nine failures to: (A) coordinate its Title IX compliance regarding numerous reports/complaints of both employee-to-student and student-to-student sexual harassment through a Title IX coordinator; (B) notify students, parents, and employees about the Title IX coordinator; (C) notify students, parents, and employees that the District does not discriminate on the basis of sex; (D) adopt and implement grievance procedures that comply with the requirements of Title IX; (E) investigate and otherwise respond appropriately to incidents of (1) employee-to-student sexual harassment (including by deferring its Title IX obligations to a state agency that did not fulfill the District's obligations), and (2) student-to-student sexual harassment reported to responsible employees; (F) provide adequate notice to parties of the allegations and investigation outcomes; (G) provide interim measures to the parties; (H) appropriately respond to substantiated complaints of sexual harassment, including to prevent its recurrence; and (I) train employees regarding the District's obligation to respond to sexual harassment. Lastly, under Section V.J, OCR explains the basis for its concern that the District may not have maintained adequate records of its investigations of complaints of sexual harassment to demonstrate its compliance with Title IX.

A. The District's Failure to Coordinate Its Title IX Compliance

The Title IX regulations require the District to designate a Title IX coordinator to coordinate its compliance with Title IX and to publish the name and contact information for this coordinator, so students, parents, and employees know how to file a complaint with the Title IX coordinator. During the compliance review period through today, the District designated the same person to serve as its Title IX Coordinator and OCR interviewed her about past and current practices.

OCR found that the Title IX Coordinator did not, and currently does not, coordinate the District’s efforts to comply with/carry out its responsibilities under Title IX. The Title IX Coordinator told OCR that she did not oversee the District’s response to student-to-student complaints alleging a violation of Title IX. She had no role in the District’s investigation of any student-to-student complaints, nor did she receive notice of the outcome of such investigations. OCR found no evidence indicating that she was involved in investigating any of the prior 38 Selected Student-to-Student Incidents at the 11 Selected Schools.

The District identified the Anti-Bullying Coordinator as the individual responsible for overseeing student-to-student complaints alleging violations of Title IX. District employees stated they reported student-to-student complaints to the Anti-Bullying Coordinator; however, this individual did not report to or notify the Title IX Coordinator of such complaints. No District employees reported notifying the Title IX Coordinator of complaints alleging student-to-student sexual harassment or being contacted by the Title IX Coordinator to discuss such complaints. District employees reported notifying the Title IX Coordinator of employee-to-student complaints, but the Title IX Coordinator did not oversee the investigation of these complaints. Rather, the District deferred to an external state agency, the State of New Jersey Department of Children and Families’ Institutional Abuse Investigation Unit (IAIU), to investigate employee-to-student complaints of sexual harassment, including sexual assault, and to determine what interim measures were necessary (e.g., whether to restrict employees from the District during IAIU’s investigation of employee-to-student complaints). OCR found that the District did not investigate complaints alleging employee-to-student sexual harassment after IAIU returned the complaints to the District, even when IAIU identified concerns and/or IAIU did not interview all potential survivors.

B. Inadequate Notice of Title IX Coordinator

OCR also found that the District failed to adequately notify employees, students, and their parents, of the Title IX Coordinator. Of the 26 District employees and one former employee whom OCR interviewed, only 12 knew the identity of the Title IX Coordinator. OCR found that the District does not adequately publish the Title IX Coordinator’s contact information nor indicate how to file a Title IX complaint. The District’s website did not (and still does not) identify the Title IX Coordinator or list her contact information. The District’s Affirmative Action page⁴ includes the Title IX Coordinator’s name, identifies her as the “Assistant Superintendent, Human Resource Services” and provides her office address and telephone number, but does not identify her as the “Title IX Coordinator.” The District’s Discrimination/Harassment complaint form for complaints filed by employees identifies the Title IX Coordinator only as the Affirmative Action Officer.⁵

C. Inadequate Notice of Non-Discrimination

The District provided several notices of non-discrimination to OCR for review, but none met the requirements of the Title IX regulations in effect during SY 2017-2018 through 2019-2020. File Code 2224 *Non-Discrimination/Affirmative Action* states that sex discrimination and harassment is prohibited and establishes an Affirmative Action Officer and Team responsible for overseeing the District’s efforts to combat discrimination, but it does not identify a Title IX Coordinator or provide

⁴ See <https://www.nps.k12.nj.us/departments/affirmative-action/> (last visited August 24, 2023).

