

March 26, 2015

Ms. Debra E. Blakey  
Superintendent  
Opdyke-Belle Rive CCSD #5  
19380 E 4th St.  
P.O. Box 189  
Opdyke, IL 62872

Re: OCR Docket # 05-14-1140

Dear Ms. Blakey:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against Opdyke-Belle Rive School District #5 (the District) alleging discrimination on the basis of sex.

The complaint alleged that the District subjected a XXX student (Student A) to discrimination based on sex in the 2013-2014 academic year. The complaint raised whether the District fails to promptly and equitably respond to complaints, reports, and/or incidents of sexual harassment of which it has notice, including Student A's reports of repeated verbal and physical sexual harassment by a XXX (Student B), resulting in a sexually hostile environment for Student A and/or other students.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681-1688, and its implementing regulation, 34 C.F.R. Part 106. Title IX prohibits discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance. As a recipient of Federal financial assistance from the Department, the District is subject to this law.

The District is a public school district located in Opdyke, Illinois, serving approximately 200 students in kindergarten through 8<sup>th</sup> grade. Prior to the 2013-2014 school year, the District consisted of two school buildings, one that housed grades kindergarten through fourth grade, and the other that housed 5<sup>th</sup> grade through 8<sup>th</sup> grade. In the 2013-2014 school year, all grades were combined into a single school building, the Opdyke-Belle Rive Grade School (School). The School Principal also served as Superintendent of the District in 2013-2014; prior to 2013-2014, she was Principal of the K-4 school but was not the Superintendent.

OCR's investigation of the complaint included interviewing Student A and her parents, other student witnesses, and District personnel; conducting focus groups of students in 5<sup>th</sup> through 8<sup>th</sup> grades; reviewing all relevant District policies; and reviewing the District's responses to complaints of sexual harassment in the 2012-2013 and 2013-2014 school years. OCR conducted an on-site visit in spring 2013.

OCR considered the totality of the circumstances and evaluated all of the information gathered during its investigation. After carefully considering this information, OCR determined that there is sufficient evidence to conclude that Student A was in fact sexually harassed by Student B, that the sexual harassment was sufficiently serious to constitute a hostile environment for Student A and other students, that the District was aware of the hostile environment, and that the District failed to respond adequately to eliminate the harassment, prevent its recurrence and address its effects. OCR also determined that the District's sexual harassment and sexual violence policies and procedures do not comply with the standards in Title IX, that the District has not appropriately designated a Title IX coordinator, and that the District's Nondiscrimination Notice does not comply with Title IX requirements.

On March 17, 2015, the District provided OCR with a signed Resolution Agreement to resolve the complaint and address the identified compliance concerns.

### **Legal Standards**

OCR investigated the alleged discrimination in this case consistent with federal statutory authority, the Department's regulations, policies and pertinent case law.<sup>1</sup> The Title IX regulation, at 34 C.F.R. § 106.31(a), provides generally that, except as provided elsewhere in the regulation, no person shall on the basis of sex be excluded from participation in, denied the benefits of, or subjected to discrimination in education programs or activities operated by recipients of Federal financial assistance.

The Title IX regulation, at 34 C.F.R. § 106.9(a), provides that a recipient shall implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in the educational program or activity which it operates, and that it is required by Title IX not to discriminate in such a manner.

Under Title IX, schools are responsible for providing students with a nondiscriminatory educational environment. Sexual harassment that creates a hostile environment is a form of sex discrimination prohibited by Title IX. Sexual harassment is unwelcome conduct of a sexual

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<sup>1</sup> The applicable legal standards described herein are more fully discussed in OCR's Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties (2001 Guidance) dated January 19, 2001, and found online at <http://www.ed.gov/about/offices/list/ocr/docs/shguide.html>, OCR's 2011 Dear Colleague letter on Sexual Violence (2011 DCL), dated April 4, 2011, which is available online at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html>, and OCR's "Questions and Answers on Title IX and Sexual Violence" (2014 FAQs) dated April 29, 2014, which is available online at <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

nature. 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 of a student creates a hostile environment if the conduct is sufficiently serious that it interferes with or limits a student's ability to participate in or benefit from the school's program or activity.

Harassing conduct may take many forms, including verbal acts and name calling, as well as nonverbal behavior, such as graphic and written statements, or conduct that is physically threatening, harmful, or humiliating. Harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents. Conduct is unwelcome if the student did not request or invite the conduct and regarded it as undesirable or offensive. OCR considers the conduct in question from both an objective perspective and the subjective perspective of the person allegedly subjected to harassment.

To establish a violation of the Title IX regulations prohibiting sexual harassment, OCR must find based on the totality of the circumstances that the student was subjected to a sexually hostile environment, specifically unwelcome conduct of a sexual nature, in a school-related program or activity that was sufficiently serious to deny or limit the student's ability to participate in or benefit from the recipient's program. These circumstances include the context, nature, scope, frequency, duration, and location of the incidents, as well as the identity, number, age and relationships of the persons involved. The more severe the conduct the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the harassment is physical. Indeed, a single or isolated incident of sexual harassment may create a hostile environment if the incident is sufficiently severe. In assessing whether a student was subjected to a sexually hostile environment, OCR considers the relationship between the alleged harasser and the subjects of the harassment.

