

July 29, 2015

Dr. Keith Reinhardt
Superintendent
Jonesboro School District #43
309 Cook Avenue
Jonesboro, IL 62952

Re: OCR Docket #05-15-1033

Dear Dr. Reinhardt:

This is to notify you of the disposition of the above-referenced complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Jonesboro School District #43 (District), alleging discrimination on the basis of sex.

Specifically, the complaint alleged the District subjected a middle school student (Student A) to discrimination on the basis of sex when, beginning in April 2014, Student A was subjected to gender-based harassment by other students and the District was aware of the harassment but failed to respond appropriately.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681, and its implementing regulation at 34 C.F.R. Part 106, which prohibits discrimination on the basis of sex by recipients of Federal financial assistance. As a recipient of Federal financial assistance from the Department, the District is subject to Title IX.

During the course of the investigation, OCR reviewed data provided by the District and Student A's parent as well as interviewed District staff, administrators, and Student A's parent. OCR identified some procedural compliance concerns that the District, in conjunction with OCR, resolved prior to the completion of OCR's investigation. For those areas that have not yet been resolved, the District expressed an interest in voluntarily resolving the remaining issues. Discussions between OCR and the District resulted in the District's signing the enclosed Resolution Agreement (Agreement), which, when fully implemented, will resolve the issues raised in the complaint.

Legal Standards

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.

Title IX's sex discrimination prohibition extends to claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity. The actual or perceived sexual orientation or gender identity of the parties does not change a school's obligations. Thus, students who do not conform to sex stereotypes are protected from sex-based discrimination under Title IX.¹

Under Title IX, schools are responsible for providing students with a nondiscriminatory educational environment. Sexual or gender-based harassment (referred to as "sexual harassment" through the remainder of this section of the document) that creates a hostile environment is a form of sex discrimination prohibited by Title IX. Sexual harassment is unwelcome conduct of a sexual nature. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. 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

¹ See OCR policy statements, including "Questions and Answers on Title IX and Sexual Violence," issued on April 29, 2014 and found at <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

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.

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.

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, 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 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.

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.

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.

District Policies and Procedures

In consultation with OCR after OCR initiated its investigation, the District substantially revised its Title IX policies and procedures. The following sections summarize the District's Title IX policies and procedures: (a) as they existed during the 2013-2014 and 2014-2015 school years when Student A reported to the District that he was being subjected to gender-based harassment; and (b) as they exist in their current, revised form.

Nondiscrimination Notice & Title IX Coordinator

The District published a nondiscrimination statement in its 2013-2014 and 2014-2015 Student Handbooks (Former Handbook), stating that "Title IX prohibits discrimination on the basis of sex in education programs or activities, . . . [and the District] does not

discriminate on the basis of sex in admission to or employment in its education programs or activities.” The statement contained no indication that the District does not discriminate on the basis of sex in its program other than in the areas of admission and employment. The notice identified the district superintendent by title as the Title IX Coordinator, provided an office address and telephone number, but did not include an e-mail address, and directed “[g]rievance procedure questions to address sex discrimination claims” to the District’s Title IX Coordinator but did not direct inquiries to OCR.

On June 22, 2015, the District revised its Nondiscrimination Notice, which now states that the District “does not discriminate on the basis of sex in all aspects of its educational programs and activities, including admission to or employment in its education programs or activities.” The current notice identifies the district superintendent by title as the Title IX Coordinator, and provides an office address, telephone number, and e-mail address for him. The current notice directs grievance procedure questions to the District’s Title IX Coordinator and states that inquiries concerning application of Title IX and its implementing regulations may be referred to the District’s Title IX Coordinator or to OCR.

The District provided documentation to OCR indicating that it published the current Nondiscrimination Notice and the complete contact information for its Title IX Coordinator in its 2015-2016 Student Handbook (Handbook) and employee handbook.²

Sexual Harassment

The Former Handbook stated that the District prohibits harassment “on the basis of actual or perceived . . . sex; sexual orientation; gender; identity; gender-related identity or expression,” and provided examples of prohibited conduct, including “name-calling, derogatory slurs, . . . causing psychological harm, [and] threatening or causing physical harm.” The former harassment policy also provided examples of sexual harassment, including “violation of another person’s privacy rights . . . , repeated remarks with sexual or demanding implication, unwelcome touching, and any other unwelcome or unwanted actions that occur because of one’s gender.” The former harassment policy directed students to report incidents of sexual harassment to a teacher or the principal “immediately,” and stated that “a substantiated charge of sexual harassment shall subject the guilty party to disciplinary actions which may include suspension or expulsion.” The Former Handbook cited to former Board Policy 7:20 (*Harassment of Student Prohibited*), but the District did not provide OCR a copy of this policy, nor was it available on the District’s website.

The Former Handbook contained a section titled “Guidelines for Disciplinary Action,” which stated that sexual harassment can result in a range of disciplinary consequences, including conference with principal, notification of parents or guardians, suspension, or expulsion.

² The employee handbook is at <http://www.jonesboro43.com/documents/general/EmployeeHandbook.pdf>.