⁵ See <https://www.nps.k12.nj.us/documents/discrimination-harassment-complaint-form-updated-7-16-20-min/>.

contact information. File Code 4111.1/4211.1 *Non-Discrimination/Notice of Affirmative Action* does not refer to the Title IX Coordinator either; rather, it states that sex discrimination and harassment are prohibited and refers to an “Affirmative Action Officer” as the individual responsible for receiving complaints of sexual harassment, without providing any contact information.

D. The District’s Lack of Functional Title IX Grievance Procedures

The District has used different policies and procedures depending on the status of the respondent (e.g., student, employee, third party), but none complied with Title IX’s requirements. This approach results in inconsistencies in its investigations of complaints alleging sexual harassment and assault.

The District provided File Code 5145.4, *Equal Educational Opportunity* and File Code 5145.7, *Gender Identity and Expression* as policies prohibiting sexual harassment against all students. See <https://boardpolicyonline.com/?b=newark>. The District used File Code 5131.1 *Harassment, Intimidation, and Bullying* (the HIB Policy) to investigate complaints alleging sexual harassment between students. See *id.* In addition, although the HIB Policy does apply to employees, the District does not use the HIB Policy to investigate anything that would constitute “child abuse.” OCR determined that the HIB Policy did not comply with the Title IX regulations in effect prior to August 2020, because the HIB Policy does not provide for adequate notice of the allegations to the parties and does not specify timeframes for notice of the determination to the parties (e.g., “by next Board of Education meeting”). Further, the HIB Policy has not been updated to include provisions complying with the 2020 Amendments to 34 CFR Part 106, including equal and adequate notice of the complaint allegations; stating that the party may select an advisor of their choice; notifying the parties of the right to request to inspect and review evidence; stating that the respondent is informed that they are presumed not responsible until conclusion of the investigation; and stating the standard of evidence used during investigation.

The District uses File Code 5131 *Conduct/Discipline* (the Code of Conduct) to issue disciplinary sanctions to students who have engaged in sexual harassment. OCR determined that the Code of Conduct permits the District to issue to students a Level 2 sanction without any removal (e.g., a behavior contract, counseling, or community service) for confirmed inappropriate sexual activity (defined as “Inappropriate sexual contact” or “Indecent exposure”). The Code of Conduct permits the District to issue to students an out of school suspension (OSS) of up to four days for confirmed incidents of HIB involving cyberbullying or gender, racial, ethnic, or sexual harassment. The Code of Conduct permits the District to issue to students an OSS of five days for confirmed incidents of HIB involving assault/threats or cyber-stalking. As discussed further below in Section V.H, for substantiated complaints of sexual harassment, OCR noted that the District did not appear to make individualized determinations about what corrective actions were needed to prevent recurrence, including considering the severity of the conduct or whether the student had engaged in multiple incidents of sexual harassment.

The District has not had designated grievance procedures for investigating complaints of employee-to-student sexual harassment or employee sexual harassment of another employee. The District’s website suggests that it uses File Code 4118.3, *Grievances* and File Code 5141.4, *Missing, Abused and Neglected Children* to investigate complaints against employees. However, OCR found that

these procedures fail to provide: contact information about where to file a complaint; timeframes for the investigation; and information about appeal rights, despite the availability of appeal rights for complainant/targeted students under the HIB Policy. See <https://boardpolicyonline.com/?b=newark>.

In addition, the District has deferred to IAIU for investigation of alleged sexual harassment by employees, including sexual assault of students, and IAIU's procedures do not appear to comply with the requirements of Title IX. Documentation OCR reviewed suggests that IAIU did not notify employees of the allegations against them prior to the District's placing employees on suspension during IAIU's investigation. Evidence also suggests that the District did not investigate allegations of sexual harassment identified by IAIU during its investigation, or other potential survivors who may have been subjected to harassment and were not investigated by IAIU. Further, it is unclear what information IAIU provides to employees or students about their rights to have representation/an advisor during its investigation process as required by the 2020 Amendments.

E. The District's Failure to Investigate Complaints/Reports of Sexual Harassment

Based on its review of 38 case files and interviews of District employees, OCR determined that the District failed to investigate both complaints of employee-to-student sexual harassment and student-to-student sexual harassment in multiple ways. OCR discusses salient examples below.