A hostile environment can occur even if the harassment is not targeted specifically at the individual complainant. For example, if a student regularly directs sexual comments toward a particular student, a hostile environment may be created not only for the targeted student, but also for others who witness the conduct.

Once a recipient knows or reasonably should know of possible sexual harassment, it must take immediate and appropriate action to investigate or otherwise determine what occurred. If an investigation reveals that sexual harassment created a hostile environment, a school must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment, prevent the harassment from recurring and, as appropriate, remedy its effects. These duties are a school's responsibility, regardless of whether a student has complained, asked the school to take action, or identified the harassment as a form of discrimination. A school has notice of harassment if a responsible employee actually knew or, in the exercise of reasonable care, should have known about the harassment.

Even if the sexual harassment did not occur in the context of an education program or activity, a school must consider the effects of the off-campus sexual harassment when evaluating whether there is a hostile environment on campus or in an off-campus education program or activity

because students often experience the continuing effects of off-campus sexual harassment while at school or in an off-campus education program or activity.

The Title IX regulation, at 34 C.F.R. § 106.8(a), provides that a recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX, including, but not limited to, any investigation of any complaint communicated to it alleging noncompliance with Title IX (including allegations that the recipient failed to respond adequately to sexual harassment). Recipients must ensure that employees designated to serve as Title IX coordinators have adequate training on what constitutes sexual harassment, including sexual violence, and that they understand how the recipient's grievance procedures operate. This provision further requires that the recipient notify all its students and employees of the name, office address and telephone number of the employee or employees so designated.

The Title IX regulation, at 34 C.F.R. § 106.8(b), provides that a recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action which would be prohibited by the regulation.

In evaluating whether a school's grievance procedures satisfy this requirement, OCR will review all aspects of a school's policies and practices, including the following elements that are critical to achieve compliance with Title IX.

- Notice to students, parents of elementary and secondary students, and employees of the procedure, including where complaints may be filed;
- Application of the grievance procedures to complaints filed by students or on their behalf alleging harassment carried out by employees, other students, or third parties;
- Provisions for adequate, reliable, and impartial investigation of complaints, including the opportunity for both the complainant and alleged perpetrator to present witnesses and other evidence;
- Designated and reasonably prompt timeframes for the major stages of the complaint process;
- Written notice to the parties, complainant and alleged perpetrator, of the outcome of the complaint; and
- An assurance that the school will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

To ensure that students and employees have a clear understanding of what constitutes sexual harassment, the potential consequences for such conduct, and how the school processes complaints, a school's Title IX grievance procedures should also explicitly include the following in writing, some of which themselves are mandatory obligations under Title IX.

- A statement of the school's jurisdiction over Title IX complaints;
- Adequate definitions of sexual harassment (which includes sexual violence) and an explanation as to when such conduct creates a hostile environment;
- Reporting policies and protocols, including provisions for confidential reporting;
- Identification of the employee or employees responsible for evaluating requests for confidentiality;

- Notice that Title IX prohibits retaliation;
- Notice of a student’s right to file a criminal complaint and a Title IX complaint simultaneously;
- Notice of available interim measures that may be taken to protect the student in an educational setting;
- The evidentiary standard that must be used (preponderance of the evidence, i.e., more likely than not that sexual harassment occurred) in resolving a complaint;
- Notice of potential remedies for students;
- Notice of potential sanctions against perpetrators; and
- Sources of counseling, advocacy and support.

In some situations, if the school knows of incidents of harassment, the exercise of reasonable care should trigger an investigation that would lead to a discovery of additional incidents. The specific steps in a school’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 school, and other factors. In all cases, however, the inquiry should be prompt, thorough, and impartial. At the conclusion of a school’s investigation, both parties must be notified, in writing, about the outcome of the complaint, i.e., whether harassment was found to have occurred.

When taking steps to separate an alleged target of harassment from the alleged perpetrator during and subsequent to an investigation, a school should minimize the burden on the complainant, and thus should not, as a matter of course, remove the complainant from his or her classes, or extracurricular activities, while allowing the alleged perpetrator to remain. Additionally, prior to the outcome of an investigation, a school is required to assess whether the complainant requires protection or any other interim services as a result of the alleged harassing conduct, and if so provide them without cost to the complainant. Examples of interim services include academic support, counseling, changes to class schedules, assignments or tests, and increased monitoring, supervision or security at locations or activities where the harassing conduct occurred. During the course of a school’s investigation, school officials should notify the complainant of his or her right to file a criminal complaint and should not dissuade a victim or his or her parent from doing so during or after the school’s internal Title IX investigation. Even if a criminal investigation is ongoing, a school must still conduct its own Title IX investigation.<sup>2</sup>

If a school delays responding to allegations of sexual harassment or responds inappropriately, the school’s own inaction may subject the student to a hostile environment. If it does, the school will be required to remedy the effects of both the initial sexual harassment and the effects of the school’s failure to respond promptly and appropriately. A school’s obligation to respond appropriately to sexual harassment complaints is the same irrespective of the sex or sexes of the parties involved.

