



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION IV

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ATLANTA, GA 30303-8927

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December 1, 2017

Kurt Browning  
Superintendent  
District School Board of Pasco County  
7227 Land O'Lakes Blvd.  
Land O'Lakes, FL 34638

Complaint #04-15-1024

Dear Superintendent Browning:

The U.S. Department of Education, Office for Civil Rights (OCR) has concluded its investigation of the above-referenced complaint filed against Pasco County School District (District). The Complainant alleged that her son, an African American boy (Student), was subjected to different treatment on the bases of race and sex when administrators at Daysprings Elementary School (School) failed to investigate the Student's allegation that a white, female student engaged in inappropriate conduct toward him, but investigated the white, female student's allegations that the Student engaged in inappropriate conduct toward her and found him to have sexually harassed the white female student. The Student was 5 years old and in kindergarten at the time.

OCR investigated this complaint pursuant to Title IX of the Education Amendments of 1972 (Title IX), as amended, 20 U.S.C. §§ 1681 *et seq.*, and its implementing regulation, 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 and Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d *et seq.*, and its implementing regulation, 34 C.F.R. Part 100 which prohibit discrimination on the basis of race, color or national origin by recipients of Federal financial assistance. The District is a recipient of Federal financial assistance from the Department. Therefore, OCR had jurisdiction to investigate this matter.

OCR investigated the following issues:

1. Whether the District and School failed to provide prompt and equitable responses to allegations of sexual harassment arising from a bus incident on October 16, 2014, and if so, whether the failure to provide a prompt and equitable response allowed the Student (or others) to continue to be subjected to a hostile environment, in noncompliance with Title IX and its implementing regulation at 34 C.F.R §§ 106.8 and 106.31.<sup>1</sup>

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<sup>1</sup> OCR's letter of notification to the District listed only issues 2 and 3. Based upon the evidence obtained during the course of the investigation, OCR identified the additional related issue concerning whether the responses to both students' reports of sexual harassment met Title IX standards for responding to possible sexual harassment.

2. Whether the Student was subjected to different treatment on the basis of race when the School failed to investigate his allegations of sexual harassment against a white student, but investigated the allegations of sexual harassment of the white student against him in noncompliance with Title VI and its implementing regulations at 34 C.F.R. §§ 100.3 (a) and (b).
3. Whether the Student was subjected to different treatment on the basis of sex when the School failed to investigate his allegations of sexual harassment against a female student but investigated the allegations of sexual harassment of a female student against him in noncompliance with Title IX and its implementing regulations at 34 C.F.R. §§106.31 (a) and (b) (1), (2), (3), (4) and (7).

OCR reviews evidence under a preponderance of the evidence standard to determine whether the greater weight of the evidence is sufficient to support a conclusion that a recipient failed to comply with a law or regulation enforced by OCR or whether the evidence is insufficient to support such a conclusion. During its investigation, OCR reviewed documents submitted by both the Complainant and the District and interviewed the Complainant as well as six District and School administrators. Based on its investigation, OCR has determined, by a preponderance of the evidence, that the District is in noncompliance with Title IX and Title VI as alleged. We set forth below the factual and legal bases for our determination.

## **Legal Standards**

### Title IX

The Title IX implementing regulation at 34 C.F.R. § 106.8(a) provides that each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX, including any investigation of any complaint communicated to such recipient alleging its noncompliance with, or alleging any action which would be prohibited by, Title IX. The recipient shall notify all its students and employees of the name, office address and telephone number of the employee or employees appointed.

The Title IX implementing regulation at 34 C.F.R. § 106.9 (a)(1) provides in relevant part that each recipient shall implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school students, and employees that it does not discriminate on the basis of sex in the educational program or activity which it operates, and that it is required by Title IX and 34 C.F.R Part 106 not to discriminate in such a manner. The notice of nondiscrimination shall state at least that the requirement not to discriminate in the education program or activity extends to employment, and must include a statement that inquiries concerning Title IX may be referred to the Title IX Coordinator or to OCR (34 C.F.R. § 106.9(b)).

The Title IX implementing regulation at 34 C.F.R. § 106.31(a) provides that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives Federal financial assistance.