1. Employee-to-Student Incidents

OCR determined the District failed to investigate any incidents of employee-to-student sexual harassment, including sexual assault, during SY 2017-2018 through 2019-2020, at the Selected Schools. OCR also found that this failure preceded the three-year period under review and continued in recent years because OCR learned of additional incidents of employee-to-student sexual harassment in SY 2016-2017 and 2021-2022 that the District had not investigated. For all of these incidents, the District deferred its obligations under Title IX to IAIU, an outside entity. IAIU substantiated sexual abuse in four of the 11 complaints OCR reviewed; in seven of the 11 complaints, IAIU did not substantiate sexual abuse but identified other sexual conduct that would be prohibited by Title IX, which the District did not investigate, such as a teacher's kissing a student on District property (Incident 3); a 1:1 personal aide's making sexual comments to a friend of a targeted student (Incident 8); and an Administrator's telling a group of high school students that they "were cute," commenting on their clothing, and punching one student in the breast (Incidents 13-17).

Incident 1 (ES [redacted content])

One example of employee-to-student sexual harassment concerned a targeted student who reported to a District teacher in 2018 that he and another teacher at ES [redacted content] had approximately four sexual encounters at school dating back almost a year. These incidents included watching pornography, masturbation, oral sex, and attempted anal sex. The District notified the Newark Police Department, the targeted student's parent, and IAIU about the targeted student's report the same day. The District placed the teacher on administrative leave and the [redacted content] Prosecutor's Office of Aggravated Sexual Assault charged the teacher with Endangering the Welfare of a Child and Aggravated Criminal Sexual Contact. IAIU completed an investigation in

2019, and nearly one year after the student reported the conduct, IAIU notified the District and the parent of the targeted student that charges of sexual abuse/sexual molestation were substantiated. The teacher resigned from his position in 2020.

OCR determined the District did not investigate whether the teacher’s conduct violated Title IX. During an interview with OCR, the former HIB specialist at ES [redacted content] stated it was “not our role to investigate” when child abuse is alleged. According to District records regarding this incident, the teacher allegedly made inappropriate sexual comments to other students including stating, “That’s why your penis isn’t hanging yet,” and that a student had a “fat ass.” The District’s former Director of Labor and Employee Relations stated that the District immediately referred the targeted student’s initial report to IAIU and law enforcement, and thereafter did not determine whether the teacher’s actions had created an ongoing sexually hostile environment for the targeted student or any other students at ES [redacted content]. The former Principal of ES [redacted content] informed OCR that school administrators informed faculty and students about an allegation against the teacher and asked students to share any information they had with the Social Worker/HIB Specialist or School Administrators at ES [redacted content]. However, ES [redacted content] did not specifically investigate the alleged sexually harassing comments the teacher made to other students.

2. Student-to-Student Incidents

OCR also determined that the District failed to investigate incidents of alleged student-to-student sexual harassment reported to responsible District employees. Based on its review of the case files for the 38 Selected Student-to-Student Incidents, OCR found that the District had failed to investigate at least nine allegations of sexual harassment during the review period and three prior incidents of alleged sexual harassment that targeted students had previously reported to responsible employees in 2017. In three of the 38 case files, OCR did not find any evidence that the District investigated whether substantiated incidents of sexual harassment had created a hostile environment for other District students.

Incident 2 (HS 2)

One example involved alleged sexual harassment of a male high school student with a disability by a female high school student with a disability. The male student reported to HS 2 staff in 2018 that the female student had followed him around HS 2 and touched him in his private area on several occasions at school. According to the District’s documentation, the targeted male student had previously reported to his Child Study Team case manager that the female student had offered him oral sex in 2017, and another student had reported to an assistant principal having observed the female student crawl under a bathroom stall that the targeted male student was using and perform oral sex in 2017. The District did not initiate an HIB investigation regarding the events that occurred in 2017 until the targeted male student reported the ongoing sexual harassment in 2018.

F. The District Failed to Consistently Notify Parties of the Allegations or Outcomes of Its Investigations

Based on its file review and interviews of District employees, OCR determined that the District failed to consistently notify parties of the allegations or outcomes of its investigations for complaints of employee-to-student sexual harassment and student-to-student sexual harassment.