Depending on how widespread the harassment was and whether there have been any prior incidents, the school may need to provide training for the larger school community to ensure that students, parents, and teachers can recognize harassment if it recurs and know how to respond.

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<sup>2</sup> See G-1 through G-3, in “Questions and Answers on Title IX and Sexual Violence,” available at <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

Finally, the school should take steps to stop further harassment and prevent any retaliation against the person who made the complaint (or was the subject of the harassment) or against those who provided information as witnesses. At a minimum, the school’s responsibilities include making sure that the harassed students and their families know how to report any subsequent problems, conducting follow-up inquiries to see if there have been any new incidents or any instances of retaliation, and responding promptly and appropriately to address continuing or new problems.

### **Facts**

During the 2013-2014 school year, Student A and Student B were enrolled in XXX grade at the School. Approximately 30 students were enrolled in XXX grade in 2013-2014 in the only XXX grade classroom in the District.

At the time the OCR complaint was filed, the District had policies in place prohibiting sexual harassment. The District’s sexual harassment policy has not been revised since the 2013-2014 school year.

### **Nondiscrimination Notice**

Board Policy 7:10, *Equal Educational Opportunities*, states, in pertinent part, that “equal education and extracurricular opportunities shall be available for all students without regard to ... sex” and that “no student shall, based on sex ... be denied equal access to programs, activities, services, or benefits or be limited in the exercise of any right, privilege, advantage, or denied equal access to educational and extracurricular programs and activities.”<sup>3</sup> This policy also states that “any student may file a sex equity complaint by using Board policy 2:260, Uniform Grievance Procedure.” The District also publishes the same nondiscrimination statement in its Student Handbook (Handbook),<sup>4</sup> and directs “any student or parent/guardian with a sex equity or equal opportunity concern” to contact the building principal.<sup>5</sup> The nondiscrimination notice does not identify a Title IX Coordinator or state that questions regarding Title IX may be referred to OCR.

### **Title IX Coordinator**

Board Policy 7:20, *Harassment of Students Prohibited*, identifies the Superintendent as the “Nondiscrimination Coordinator” by name and provides an address and telephone number for her. The Superintendent was not identified as the Nondiscrimination Coordinator on the District’s website in 2013-2014 or in the 2013-2014 Handbook, but is identified as the “Nondiscrimination Manager and Complaint Coordinator” in the section of the 2014-2015

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<sup>3</sup> Portions of the District’s Board Policy Manual are available on the District’s website at

[http://opdykabelle5.sharpschool.net/about/school\\_board/board\\_of\\_education\\_policy\\_manual/](http://opdykabelle5.sharpschool.net/about/school_board/board_of_education_policy_manual/).

<sup>4</sup> [http://p2cdn1static.sharpschool.com/UserFiles/Servers/Server\\_1038562/File/docs/Handbook\\_2013-14.pdf](http://p2cdn1static.sharpschool.com/UserFiles/Servers/Server_1038562/File/docs/Handbook_2013-14.pdf)

<sup>5</sup> [http://opdykabelle5.sharpschool.net/about/school\\_board/board\\_of\\_education\\_policy\\_manual/](http://opdykabelle5.sharpschool.net/about/school_board/board_of_education_policy_manual/)

Handbook on bullying and harassment.<sup>6</sup> She is not specifically identified as the District’s Title IX Coordinator in this or prior Handbooks, on the District’s website, or in other published documents provided to OCR.

The Superintendent told OCR that the 2013-2014 school year was her first year as the District’s Superintendent and that the role of Nondiscrimination Coordinator came with the title. She stated that she has not received any formal training on Title IX.

### District’s Sexual Harassment Policies

OCR reviewed the policies and procedures in place at the time of Student A’s sexual harassment complaint. Both the 2013-2014 Handbook and Board Policy 7:20, *Harassment of Students Prohibited*, specifically prohibit harassment based on sex. The harassment policy defines sexual harassment as “whenever [a person] makes sexual advances, requests sexual favors, and engages in other verbal or physical conduct of a sexual or sex-based nature.” It provides examples of sexual harassment such as “touching, crude jokes or pictures, discussions of sexual experiences, teasing related to sexual characteristics, and spreading rumors related to a person’s alleged sexual activities.”

The harassment policy directs students to report incidents of sexual harassment to “the Nondiscrimination Coordinator, Building Principal, or a Complaint Manager.” The policy identifies the Superintendent as the Nondiscrimination Coordinator and Complaint Manager. Portions of Board Policy 7:20 and the Handbook are available on the District’s website.<sup>7</sup>

At the time of Student A’s sexual harassment complaint, the District’s Board Policy 7:180, *Preventing Bullying, Intimidation, and Harassment*, provided that full implementation of the District’s harassment policies included “(a) conducting a prompt and thorough investigation of alleged incidents ... (b) providing each student who violates [the] policies with appropriate consequences and remedial action, and (c) protecting students against retaliation for reporting such conduct.” This policy also “encourage[d] all members of the school community ... to report alleged acts of ... harassment, and other acts of actual or threatened violence.” Board Policy 7:180 did not contain specific timeframes for reporting harassment. This policy was not available on the District’s website, but was available in the Superintendent’s office.