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The Title IX implementing regulation at 34 C.F.R. § 106.31(b)(1), (2), (3), (4) and (7) provides that a recipient shall not, on the basis of sex: (1) treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service; (2) provide different aid, benefits, or services or provide aid, benefits, or services in a different manner; (3) deny any person any such aid, benefit, or service; (4) subject any person to separate or different rules of behavior, sanctions, or other treatment; or, (7) otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

The regulation implementing Title IX at 34 C.F.R. § 106.8(b) requires that each recipient adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints under Title IX. OCR has identified a number of factors to consider in evaluating whether a recipient's grievance procedures are prompt and equitable, including whether the procedures provide for: notice to students and employees of the procedure, including where complaints may be filed; application of the procedure to complaints alleging harassment carried out 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 the major stages of the complaint process; notice to the parties of the outcome of the complaint; and, an assurance that the recipient will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

Sexual harassment of students can constitute discrimination prohibited by Title IX and a recipient has a responsibility to respond to such harassment promptly and effectively. Harassing conduct creates a sexually hostile environment when it is sufficiently serious to limit or deny a student's ability to participate in or benefit from the school's educational program.

In situations involving harassment by peers, a recipient is in violation of Title IX if it has notice of a sexually hostile environment and fails to take immediate and effective corrective action.

A recipient can receive notice of harassment in different ways. For example, a student or parent may have contacted appropriate personnel such as a principal, teacher or some other responsible employee. The recipient may also receive notice about harassment in an indirect manner. For purposes of compliance with the Title IX regulations, a recipient has a duty to respond to harassment incidents about which it reasonably should have known, i.e., if it would have learned of the harassment if it had exercised reasonable care or made a reasonably diligent inquiry.

When responding to harassment, a recipient must take prompt and appropriate steps to investigate or otherwise determine what occurred and take prompt and effective steps reasonably calculated to end any harassment, eliminate a hostile environment if one has been created, and prevent harassment from occurring again. These steps are the recipient's responsibility whether or not the student who was harassed makes a complaint or otherwise asks the recipient to take action. The specific steps in a recipient's investigation will vary depending upon the nature of the allegations, the source of the complaint, the age of the student or students involved, the size and administrative structure of the recipient, and other factors. In all cases, however, the inquiry should be prompt, thorough, and impartial.

## Title VI

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The Title VI implementing regulation at 34 C.F.R. § 100.3(a) provides that no person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any educational program or activity to which Title VI applies.

The Title VI implementing regulation at 34 C.F.R. §100.3(b) provides that a recipient may not, directly or through contractual or other arrangements, on ground of race, color, or national origin: (i) deny an individual any service, financial aid, or other benefit provided under the program; (ii) provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others; (iii) subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit; or, (iv) restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit.

### Different Treatment

When reviewing a claim of different treatment based on race or sex, OCR first determines whether there is evidence that an individual has been treated differently than similarly situated individuals of a different race or sex. If there is a difference in treatment, OCR determines whether the District has a legitimate nondiscriminatory, non-pretextual reason for the difference in treatment. In determining whether there is circumstantial evidence of discriminatory intent OCR may also examine whether there is evidence that the recipient treated the individual in a manner that was inconsistent with its established policies.

### Applicability to Charter Schools

Title IX and Title VI apply to all public charter schools. Moreover, the regulations that apply to charter schools are the same as those that apply to other public schools.

### **Background**

The Student and a white female who reportedly accused the Student of sexually harassing conduct were both 5 year old kindergarten students at the School. The School is a District charter school.

### **Summary of Complaint Allegations**

The Complainant alleged that she and her husband (Parents) were informed on October 17, 2014 that the Student had been found to have sexually harassed a white female student on the bus the day before. After obtaining additional information about the incident, the Parents verbally informed the District and School that they felt the white female student (Student A) had been the aggressor and that the investigation had not been fair due to the Student's sex and race. On October 20, 2014, they submitted a written appeal of the Student's discipline. The Parents' written submission also stated that in responding to the report made on behalf of the white female, staff subjected the Student to discrimination on the basis of his race (African-American) and of his sex (male). The Parents also raised concerns about race discrimination during one or

more meetings with District and School staff. The Parents were not told that the concerns they raised would be investigated.

On October 28, 2014 and November 4, 2014, the Complainant updated OCR, advising that the Parents had met with the School's board. Concerns about the fairness of the discipline of the Student and about discrimination on the basis of race and sex were raised by the Complainant's husband during the meeting. Subsequent to the meeting, the board changed the wording of the incident report, and the Student was not disciplined. However, the Student could not ride the bus until after January 6, 2015. The Parents remained concerned about some of the wording in the revised referral because it called into question whether the Student had done something wrong.