1. Employee-to-Student Incidents

With respect to five of the 11 complaint files for the Selected Employee-to-Student Incidents that OCR reviewed, the District did not provide any documentation showing that it notified the respondent employees of the allegations against them. OCR further found that for nine of the 11 complaints, the District did not provide any documentation that it notified both parties of the outcome.

Incident 3 (HS [redacted content])

For example, in 2019, the New Jersey State Central Registry received an anonymous complaint that a high school teacher had engaged in sexual genital contact with a student earlier that year. IAIU promptly advised the principal of HS [redacted content] of the allegation against the teacher. The teacher resigned a week later and did not cooperate with IAIU's investigation. IAIU completed its investigation within four months and issued a determination stating it could not substantiate sexual genital contact between the parties. However, IAIU found information indicating that the targeted student "was harmed or placed at risk of harm" and video footage confirmed that the teacher kissed the student outside of a different District school, HS [redacted content].

OCR determined the District did not notify either party of the allegations and OCR did not find any evidence that the District notified the teacher of IAIU's determination. OCR also noted that IAIU's determination letter to the student's parent did not state that it had reviewed video evidence confirming that the teacher had kissed the student. OCR did not find any evidence that the District notified the student's parent that the teacher had kissed the student.

2. Student-to-Student Incidents

With respect to 33 of the 80 student-to-student complaints, the District did not provide documentation that it notified both parties of the allegations. For 26 of these 80 complaints, the District did not provide documentation that it notified both parties of the outcome. District staff asserted that if they did not notify the parties of the allegations or outcomes in writing, they did so orally. But OCR found evidence that contradicted the assertions of District staff, as detailed below.

Incident 4 (ES [redacted content])

OCR determined that for one student-to-student incident involving 7th and 8th grade students in 2018, the parent of a female student filed a complaint against three male students. The parent alleged that the three male students physically assaulted the female student on the playground by pinning her to the ground, hitting her, and stating "we should rape her." The District confirmed that the male students had assaulted and sexually harassed the female student and reported the

incident to the Newark Police Department. The District’s documentation of the incident produced no evidence that it provided notice of the allegations of sexual harassment to the parents of one of the male students. The evidence the District produced indicated that it only notified the parent that her son was being suspended for four days and removed to another school. OCR determined that the outcome letters issued to the parents of the female student and the male students did not provide any information regarding the underlying incident and only stated that “the allegation of bullying was substantiated.”

Incident 5 (ES 3)

OCR also determined that the District provided the parties with different information about its investigative findings depending on the party’s status as a complainant versus a respondent. For example, in Incident 5, the letter to the respondent student describes the District’s findings and a description of the conduct, while the letter to the targeted student simply states she is a confirmed HIB victim. During interviews with OCR, District HIB Specialists informed OCR that a previous Anti-Bullying Coordinator for the District had instructed them to include different information in the outcome letter depending on the party’s status.

G. The District Failed to Provide Interim Measures

Based on its file review and interviews of District employees, OCR determined that the District failed to provide interim measures and/or document the provision of interim measures for complaints of employee-to-student sexual harassment and student-to-student sexual harassment.

1. Employee-to-Student Incidents

For eight of the 11 Selected Employee-to-Student Incidents, the District did not provide documentation that it provided any interim measures to the parties. For example, despite IAIU’s finding in Incident 3 that the targeted student was “placed at risk of harm” by the respondent employee, and video footage documenting the respondent employee kissing the targeted student, OCR did not find any evidence that the District offered the student any counseling or other interim measures.⁶

2. Student-to-Student Incidents

For 14 of 80 student-to-student complaints the District reported to OCR, the District did not indicate whether it provided interim measures to the parties. In addition, OCR did not find documentation of the interim measures the District asserted it provided in any of the 38 case files for Selected Student-to-Student Incidents that OCR reviewed. In at least two of these 38 case files OCR found evidence indicating that the District did not provide and/or did not timely provide requested interim measures to the targeted students. Below OCR describes these two examples from these 38 case files.

⁶ See *supra* discussion of Incident 3 at page 11.