In October 2014, pursuant to a state bullying law, the District revised Board Policy 7:180. This policy now expressly states that “bullying on the basis of ... sex ... is prohibited.” It defines bullying as “any severe or pervasive physical or verbal act or conduct, including communications made in writing or electronically, ... causing a substantially detrimental effect on the student’s physical or mental health; substantially interfering with the student’s academic performance; or substantially interfering with the student’s ability to participate in or benefit from the services, activities, or privileges provided by a school.” The revised policy identifies the Superintendent as the Complaint Manager and provides her mailing address, e-mail address and telephone number, and states that the Complaint Manager will promptly investigate reports of bullying and

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<sup>6</sup> [http://opdykabelle5.sharpschool.net/UserFiles/Servers/Server\\_1038562/File/Handbook\\_2014-15%20Final%20Copy.pdf](http://opdykabelle5.sharpschool.net/UserFiles/Servers/Server_1038562/File/Handbook_2014-15%20Final%20Copy.pdf)

<sup>7</sup> [http://opdykabelle5.sharpschool.net/about/school\\_board/board\\_of\\_education\\_policy\\_manual/](http://opdykabelle5.sharpschool.net/about/school_board/board_of_education_policy_manual/)

make “reasonable efforts” to complete the investigation within 10 school days. The policy states that the District shall use interventions to address bullying, which may include school social work services, restorative measures, social-emotional skill building, counseling, school psychological services, and community-based services. The revised Board Policy 7:180 is available on the District’s website.<sup>8</sup>

The Handbook contains a section titled “Student Code of Conduct,” which explains that engaging in sexual harassment is considered “serious prohibited student conduct,” that can result in a range of disciplinary consequences, including notification of parents or guardians, in-school detention, suspension, or expulsion.<sup>9</sup>

The District’s Uniform Grievance Procedure, Board Policy 2:260, advises “students, parents, guardians, employees, or community members” to notify a District Complaint Manager and file a complaint “if they believe that the Board of Education, its employees, or agents have violated their rights” under Title IX. The District identifies in this procedure the Superintendent as the Complaint Manager, and provides an address and telephone number for her. This procedure states that “the Complaint Manager will investigate the complaint and will provide a written report of the findings to the Superintendent within 30 business days, or request an extension of time.” The Superintendent is to mail a written decision to the complainant within five business days thereafter. The grievance procedure does not indicate what standard of proof will be used. A complainant may appeal an adverse decision to the District’s Board of Education. Board Policy 2:260 is not available on the District’s website or in the Handbook, but is available in the Superintendent’s office.

### Sexual Harassment Incidents

The District provided OCR information on sexual harassment incidents that occurred during the 2012-2013 and 2013-2014 school years.

In the 2012-2013 school year, five students, XXX, were found to have engaged in sexual harassment on one occasion each, and were sanctioned with penalties up to a two-day out of school suspension. On May 16, 2013, XXX was found to have XXX and received a one-day out of school suspension for the incident.

In 2013-2014, there were five incidents of sexual harassment involving students other than XXX; XXX was the perpetrator in two incidents. XXX received a warning for the first incident and a one-day out-of-school suspension for the second incident.

### *Student A’s Complaints of Sexual Harassment by Student B and the District’s Response*

Student A’s parent asserted to OCR that, during the 2013-2014 school year, Student B repeatedly sexually harassed Student A and physically threatened her.

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<sup>8</sup> See *id.*

<sup>9</sup> See District’s Handbook, pp. 27-31 at

[http://p2cdn1static.sharpschool.com/UserFiles/Servers/Server\\_1038562/File/docs/Handbook\\_2013-14.pdf](http://p2cdn1static.sharpschool.com/UserFiles/Servers/Server_1038562/File/docs/Handbook_2013-14.pdf).

On October 3, 2013, Student A reported to the XXX grade teacher's aide that Student B XXX. The teacher's aide reported the incident to the Superintendent. The Superintendent said she interviewed both students that same day and determined that Student B had sexually harassed Student A in violation of the Code. She issued Student B a XXX for the incident.<sup>10</sup> She also called both students' parents and informed them of the incident and results of her investigation.

According to Student A, sometime in December 2013, while she and other students were playing tag during recess, Student B XXX. Student A said she told the XXX grade teacher (Teacher A) about the incident, who in turn told her to report it to the Superintendent directly. Teacher A told OCR that, when a student comes to her with a report of inappropriate behavior by another student, her practice generally is to instruct a student to make a report to the Superintendent directly, if the student so chooses. However, Teacher A stated that when a student complains of "serious" misconduct, the teacher personally reports it to the Superintendent. Teacher A did not specifically recall Student A telling her that Student B XXX. She stated that she considers XXX serious misconduct and that if she had received a report of such an action, she would have reported it to the Superintendent directly. Student A said she reported the incident to the Superintendent that same day. The Superintendent told OCR that Student A did not report the incident to her that day; rather, she says the first time she became aware that Student B XXX was when the parent complained about the incident, along with others in a chart of incidents the parent provided to the School Board in March 2014. The Superintendent stated that the parent reported to the School Board that this incident occurred on the bus, and not during recess.