## **DISTRICT'S POLICY AND PROCEDURES AND SCHOOL PRACTICES**

According to District and School staff, the School has adopted all of the District's policies and procedures regarding discrimination. The District and School's nondiscrimination statement cover all protected categories under statutes enforced by OCR<sup>2</sup> and is published on each website. The name and contact number of the District's Equity Officer, who serves as the Title IX Coordinator, is published in the notice of nondiscrimination.<sup>3</sup>

The District's Board Policy "2260.2 - Nondiscrimination Grievance Procedure" in effect as of the 2014-15 school year stated that the Board offers students the opportunity to participate in programs and activities without regard to sex, among other bases. According to District Staff, the District's Nondiscrimination Grievance Procedure can be used to file a complaint under any of the protected categories alleging any discrimination concern, even though the procedure specifically refers to a "grievance *harassment* form." (Emphasis added.) The Procedure outlines the process for filing a complaint and the steps the District will take to address the complaint.

The District also has Policy "5517 – Anti-harassment," which covers all forms of harassment, including sexual harassment and Policy "5517.01 – Bullying and Harassment," which covers harassment and bullying, and outlines the "procedure for investigation".

The School has not separately published grievance procedures applicable to the School. According to School officials, parent access to the procedures is available through the District's Student Code of Conduct published on the District website. OCR noted that the District's policies and procedures for filing and investigating a complaint of discrimination were not included in the 2014-2015 Student Code of Conduct. Although the 2017-2018 Student Code of Conduct contains a paragraph on "unlawful harassment" that states to "Please contact School Board of Pasco County Equity Manager/Title IX Coordinator...with concerns" and includes the Title IX Coordinator's contact information, the Code does not expressly include information about how to file a harassment complaint or about the District's policies and procedures related to harassment. See [http://www.pasco.k12.fl.us/library/student\\_services/conduct/esc\\_eng.pdf](http://www.pasco.k12.fl.us/library/student_services/conduct/esc_eng.pdf) (last accessed Nov. 27, 2017) The District is revising the foregoing policies pursuant to a Resolution Agreement in OCR complaint #04-12-1251; that complaint is still in monitoring and compliance regarding the anti-harassment policies are being addressed under that complaint.

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<sup>2</sup> Race, color, sex, national origin, disability, Boy Scouts of America Equal Access Act.

<sup>3</sup> See [http://www.pasco.k12.fl.us/comm/non\\_discrimination\\_policy](http://www.pasco.k12.fl.us/comm/non_discrimination_policy) (last accessed Nov. 27, 2017).

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The evidence establishes that the procedure actually used by School staff to respond to a complaint of discrimination is to speak with both students and determine whether something has taken place, consult with the School's Senior Administrator and then determine what punishment is warranted. This process is used for allegations of sexual harassment as well as sex and race discrimination.

## **ISSUE 1 - SEXUAL HARASSMENT**

### **Findings of Fact**

On October 17, 2014, the parent of the white female student (Student A) called the School and stated that Student A had reported that the Student touched her in her private areas on the bus the day before. Student A's parent stated to School staff that Student A had made up stories before, but she wanted the School to find out if something actually occurred on the bus. As a result of the verbal complaint by Student A's parent, School staff immediately initiated an investigation. School administrators interviewed the Student first and then interviewed Student A. Student A's parent requested that Student A have someone present with her during her interview and the School arranged for her teacher to be present with her. Based on information given by Student A, school administrators interviewed the Student a second time. Student A's parent had requested that Student A only be interviewed once, and staff did not interview her again in light of additional information obtained from the Student's second interview. No teacher was present during the Student's interview. School staff's justification for not having someone present with the Student is that they do not normally have a person with a student when they interview them and it is not required.

During their investigation, School staff reportedly also interviewed the bus driver, who said that he did not see anything. A middle school Principal was asked to interview two middle school students who were allegedly sitting next to Student A on the bus; that Principal notified School staff that the middle school students reported that they did not observe anything. Citing an admission by the Student that he had touched the white female student in her private areas, School staff determined the Student had violated the Student Code of Conduct rule regarding sexual harassment, would be suspended from school for 10 days and would be suspended off the bus. Based on the Complainant's statements and information contained in the police report, the Student alleged that the white female student initiated a game and moved his hand to her private areas and attempted to remove his pants.