Incident 6 (ES 1)

For example, in 2018, a staff member at ES 1 filed a complaint alleging that a male student with a disability inappropriately touched three female English Learner students in school and on the school bus. OCR found no evidence that the District attempted to separate the female students from the male student until approximately three weeks after the staff member's initial report, even though the targeted students shared a bus with the male student and one of the targeted students shared a class with the male student. Further, OCR found no evidence that the District offered any interim measures to a witness student who reported trying to "protect" one of the targeted students from the male student while on the bus. In interviews with OCR about the complaint, District staff could not recall if the District provided any requested interim measures, and OCR did not find evidence that it granted any requests for interim measures.

Incident 7 (HS 1)

In 2019, a female student reported that two male students had sexually harassed her by touching her buttocks and making sexual comments. The HIB Specialist for HS 1 investigated and confirmed that the male students had sexually harassed the female student during their shared biology class. The school disciplined the male students with OSS for 3 days. Documentation OCR reviewed stated that the female student requested a class change following the incident, but the HIB Specialist could not recall whether the school granted the female student's request for a class change, and the District did not provide any evidence of having done so. OCR determined that the female student subsequently dropped out of school.

H. The District Did Not Take Appropriate Action in Response to Substantiated Complaints of Sexual Harassment, including to Prevent Its Recurrence

OCR's review of complaint files and interviews of District employees indicated that the District failed to take appropriate action in response to complaints of both employee-to-student and student-to-student sexual harassment, including to prevent the recurrence of the harassment.

1. Employee-to-Student Incidents

As discussed above, OCR determined that the District did not investigate whether any of the allegations of employee-to-student sexual harassment in 11 complaints violated Title IX and instead deferred its investigations to IAIU. OCR also determined that even when IAIU confirmed that District employees had engaged in inappropriate sexual conduct in four of the 11 incidents (Incidents 3,⁷ 1,⁸ 8, and 13), the District did not investigate whether the employee-to-student harassment had created a hostile environment for other District students. Further, OCR determined that two of the six employees alleged to have engaged in sexual harassment are still employed with the District, even though the District has never investigated whether their conduct violated Title IX. OCR discusses one of these examples below.

⁷ See *supra* discussion of Incident 3 at page 11.

⁸ See *supra* discussion of Incident 1 at page 9.

Incident 8 (ES [redacted content])

In 2019, an 8th grade student notified a teacher at ES [redacted content] that a 1:1 personal aide assigned to a different student had a sexual relationship with him in her home. The targeted student stated that the aide continued to harass him via social media. The Principal of ES [redacted content] took statements from the targeted student and a teacher and notified the targeted student's guardian and the Newark Police Department the day of the student's report. The District immediately restricted the aide from the school and terminated her employment with the District approximately six weeks after the targeted student's report in 2019. IAIU completed an investigation of the targeted student's allegations, issuing a determination letter approximately four months after the targeted student's report, stating that it had substantiated the allegations of sexual abuse/sexual abuse-penetration. According to documentation the District provided to OCR, the State of New Jersey also pursued criminal charges against the aide.

OCR determined that the District did not investigate whether the aide's conduct created a sexually hostile environment for the targeted student or other students at ES [redacted content], including the student to whom the aide was assigned. In addition, the District did not investigate allegations reported by a friend of the targeted student who reported that the aide had made multiple sexually inappropriate comments to her regarding the targeted student, and that the aide removed the targeted student's friend from class to ask why the targeted student was no longer talking to the aide.

2. Student-to-Student Incidents

OCR's review of the 38 case files for Selected Student-to-Student Incidents revealed that the District did not take appropriate action in response to substantiated sexual harassment in at least three cases and appears to have failed to make individualized determinations about what action was needed to prevent recurrence in other substantiated sexual harassment cases. In the first case (Incident 10 below), OCR found that the District determined that it could not substantiate the allegation that the respondent student engaged in sexual harassment despite corroboration of the alleged harassment by multiple witnesses and the District provided no explanation for this determination. In the second case (Incident 11), where the evidence substantiated a sexual assault involving students at one District school and two respondent students from two different District schools who played a role in the assault by recording it, the District took action to prevent recurrence by the students who committed the assault but not for the two who filmed it. In the third case (Incident 12), the District quickly confirmed and imposed discipline for the underlying incident but did not investigate it as sexual harassment until several weeks later and failed to investigate related retaliatory harassment.