According to Student A, sometime in January 2014 on the bus ride home from school, Student B XXX. Student A said another student, whom she did not identify, reported the comment to the bus driver. The bus driver told OCR that he did not hear Student B make that comment to Student A, nor did he receive a report from any student that Student B made that comment. He said if he had, he would have issued Student B a bus referral for the incident. The Superintendent told OCR she did not receive a bus referral nor was she aware of this incident at the time it allegedly occurred; however, the incident is listed in the chart of incidents the parent provided to the School Board in March 2014.

According to the District, on January 10, 2014, Teacher A referred XXX for XXX due to XXX. Teacher A noted in the referral that XXX XXX; although the referral did not provide specific details about these incidents, XXX had been disciplined on several occasions for XXX, as noted in footnote 10. XXX. The Superintendent told OCR that XXX the District can request for a student. If the XXX determines that more services are needed, then the XXX for further services. The XXX works with the parent and XXX directly and the District is not involved or informed of any XXX. The Superintendent stated that as far as she is aware, XXX was not referred XXX. Both Teacher A and the Superintendent indicated to OCR that they did not believe the XXX. OCR did not interview XXX because the information that could be provided was not necessary for the compliance determination.

According to Student A and her parent, sometime in February 2014, Student A XXX. Student A said that shortly after XXX, Student B told her XXX. Student A told OCR that she considered

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<sup>10</sup> Prior to this incident, XXX had been disciplined by the Superintendent XXX for XXX in 2013-2014: XXX in August 2013 he XXX, and once in September 2013 he XXX.

his statement to be a threat. According to Student A's parent, when Student A XXX, she refused to XXX because she feared Student B would be there.

In the last week of February 2014, the Superintendent met with Student B's parent and Student A's parent together, due to reports of multiple incidents of misconduct by Student B toward Student A, many of which were not sexual in nature. Student A's parent also brought a family friend to this meeting for support. According to the Superintendent, the purpose of the meeting was to discuss Student B's inappropriate behavior toward Student A and get both parents involved in preventing future incidents from occurring. Both Student A's parent and the Superintendent told OCR that XXX. Student A's parent told OCR that Student B's parent also said XXX. The Superintendent stated the parent indicated that Student B XXX. Student A's parent said she told Student B's parent that if Student B keeps harassing Student A, she would go to the police. She said that Student B's parent replied, "You do what you have to do."

Student A's parent told OCR that the day after the meeting, she filed a complaint against Student B with the local police. She said the police told her that they could not do anything about Student B's alleged harassment of Student A unless an adult witnessed it. The parent said she called the Superintendent and requested that every adult in the School be notified to monitor the interactions between Student A and Student B, and the Superintendent stated that the parent also requested that the School notify the police any time Student B exhibited sexual behavior toward Student A at school. The Superintendent said she agreed to the parent's requests and called Student B's parent to inform him that the School would notify the police if Student B sexually harassed Student A in school. The Superintendent stated that she also verbally informed School staff who had interaction with Students A and B to keep an eye on interactions between the two students and report any incidents that they witnessed.

On or about March 5, 2014, the parent reported to the Superintendent that XXX. Teacher A stated that it appeared to her that Student A was about to push Student B; she stated she did not see Student B attempt to do anything to Student A beforehand. The Superintendent indicated that the parent requested to speak with Teacher A, so she set up a meeting for March 10, 2014. She did not do anything further to investigate the incident.

According to the Superintendent, on March 7, 2014, Student A's parent called to report that the parent was filing a complaint with OCR because of Student B's harassment of Student A. The parent told the Superintendent that she wanted Student B expelled from school because Student A does not feel safe at school.

According to the District and Student A's parent, on March 10, 2014, the Superintendent met with Student A's parent and Teacher A to discuss the parent's concerns about Student A's safety at school. Student A's parent informed them that Student B continued to harass Student A on the bus, and that Student A's XXX was a witness. They also discussed how to keep the students separated in class since XXX. According to the Superintendent and Teacher A, Student A's parent requested that Student A be permitted to go to Teacher B's classroom (XXX) during the day to complete her school work in an attempt to separate Students A and B in school. The parent denies that she requested Student A be moved but acknowledged that she agreed that Student A would receive instruction from Teacher A in the classroom and then go to XXX to

complete her work. During the March 10 meeting, the District offered to XXX to XXX to XXX, which XXX accepted.

After the March 10 meeting, the Superintendent met with XXX (Student D) to inquire about Student B's behavior toward Student A on the bus. According to the Superintendent, Student D stated that Student B cursed at Student A the previous Friday and that he generally acts immature on the bus and also told the Superintendent that Student B did not sit in his assigned seat on the bus to school that morning. The Superintendent said she interviewed Student B and he admitted to not sitting in his assigned seat that morning. She XXX. The Superintendent told OCR that she believed XXX would also serve to prevent incidents between Students A and B. Student A's parent told OCR that the Superintendent informed her and Student A that XXX.