School staff reported the incident to the sheriff's department and Child Protective Services (CPS); as justification for reporting the incident, School staff cited their status as mandatory reporters and their determination that the Student had "sexually abused" Student A. The Student's Parents were not notified about the allegations until the investigation was completed on October 17, 2014, and they were not given an opportunity to present any evidence or informed that they had a right to do so under the District's policy. After the School made its determination, the Parents were called in to meet with School staff, who told them "what happened," that the Student would receive a 10 day suspension, that he would not be permitted to use the School bus and that the Parents could appeal the decision before the School's board. On October 20, 2014, the Parents met with a School official and

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hand-delivered a letter dated October 18, 2014. The letter, among other things, objected to the punishment of the Student as well as School's staff's handling of the investigation. The letter expressed a concern that due to the Student's race and sex School officials were biased in their investigation of the allegations against him. In addition, the letter stated that the Student was the victim during the incident.

During conversations with School officials, the Parents stated that they felt Student A had coerced the Student into touching her as she was the one who initiated the game. Also, during one or more meetings with School and District officials, the Parents requested that staff review the police report arising from the School's report of the incident to law enforcement. However, the District official did not review the report and during meetings with the Parents, the School official acknowledged that she had not reviewed the report. The police report included statements that emphasized the juvenile nature of the interaction between the five year old students. For example, both students referred to their interaction as a "game." Student A said they were playing the "take off your clothes" game; the Student said it was a "secret game." The Student also made statements about Student A making him touch her, taking off her own clothes and attempting to unbuckle his pants. The report also reflected the Student's shyness when responding to questions about private body parts.

The Parents appeared before the School's board on October 27, 2014. At the meeting, the Complainant's husband stated that the staff was prejudiced against the Student based on his race, and that the investigation did not include information about the white female student trying to take the Student's belt off. He also stated that the police report would now be attached to the Student's life and he was the victim.

Subsequent to the board meeting the School rescinded the suspension and reduced the level of the offense to 1P "Failure to comply with classroom, school or bus rules." Additionally, the referral was changed to read as follows, "Student participated in inappropriate conduct on the bus. Appropriate steps were taken through school district and outside resources." However, the Student missed two days from school (October 21 and 22, 2014) and was not allowed to ride the bus until January 6, 2015. Student A also stopped riding the bus. However, the School did not exclude her from the bus; instead she stopped riding due to the choice of the parent. The Complainants disagreed with inclusion of certain language in the revised referral and requested that the language be taken out but were told that the board's decision was final.

Also, in response to the Parents' information and concerns a School official "looked into" whether the investigation into the sexual harassment incident had been conducted properly and consulted with District staff, the sheriff and CPS concerning their views of whether the School's actions were appropriate. Based on their feedback, she reportedly determined that the School "had done the right thing." The School Official was aware of the Parents' contention that Student A had encouraged the Student to do what he did; however, she conducted no fact-gathering with regard to that allegation. Moreover, as noted above, during a meeting with the Parents, the School official acknowledged that she had not reviewed the police report, which contained additional statements by the Student and Student A. Further, the School Official did not specifically investigate whether School staff subjected the Student to different treatment on

the basis of race and sex. The Official discussed her decision during meetings with the Parents and via telephone with the Parents.

## **Analysis and Conclusion**

### ***Notice of Peer Harassment***

On October 17, 2014, Student A's parent reported to the School that Student A had accused the Student of touching her in her private area on the bus the day before. In a letter dated October 18, 2014, and delivered to School staff on October 20, 2014, as well as during meetings with staff and before the School Board, the Complainant and her husband provided notice of Student A's alleged conduct during the bus incident. In addition, the Complainant and her husband referred staff to the police reports which included additional statements about the students' conduct during the incident. Based upon the foregoing, the District had notice of alleged harassment by both the Student and Student A.

### ***Response to Reports of Sexual Harassment During Bus Incident***

The School promptly initiated an investigation of the report made by Student A's parent. During the investigation, School personnel treated Student A in a manner consistent with her age and accommodated the requests of her parent regarding Student A's interview, that she only be interviewed once and that someone be with her during the interview, but did not extend a similar process to the Student or his parents. Student A was interviewed once and allowed to have someone present during her interview. The Student, who was the same age as Student A, – five years old, was interviewed twice and not allowed to have someone present during his interview. Student A's parent was aware that an investigation of sexual harassment was taking place and Student A would be questioned by staff, but the Student's parents were not made aware that an investigation of sexual harassment was taking place or that he was to be questioned by School staff. Staff questioned the Student about Student A's allegations, but did not re-interview Student A after receiving information about her conduct. In light of the foregoing, the investigation was not impartial.