In addition, OCR's review of the District's responses to findings of sexual harassment by students raises a concern that the District may not have made individualized determinations about what action was needed to prevent further harassment. Specifically, the records and interviews indicated that the District typically imposed a four-day suspension for incidents of confirmed sexual harassment despite differences in their nature, severity, and frequency; and staff were unable to explain why that disciplinary sanction was imposed despite the differences in circumstances of the incidents. For example, the District imposed a four-day suspension on a student who was found to have engaged in sexual harassment on three occasions (Incident 6) and imposed the same

consequence – four-day suspension – on other students who engaged in sexual harassment on only one occasion. District staff stated to OCR that under the Code of Conduct, they could not issue a suspension of more than four days without a hearing before the Superintendent, suggesting that District staff may have decided to issue four-day suspensions in some cases not based on the nature of the harassment itself but rather to avoid having to hold a disciplinary hearing before the District Superintendent. OCR determined that on multiple occasions the District issued disciplinary sanctions that appeared inconsistent with its Code of Conduct, including that the District did not impose any suspension of five or more days for sexual harassment across three school years of data, regardless of the severity of the incident.

Incidents 9 and 10 (ES 1)

In 2018, a teacher at ES 1 reported observing a 2nd grade female student touching another 2nd grade female student in the genital area (Incident 9). ES 1’s HIB Specialist investigated and determined that the student had engaged in the alleged sexual harassment based on the statements of the teacher and the female targeted student. During the investigation, the female targeted student reported having observed the student sexually harass another 2nd grade female student by touching her inappropriately in her genital area and buttocks (Incident 10). Four days after the teacher reported Incident 9, this second targeted female student confirmed that the student had touched her inappropriately in school more than once. Despite having corroborating evidence from multiple witnesses, the District did not determine that the female student had sexually harassed the second targeted student.

Incident 11 ([redacted content])

In [redacted content], the 1:1 personal aide for a male student filed a complaint alleging that the student and seven other students participated in the sexual assault of a female student in a teacher’s lounge at [redacted content]. The District determined that two students from two different schools ([redacted content]) participated in the incident as lookouts and/or recorded a video of the incident. Administrators at [redacted content] told OCR that they notified administrators at the other schools regarding the two students’ involvement in the incident, but the District did not provide any documentation of such notice or any other action the District took to prevent the recurrence of sexual harassment. OCR noted that one of the other schools [redacted content] did not include the student involved in Incident 11 in the records it produced to OCR of incidents of sexual harassment involving its students. In addition, an administrator at the other school [redacted content] denied that staff at the school of the incident [redacted content] had notified his school that one of its students was involved in Incident 11. Further, the second school [redacted content] reported to OCR that none of its students had engaged in incidents of sexual harassment during SY 2017-2018 through 2019-2020.

Incident 12 (ES [redacted content])

In 2018, a 3rd grade male student reported that two male students in 5th and 6th grade forced him into the boys’ bathroom in school and “tried to do gay stuff to [him],” including forcibly kissing him. The respondent male students received OSS for three days. ES [redacted content] did not investigate the incident as sexual harassment until several weeks later, when the parent of the student complained to the District’s Anti-Bullying Coordinator about retaliatory harassment by the

students following their return from suspension. OCR did not find any evidence that the District investigated the retaliatory harassment. Although the District granted the student’s request for a safety transfer, he was not permitted to transfer to a new school until the start of SY 2018-2019 even though there were approximately three months of school remaining in SY 2017-2018.

I. The District Failed to Provide Adequate Training to Its Employees

OCR also found that the District failed to provide adequate training to its employees regarding the requirements of Title IX. The District provided information stating that all employees are required to participate in affirmative action training offered annually via an online training course. The District provided documentation of several school-level HIB trainings offered to students, school security guard and safety officers, and relevant school employees (i.e., Student Support Team members such as social workers) on a variety of topics, including the Week of Respect, HIB and security procedures and protocols, the Anti-Bullying Bill of Rights Act, and reporting requirements (e.g., paperwork completion). Further, the District stated that it provides annual professional development and training to employees in various administrative, instructional, and non-instructional positions regarding District employees’ obligation to report incidents of alleged child abuse. However, this information and documentation failed to demonstrate that the District adequately trained its employees on how to comply with Title IX with respect to ensuring prompt and equitable responses to complaints of sexual harassment of students by other students and employees, including how to investigate and resolve such complaints. OCR also determined that the District has not updated the training it provides staff to comply with the 2020 Amendments to Title IX because there is no documentation that employees are trained on the definition of sexual harassment as defined by 34 CFR § 106.30; several employees OCR interviewed did not know what Title IX referred to; and the District does not publish trainings on its website. Further, OCR determined that the District has not provided information that students and/or parents received training regarding Title IX.