The Superintendent told OCR that, after the March 10 meeting with Student A's parent and Teacher A, she called XXX.

According to Student A and her parent, the arrangement that Student A complete her school work in XXX only lasted two days because Teacher B told Student A that she should not be in XXX and that she should "just ignore [Student B]." Student A and her parent told OCR that Teacher B made Student A feel as if the harassment was her fault and she should just "deal with it." Teacher B told OCR that she experienced similar harassment when she was young and talked to Student A in an attempt to support her and make her feel better. She denied that she told Student A that she should "just ignore" Student B, but stated she tried to empower Student A and encourage her not to let Student B's actions define her experience at school. She also told OCR that she did not feel XXX was the best academic placement for Student A.

On March 17, 2014, Student A's parent addressed the School Board at its meeting to complain about Student B's sexual harassment of Student A and the School's response. At the meeting, she provided each board member with a document detailing the following incidents of harassment by Student B:

- In November 2013, Student B XXX;
- In December 2013, Student B XXX;
- In January 2014, Student B XXX;
- In January 2014, Student B XXX;
- In February 2014, Student B XXX;
- In March 5, 2014, Student A's friends told Student A that XXX;
- On March 7, 2014, Student B XXX;
- On March 7, 2014, Student A XXX;
- On March 17, 2014, Student B XXX.

The Superintendent told OCR that, after the March 17 school board meeting, she held an all-staff meeting to inform staff to monitor Students A and B to ensure no further harassment occurred. She also had Student A document any future incidents of harassment by Student B on the District's "Anti-Bullying/Harassment Complaint Form" (Complaint Form). She did not take

action to investigate any incidents that had not previously been investigated.<sup>11</sup> The District did not take any additional steps to separate Students A and B.

On March 18 and March 20, 2014, Student A submitted Complaint Forms regarding conduct by Student B, asserting that on March 17, Student B XXX and that on March 20, Student B XXX. Student A told OCR that Student B XXX on March 17 during recess and XXX. The Superintendent told OCR she investigated the incidents but that the staff member on duty at recess did not witness the March 17 incident, and that Teacher A indicated that Student B XXX on March 20 because XXX, but that he XXX toward anyone in particular. Both the Superintendent and Teacher A stated that they did not ever observe Student A with XXX. Student B was not disciplined for either incident.

The Superintendent stated that she called Student A's parent around this time and informed her that the District was XXX. The Superintendent asked the parent whether she wanted XXX. The parent told OCR that she asked that XXX. On March 25, 2014, the Superintendent called Student A's parent to inform her that XXX to ensure Student B did not harass Student A any further at school. The Superintendent explained to the parent that XXX. The Superintendent also informed the parent that when Student B XXX and ensure Student B did not harass Student A, or otherwise engage in inappropriate behavior on the bus. The District did not XXX to monitor Student B's conduct with other female students.

According to Student A and her parent, on April 1, 2014, one of the cafeteria workers pulled Student A from the breakfast line because Student B was also in line at the time and School staff was instructed to keep Students A and B apart at all times. Student A also told OCR that throughout that day, Student B XXX when she was walking from one place to another but that XXX. The next day, Student A's parent called the Superintendent and reported that Student B XXX. The Superintendent said she interviewed XXX who told her that she was with Student A all day and did not witness Student B XXX. XXX told OCR that she did not observe Student B XXX.

According to Student A and her parent, on April 4, 2014, while the students were in the classroom, Student B XXX. District staff denied observing XXX. Student E told the Superintendent that she XXX, although Student E's version of the language used in the incident differed from the version given by Student A. According to the parent, the Superintendent informed her that there was nothing she could do about Student B's XXX to Student A because no adults witnessed it and Students A's and Student E's accounts differed. The Superintendent told OCR that she investigated Student A's report and determined XXX was not substantiated. District staff who were present in the classroom told her they did not observe Student B XXX, and Student A said Student B XXX, while Student E stated he XXX. The Superintendent indicated to OCR that she did not find the student witnesses to be credible. The District did not take any disciplinary action as a result of the reported threat incident.

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<sup>11</sup> In particular, the Superintendent did not investigate the December 2013 allegation that Student B XXX, the alleged XXX in February and March 2014, or the March 7<sup>th</sup> incident alleging Student B XXX." The Superintendent indicated to OCR that she did not perceive the parent's document as alleging new incidents of harassment; she believed that the parent's dates were not accurate and that the Superintendent had already dealt with much of what the parent reported.

OCR interviewed three XXX grade students (Students F, G, and H) who Student A identified as witnesses to Student B's harassment of her. Student F told OCR that she has not witnessed Student B do anything to Student A. Student G told OCR that at some point during the fall 2013 semester, she saw Student B XXX. She stated that Student B started XXX.

Student H stated that she has seen Student XXX. She did not recall whether she or any of the other students reported XXX to Teacher A or any other School official. Student H stated that Student B XXX. Student H said she reported XXX to Teacher A, but that she did not think the teacher told the Superintendent. Teacher A did not specifically recall Student H reporting to her that XXX, and stated that if Student H had reported this conduct to her, she would have reported it to the Superintendent directly. Student H said she is afraid of Student B because he bothers her a lot and she does not like it. She stated that she has also seen Student B XXX. She stated he XXX.