During the investigation the Student and his parents were not given notice of the investigation of the allegations against the Student and a full opportunity to provide evidence. The only opportunity that the Student had to respond to Student A's allegations was during impromptu interviews of the five year old by School staff at the School with no involvement of a parent or other adult who was there to provide support for the Student. Moreover, upon receipt of information concerning alleged acts taken by Student A, including her attempt to take off the Student's belt, the District did not question Student A or other potential witnesses about the reported acts of Student A. Further, while the Complainants told School staff that the police report contained relevant information reflecting that the Student may have been sexually harassed, the report was not reviewed by the staff.

At no time did the School initiate an investigation or otherwise make any inquiry about the acts of Student A that were alleged by the Student in order to determine whether: the Student was subjected to sexual harassment, Student A should have also been disciplined, the Student or both

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students needed age appropriate counseling as a result of the incident or the Student's discipline in light of the surrounding circumstances added to a hostile environment for him. Additionally, upon the District gaining knowledge of the events, including the harassment allegation by the Student's parents, the District did not require the School to conduct a further investigation; nor did District level staff initiate an investigation of their own. Instead, School staff was told they did the right thing. Also, the School kept no record of the investigation including the specific questions posed to the Student and to Student A or statements taken from the parties involved and potential witnesses; the investigative file included only a referral for the Student. In light of the foregoing, the District's response was not adequate and did not include appropriate steps to determine what occurred during the bus incident.

OCR concludes that the District had notice of possible sexual harassment by both the Student and Student A during the incident that occurred on the school bus. In response to that notice it failed to provide a prompt and equitable response and thereby violated Title IX and its implementing regulation with regard to the issue investigated.

## **ISSUES 2 AND 3: DIFFERENT TREATMENT ON BASIS OF RACE AND SEX**

### **Findings of Fact**

#### Differences in treatment

As noted above, the preponderance of the evidence establishes that during the investigation of the sexual harassment report made by Student A's parent, the Student was interviewed with no support person present, and following the initial interview, was re-interviewed to follow up on information provided by Student A. By contrast, Student A had a support person present during the interview and was not re-interviewed after the Student or his parents provided information about her conduct. Additionally, because School staff deem themselves mandatory reporters, Student A's allegations were reported to the sheriff's office and CPS, but the Student's allegations of Student A harassing him were not likewise reported to the sheriff or CPS. School staff also made no inquiries and took no action concerning the reported conduct of Student A.

#### Deviations from policies and practices

The District's treatment of the Student and handling of the Complainant's concerns involved several deviations from District policy or practices. The District has a policy that permits students or parents to submit complaints alleging discrimination on the basis of sex or race, as well as other bases. The Student's parents presented a verbal, internal complaint alleging race and sex discrimination with respect to the handling of the allegations lodged on behalf of the white female student and also alleging sexual harassment of the Student. The Student's Parents also sought to file a written complaint pursuant to the District's policy and submitted a written document discussing their concerns about sex and race discrimination. However, District staff told them that they could not file a written complaint and their only recourse was to submit an appeal. Accordingly, the Complainants also raised their discrimination concerns in connection with an appeal of the discipline of the Student.

School staff received the Parent's complaint alleging different treatment on the basis of race and sex but did not investigate the complaint. Likewise, personnel at the District level failed to investigate whether the District subjected the Student to different treatment because of his race or sex as alleged by the Complainants.

The School also deviated from its practices regarding investigating complaints of discrimination when it agreed to only interview Student A once and allowed a person in the room with her during the interview at the request of the parent.

Although the District's sexual harassment policies and procedures required that parents of an accused student receive notice of the allegations at the time of the investigation and receive a copy of the Anti-harassment policy, the School did not notify the Complainant until after the investigation was completed and did not provide the Complainant with any information regarding the policy. The School was required to provide a written report of the investigation to the Superintendent and to the Complainant, but did not submit such a report or keep a record of the investigation. In contravention of the Anti-harassment policy the Student was not given an opportunity to respond to the allegations against him by presenting evidence and when asked why this opportunity was denied, the School stated that the Student's parents could appeal.