J. The District May Not Have Maintained Adequate Records of Its Responses to and Investigations of Sexual Harassment

The regulation implementing Title VI of the Civil Rights Act of 1964 (Title VI), at 34 C.F.R. § 100.6(b), requires recipients to collect, maintain, and provide to OCR such records that will enable OCR to ascertain whether the District is in compliance with the nondiscrimination requirements of Title VI. This requirement is incorporated by reference in the regulations implementing Title IX, at 34 C.F.R. § 106.81.

OCR has a compliance concern that the District is not meeting its obligation to maintain the records OCR needs to assess if the District’s response to sexual harassment complies with Title IX based on recordkeeping deficiencies OCR found in many of the complaints OCR reviewed from SY 2017-2018, 2018-2019, 2019-2020, and 2021-2022. OCR discusses some examples of such deficiencies below. In addition, the District’s continued use of its HIB data system to track its response to incidents of sexual harassment also raises a concern about the District’s compliance with the Title IX record-keeping requirements for sexual harassment complaints in 34 C.F.R. § 106.45(b)(10). For example, the regulation requires the District to keep records that it does not consistently store in its HIB data system, such as documentation of the disciplinary sanctions imposed on the respondent, any remedies provided to the targeted student designed to restore or preserve equal

access to the recipient's education program or activity, records of informal resolutions of sexual harassment complaints, records documenting how the District's response to reports of sexual harassment were not deliberately indifferent, including records of the supportive measures it provided to targeted students or an explanation of why supportive measures were not provided in light of the known circumstances.

1. Employee-to-Student Incidents

OCR found that for five of the 11 employee-to-student complaints, the District did not provide any documentation that it notified the respondent employee of the allegations. OCR also found that for nine of the 11 complaints, the District did not provide any documentation that it notified both parties of the outcome. Further, for eight of the 11 complaints, the District did not provide OCR with any documentation that it provided interim measures to the parties. OCR describes a few examples of these recordkeeping concerns below.

Incidents 13-17 (HS [redacted content])

While OCR's compliance review focused on the District's response to student-to-student and employee-to-student sexual harassment in SY 2017-2018 through 2019-2020, the Principal at HS [redacted content] informed OCR of two additional incidents of employee-to-student sexual harassment from SY 2021-2022, and OCR requested the related records. From these records, OCR learned that during the course of one week in 2022, three 10th grade and two 11th grade students reported a total of five incidents of inappropriate conduct by an Administrator at HS [redacted content], which included touching their hair, making comments about them being "cute," making comments about their clothes, punching one student in the breast, and putting a student in a headlock. The District placed the Administrator on administrative leave on the date of the last report and referred Incidents 13-17 to IAIU for investigation. IAIU notified the District, the respondent Administrator, and the students' parents of its determination by letter approximately two weeks later, which stated that IAIU did not substantiate the allegation of "Physical Abuse/Risk of Harm" because the students were not physically abused. OCR determined that the HIB Specialist at HS [redacted content] obtained witness statements from each student and interviewed the Administrator who denied the allegations, but the District was unable to produce any record of the Administrator's statement.

2. Student-to-Student Incidents

The District did not consistently document the steps it took to investigate and respond to allegations of sexual harassment. For example, District staff asserted that they always interviewed both parties and relevant witnesses during all investigations, but OCR found multiple case files that did not include witness statements. In addition, as noted above, the District did not produce any documentation of providing notice to the administrators at ES [redacted content] and HS [redacted content] of their students' involvement in Incident 11, or of the District's having taken any action to prevent the recurrence of sexual harassment.

OCR has a concern that the District either (1) lacks the records it needs to demonstrate to OCR that it responded equitably to complaints of sexual harassment by notifying both parties of the

allegations and the investigation's outcome, or that it took action to prevent the recurrence of sexual harassment, or (2) did not take its asserted steps to respond equitably.