Student E told OCR that she has seen Student B XXX. She stated that Student B XXX.

The District provided information regarding seven other incidents involving Student B and students other than Student A in the 2013-2014 school year, XXX. These incidents involved sexually harassing conduct, including inappropriate sexual comments and conduct. Student B XXX. OCR notes that Student B XXX.

#### Training/Outreach

The Superintendent stated that she does not recall receiving training on the investigation of sexual harassment complaints. As incidents arise, she stated that she confers with the state regional superintendent and the District's legal counsel for assistance.

The District provided documentation and testimony indicating that it has provided several training sessions to staff and students on sexual harassment. On August 15, 2013, all staff received training titled "Sexual Harassment and Discrimination," during which the Superintendent reviewed the District's sexual harassment policies and procedures and a representative from a local child advocacy group discussed mandatory reporting requirements and student-on-student sexual harassment. The District stated that this training is mandatory for all District staff and occurs on an annual basis.

On October 15-17, 2013, the representative from a local child advocacy group gave classroom presentations to Kindergarten and 2<sup>nd</sup>, 4<sup>th</sup>, 6<sup>th</sup> and 8<sup>th</sup> grade students on inappropriate touching and gave examples where another student or an adult could be the perpetrator.

On January 27, 2014, the District held a school assembly for all students to discuss the effects of bullying and violence in school. Students were instructed on how to report bullying and harassment. The documentation provided to OCR about this assembly does not specify whether sexual harassment was specifically addressed.

#### Student/Climate Information and Assessment

During its on-site visit, OCR conducted focus groups of 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> grade students at the District. OCR separated each class by sex. The students were not aware of specific School policies on sexual harassment, but several stated they had been taught about “good touch/bad touch” and generally had an understanding of the definition of sexual harassment.

All the groups of students identified individuals to whom they could report sexual harassment. Some generally indicated that it could be reported to a responsible adult, while others identified specific people to whom they would report harassment; the individuals named included the Superintendent, the Principal, the nurse, and the students’ teacher. The groups differed as to whether they believed the District would take a report of sexual harassment seriously.

More than half of the female students, including all but one of the XXX grade students, indicated that they have personally been sexually harassed or have observed someone else being sexually harassed at the School. The XXX grade male and female students told OCR that one particular XXX grade student, who they did not name but the description of whose conduct matched that of XXX, harassed many of the female students in class. They indicated that the teacher attempted to stop his behavior and that XXX. The XXX students indicated that they felt there was “nothing anyone could do” to stop this student’s behavior and it was something they all just had to deal with.

### **Analysis and Conclusion**

The complaint alleges that the District failed to respond appropriately to complaints, reports, and/or incidents of sexual harassment of which it had notice, including Student A’s reports of repeated verbal and physical sexual harassment by Student B during the 2013-2014 school year, which resulted in a sexually hostile environment for Student A and other students.

#### *Hostile Environment*

OCR considered the totality of the circumstances and evaluated all of the information gathered during its investigation. After carefully considering this information, OCR determined that there is sufficient evidence to conclude that Student A was in fact sexually harassed by Student B, that the sexual harassment was sufficiently serious to create a hostile environment for Student A and other students, that the District was aware of the hostile environment, and that the District failed to take prompt and effective steps reasonably calculated to end the sexual harassment, eliminate the hostile environment, prevent its recurrence and remedy its effects.

The evidence established that, from August 2013 to early April 2014, Student B sexually harassed several female students, including Student A, and that the District had notice of incidents of harassment. The evidence further established that the District was inconsistent in whether and how it investigated reports of sexual harassment, and in the manner in which discipline was imposed. For example, Teacher A indicated that she did not report all reports of inappropriate behavior she received from students unless she determined it was “serious” enough. Moreover, while the Superintendent indicated she employed XXX, the evidence indicates that she did not consider all of the prior incidents of sexual harassment by Student B

each time a new report of harassment was made, either by Student A or another female student. Although the District asserted that it did not have notice of some of the incidents at the time they occurred, namely the alleged December 2013 XXX, the February and March 2014 XXX, and the March 7, 2014 XXX, the evidence established that the District failed to investigate these incidents after March 17, 2014, when Student A's parent provided a comprehensive list of alleged incidents.

In addition, while the District imposed discipline on Student B for his harassing conduct on some occasions, such as XXX, the evidence established that the discipline was not effective in preventing the reoccurrence of sexual harassment by Student B, as he XXX in almost every month of the 2013-2014 school year. All but one of the XXX students indicated that they have personally been sexually harassed or have observed someone else being sexually harassed at the School and noted that one particular XXX student, who they did not name but the description of whose conduct matched that of XXX, harassed many of the female students in class. The District did not XXX despite his repeat offenses. The evidence also established that, although the District XXX, this step was not effective as Student B XXX, had harassed others and, on at least one occasion, may have XXX. While the District disciplined XXX, it did not levy more severe discipline on him or effectively monitor him, and XXX continued to harass female students XXX.