## **ANALYSIS AND CONCLUSION**

### ***Race Discrimination***

The District treated the Student, who is black, differently than Student A, who is white, with regard to the number of times they were interviewed, having another person present during the interview, reporting of allegations to other authorities, making an inquiry concerning the alleged conduct and imposing consequences for the alleged conduct. In addition, in responding to allegations about the students' conduct and their parents' concerns, the District deviated from its policies and practices in several respects. Based upon the foregoing, OCR concludes that there is a prima facie case of race discrimination.

OCR next examined whether the District offered a legitimate nondiscriminatory reason for the differences in treatment. District witnesses offered no explanation for the failure to make inquiries or take action regarding the allegations that Student A harassed the Student or the failure to investigate the Complainants' allegations of discrimination by staff. District witnesses provided rationales for only two specific components of the differences of treatment noted above. The explanation for reporting the allegation of harassment of the white female student to the sheriff and CPS while not making a similar report of the allegation of harassment of the Student, is that they reported the incident to the sheriff and CPS identifying the Student as the harasser because they are required to do so by law as mandatory reporters. OCR finds that the District's rationale fails to explain why the District did not consider itself a mandatory reporter required to make a report identifying the white Student A as a harasser in light of the Complainant's allegations.

With respect to interviewing Student A only once and allowing her to have someone else in the room, while not affording that same opportunity to the Student, District witnesses stated it was not required and that they only did it for Student A because the parent requested it. As noted

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above, the District did not provide the Student's parents notice of the allegations against him or the investigation. Thus, there was no opportunity for the Student's parents to request to have someone present or to limit the number of times the Student was interviewed. Accordingly, OCR finds that the District's explanation does not constitute a legitimate nondiscriminatory rationale.

Based on the foregoing, the evidence is sufficient to establish that the Student was subjected to different treatment on the basis of race and the District could not provide a legitimate nondiscriminatory reason for its actions. Accordingly, the evidence is sufficient to establish noncompliance with Title VI with respect to the issue opened.

### ***Sex Discrimination***

The Student is male and Student A is female. The District treated the students differently and engaged in deviations from policy and practice in the manner described in the foregoing discussion of the race discrimination prima facie case. Accordingly, OCR concludes that there is a prima facie case of different treatment based on sex. For the reasons set forth in the discussion above, OCR concludes that the District did not present legitimate nondiscriminatory reasons for the differences in treatment based on sex. Based on the foregoing, the evidence is sufficient to establish that the Student was subjected to different treatment on the basis of sex and the District failed to present legitimate nondiscriminatory reasons for the differences in treatment. Accordingly, OCR concludes that the evidence is sufficient to establish noncompliance with Title IX with respect to the issue opened.

### **CONCLUSION**

Based on the preponderance of the evidence, OCR finds that the District is in noncompliance with Title VI and Title IX with respect to the three issues investigated. In addition, OCR also finds that the District's policies and procedures as set forth above are not in compliance with Title IX. To address the District's non-compliance, the District agreed to a Resolution Agreement that requires the District to take the following corrective actions: the School will develop and adopt its own or the District's Anti-Harassment and Nondiscrimination Grievance Procedures (Procedures), the District and School will provide annual training to its staff and all individuals who investigate complaints of discrimination on the basis of race, color, national origin or sex, including individuals at the School that are responsible for investigating complaints of harassment, and maintain all documentation of Title VI and Title IX discrimination complaints and the investigation of such complaints filed with the School or with the District regarding alleged discriminatory acts at the School.

The Complainant will be offered counseling for the Student at the expense of the School and/or District as a remedy for the incident that took place on the bus and the subsequent actions taken by the School as a result of the incident and the School and District will expunge the referral to the Department of Children Protective Services and any other information regarding the incident as well as the two unexcused absences resulting from the incident, from the Student's file. Once the absences are expunged the Student will be recognized for perfect attendance, if otherwise qualified.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If we receive such a request, we will seek to protect, to the extent possible, any personally identifiable information, the release of which could reasonably be expected to constitute an unwarranted invasion of personal privacy. Intimidation or retaliation against complainants by recipients of Federal financial assistance is prohibited. No recipient may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws OCR enforces, or because one has made a complaint, or participated in any manner in an investigation in connection with a complaint.

If you have any questions about this complaint, please contact Vicki Lewis, at 404-974-9332 or Arthur Manigault, Compliance Team Leader at 404-974-9376.

Sincerely,

Melanie Velez  
Regional Director

Enclosure  
cc: Dennis Alphonso