The District also failed to provide documentation of the provision of interim measures to the parties. For example, District staff asserted that its practice is to offer counseling to all students named as targeted or respondent students in complaints alleging sexual harassment. However, despite OCR's repeated requests for such documentation, the District did not provide OCR with documentation related to the offer or provision of any counseling sessions in any of the 38 case files of the Selected Student-to-Student Incidents. In addition, District staff reported creating records documenting the provision of interim measures separate from the investigative case files and did not provide these records despite repeated requests from OCR for the complete complaint files. Further, during multiple interviews, District staff referred to personal notes they had created contemporaneously with their investigations to explain how the District responded that were not maintained within the investigative case files the District provided to OCR.

Incident 18 (HS 2)

In 2017, three female students reported that another female student grabbed their breasts while a male student recorded the incident on his phone. The District provided to OCR a three-page Student Safety Data System (SSDS) form completed by the assistant principal, which stated that the District had confirmed sexual contact and sexual assault occurred in the school building, but the District did not produce any of the evidence it relied upon in making this determination. The SSDS form states that an administrator at HS 2 asked a targeted student to provide a statement, and the administrator questioned the respondent student regarding his involvement in the incident; however, the District did not provide any records of witness statements from any of the students to OCR. Further, the SSDS form referenced the administrator's viewing a Snapchat video taken by one of the students, but the District did not appear to retain the video in its records as it was not part of the investigative case file provided to OCR.

Overall, the investigative case files that were produced to OCR were often incomplete or kept in a manner that did not allow OCR to assess the adequacy of the District's compliance with Title IX. The District's fragmented record-keeping practices appear related to its failure to produce all the records OCR requested during the compliance review and its failure to coordinate its schools' responses to notice of sexual harassment through its Title IX Coordinator.

VI. Conclusion

OCR applied the Legal Standards set forth above to the evidence gathered in this compliance review and found nine violations of Title IX and its implementing regulations and one compliance concern. To resolve the nine violations and one compliance concern OCR identified during this compliance review, the District entered into the attached Agreement, which is aligned with the issues investigated and the evidence obtained by OCR.

The Agreement requires that the District make changes to ensure that the Title IX Coordinator coordinates all of the District's efforts to comply with Title IX moving forward, including but not limited to all of its investigations of sexual harassment involving its students and employees. The Agreement also requires that the District revise its policies and procedures to ensure compliance

with Title IX; notify its employees, students, and their parents of its Title IX Coordinator and how to file complaints alleging a violation of Title IX; and provide training regarding the revised policies and procedures for staff and students. The Agreement further requires the District to clarify in its Title IX policy and grievance procedures and other relevant District policies and procedures its continued obligation to comply with Title IX while other entities' investigations are pending. In addition, the Agreement requires the District to conduct a climate survey and to implement a revised Title IX record-keeping system to appropriately document and preserve records about sexual harassment as required by the Title IX regulations. Further, the Agreement requires the District to report to OCR any complaints of sexual harassment it receives during OCR's monitoring of the Agreement. Additionally, the Agreement requires the District to review the case files for a subset of the reported incidents of employee-to-student and student-to-student sexual harassment from school years 2017-2018 through 2021-2022 that OCR identifies for the District's review to determine if further action is needed to provide an equitable resolution of each incident.

Based on the commitments made in the Agreement, OCR is closing the investigation of this compliance review as of the date of this letter. When fully implemented, the Agreement is intended to address the areas of violation and compliance concern identified by OCR. OCR will monitor the implementation of the Agreement until the District is in compliance with the terms of the Agreement and the statutes and regulations at issue in this compliance review.

This concludes OCR's compliance review and should not be interpreted to address the District's compliance with any other regulatory provision or to address any issue other than that addressed in this letter. This letter sets forth OCR's determination in this compliance review. 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 District may not harass, coerce, intimidate, discriminate, or otherwise retaliate against any individual because the individual has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file a separate retaliation complaint with OCR.

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

If you have any questions, please contact Jessica Daye, Compliance Team Investigator, at (646) 428-3812 or jessica.daye@ed.gov; Erin M. Greene, Compliance Team Attorney, at (646) 428-3870 or erin.greene@ed.gov; Joy M. Purcell, Senior Compliance Team Attorney, at (646) 428-3766 or joy.purcell@ed.gov; or Félice A. Bowen, Compliance Team Leader, at (646) 428-3806 or felice.bowen@ed.gov.

Sincerely,

/s/

Rachel Pomerantz

cc: Brenda Liss, Esq.

Attachment