Further, the evidence indicates that the District did not provide adequate interim measures to Student A or XXX who reported Student B sexually harassed them XXX, nor did the District take action to remedy the effects of the sexual harassment on Student A or the other female students at the School. The evidence established that the District inappropriately placed the burden on Student A to remain separated from Student B by XXX for two days in March 2014. Similarly, and although Student A's parent requested XXX. Moreover, although the District provided XXX for a few weeks in 2013-2014 and again in 2014-2015, the District did not provide Student A any other interim or remedial services, such as outside counseling, tutoring, or any other academic services. Finally, the evidence established that most, if not all, of the XXX students, and some of the XXX students, were affected by the sexually hostile environment at the School, such that the female students believed that sexual harassment was something they had to tolerate at school. Despite the notoriety of Student B's sexual harassment of Student A and other female students, the District did not provide counseling, remedial or academic services to any other students.

### *Policies and Procedures*

The District's sexual harassment and sexual violence policies and procedures do not comply with the requirements of Title IX to provide specific and continuing steps to notify students, parents, and employees that it does not discriminate on the basis of sex or apprise them of the protections of Title IX. For example, the District does not provide notice to students, parents and employees of the procedures, including where complaints may be filed, that is easily understood, easily located, and widely distributed as required in 34 C.F.R. § 106.8(b) and § 106.9, there are no provisions for steps to protect the alleged target of harassment as necessary, including interim steps before the final outcome of the District's investigation; the procedures do not state that the preponderance of the evidence standard will be used for investigating allegations of sexual

harassment; and the procedures do not provide an equal opportunity to appeal for both parties, as only the complainant is permitted to appeal.<sup>12</sup>

In addition, the procedures as implemented in the instant case did not provide a prompt and equitable resolution of sex harassment/violence complaints. OCR carefully considered the totality of the circumstances present in this case, and has determined that the evidence supports a finding that, during the 2013-2014 school year, the District failed to promptly and equitably respond to complaints, reports, and/or incidents of sexual harassment of which it had notice, including Student A's reports of repeated verbal and physical sexual harassment by Student B, resulting in a sexually hostile environment for Student A and other students. Thus, the District failed to comply with the applicable Title IX regulations at 34 C.F.R. §§ 106.8(b) and 106.31.

#### *Title IX Coordinator*

Based on its investigation, OCR determined that the District has not clearly designated at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX, including, but not limited to, any investigation of any complaint communicated to it alleging noncompliance with Title IX (including allegations that the District failed to respond adequately to sexual harassment or bullying on the basis of sex). Although the District has designated the Superintendent as its Nondiscrimination Coordinator and the Complaint Manager, it is not clear in the District's published materials whether she also serves as the District's Title IX Coordinator, and the District has not adequately notified all its students and employees of the name, office address, email address and telephone number of its Title IX Coordinator. The evidence also established that the District has not adequately trained the Nondiscrimination Coordinator on what constitutes sexual harassment, including sexual violence; how to conduct investigations of sexual harassment complaints, including the preponderance of evidence standard of review that applies, how to oversee all reports and complaints raising Title IX issues and the District's response; how to identify and address patterns or systemic problems implicating Title IX; and how to maintain documentation of all sexual harassment complaints and the District's response to such complaints, including the sanctions issued and/or remedies provided to the affected parties. Thus, the District failed to comply with the Title IX regulation at 34 C.F.R. § 106.8(a).

#### *Nondiscrimination Notice*

OCR also determined that the District's Nondiscrimination Notice does not provide notice of the District's Title IX Coordinator with appropriate contact information,<sup>13</sup> nor does it state that inquiries regarding application of Title IX and its implementing regulation may be referred to the

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<sup>12</sup> The procedures also do not contain several of OCR's recommendations and best practices. For example, the procedures do not state that sexual assault complaints are not to be mediated even on a voluntary basis; the procedures do not notify the complainant of the right to proceed with a criminal investigation and a Title IX complaint simultaneously; the procedures do not prohibit conflicts of interest (real or perceived) by those handling the procedures; and the procedures do not specify that complainants will be informed at regular intervals of the status of the investigation.

<sup>13</sup> Appropriate contact information should include, at a minimum, the Title IX Coordinator's name or position, office and e-mail address, and telephone number.

District's Title IX Coordinator or OCR, in violation of the Title IX regulation at 34 C.F.R. § 106.9(a).

The District has provided the enclosed agreement to OCR, which, when fully implemented, will address all of OCR's compliance concerns. OCR will monitor the implementation of the agreement until the District is in compliance with the statute(s) and regulations at issue in the case.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

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

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

The complainant may file a private suit in Federal court, whether or not OCR finds a violation.

We appreciate the cooperation you and your staff extended to OCR during the course of the processing of this complaint. We particularly appreciate the cooperation of the District's counsel, Ms. Colette McCarty. If you have any questions, please contact Marcela Sanchez-Aguilar, Civil Rights Attorney, at 312-730-1632 or by email at [Marcela.Sanchez@ed.gov](mailto:Marcela.Sanchez@ed.gov).

Sincerely,

Jeffrey Turnbull  
Team Leader

Enclosure

cc: Ms. Colette McCarty