On June 22, 2015, the District revised its sexual harassment policy, which is contained in Board Policy 7:20, *Harassment of Students Prohibited*, and in its Handbook. The policy specifically prohibits harassment based on sex and gender-related identity or expression, and defines sexual harassment as “whenever [a person] makes sexual advances, requests sexual favors, and/or engages in other verbal or physical conduct, including sexual violence, of a sexual or sex-based nature, imposed on the basis of sex.” The revised policy provides examples of sexual harassment such as “touching, crude jokes or pictures, discussions of sexual experiences, teasing related to sexual characteristics, gender based harassment, and spreading rumors related to a person’s alleged sexual activities,” as well as acts of sexual violence.

The District also revised Board Policy 7:18, *Prevention of and Response to Bullying and Harassment*, which, among other bases, prohibits bullying on the basis of “actual or perceived” sex and gender-related identity or expression. This policy applies during any school sponsored education program or activity, while in school, on school property, on school buses or other school vehicles, at designated school bus stops waiting for the bus, through transmission of information from a school computer, computer network, or other similar electronic school equipment, and through transmission of information from a computer accessed outside of school or school-sponsored location or activity if the bullying causes a substantial disruption to the educational process or orderly operation of a school.

The sexual harassment policy directs students to report incidents of sexual harassment to “the Nondiscrimination Coordinator, Building Principal, Assistant Building Principal, Dean of Students, or a Complaint Manager,” and the bullying policy permits reports to a District Complaint Manager or any staff member with whom a complainant student feels comfortable. Both policies identify the Superintendent as the Nondiscrimination Coordinator, and identify the Principal and School Nurse as Complaint Managers. Both policies explain that “complaints will be kept confidential to the extent possible given the need to investigate,” and state that the District’s Nondiscrimination Coordinator “will evaluate all express requests for confidentiality, considering whether and to what extent [the District] can honor such request while also meeting its obligations under the law to respond to unlawful harassment, and will inform the person making such request of his or her determination before obtaining the information the student wishes to keep confidential.”

Both policies provide that the Nondiscrimination Coordinator or designee “shall use interventions as necessary to protect the Complainant during the investigation, such as but not limited to, physically separating the Complainant and accused with minimum burden on the Complainant, providing an adult escort for safety, academic support (including recalculating grades if necessary), school social work services or other counseling at no cost to Complainant, and school psychological services.” The policies require “all district employees who personally observe or become aware of a formal or informal complaint of prohibited conduct” to immediately notify a District Complaint Manager, and state that “failure to report known acts of harassment . . . could result in disciplinary action against

the employee, including but not limited to a letter or reprimand, suspension with our without pay, or termination.” Board Policies 7:18 and 7:20 and the Handbook are available on the District’s website.³

The District publishes its sexual harassment and bullying policies in full in its Handbook, and states that “the District is committed to conducting a prompt investigation” of reports received pursuant to those policies. The Handbook’s section on “Guidelines for Disciplinary Action” provides a range of escalating disciplinary consequences for sexual harassment. Specifically, it states that, for a first offense, a student may receive principal conference, parent notification and possible suspension or expulsion; for a second offense, a student may receive parent conference and suspension of up to 10 days or possible expulsion; and for a third offense, a student may receive further suspension or possible expulsion.

Grievance Procedure

The District’s former Uniform Grievance Procedure, Board Policy 2:260, advised “students, parents, guardians, employees, or community members” to notify a District Complaint Manager and file a complaint “if he or she believes that the School Board, its employees, or agents have violated his or her rights” under Title IX. This procedure identified the former Superintendent as the Nondiscrimination Coordinator, and identified the Jonesboro Elementary School’s Principal as a Complaint Manager, providing the name, physical address, and telephone number for each. This procedure stated, “The Complaint Manager will investigate the complaint or appoint a qualified person to undertake the investigation” and will provide to the Superintendent a written report of the findings within 30 business days, or request an extension of time. The Superintendent was to mail the written decision to the complainant within five business days thereafter. This procedure permitted a complainant to appeal an adverse decision to the District’s School Board within 10 business days after receiving the Superintendent’s decision. Board Policy 2:260 was not available on the District’s website or in the Former Handbook.

On June 22, 2015, the District also revised its *Uniform Grievance Procedure*, Board Policy 2:260. The procedure contains the same time frames for the investigation of complaints, written issuance of findings, and opportunity to appeal the findings. The grievance procedure now states that the District will not require a student or parent who complains of harassment to work out problems directly with an alleged harasser (or the harasser’s parents), including through mediation, that the Complaint Manager will inform the parties at regular intervals of the status of the investigation, that both parties will have an equal opportunity to present evidence during an investigation, that the District will utilize the preponderance of evidence standard in determining whether a hostile environment exists, that written findings will be issued to both parties and both parties are given equal opportunity to appeal, and that a Title IX Complainant “shall have the option to pursue a criminal complaint with an appropriate law enforcement agency, to pursue a

³ <http://www.jonesboro43.com/documents/general/bullyingpolicy.pdf>

sexual harassment complaint under the District’s complaint procedures, or to pursue both processes simultaneously.” The grievance procedure now also makes clear that “[e]ven if a criminal investigation is ongoing, the District will conduct its own Title IX investigation and will not wait for the conclusion or criminal investigation or proceeding to begin its Title IX investigation.” It explains that the District “will process all complaints of sexual violence regardless where the conduct occurred in order to determine (1) whether the conduct occurred in the context of an educational program or activity; or (2) has had continuing effects on campus or in an off campus program or activity.” The grievance procedure also now states, “In investigating complaints of sexual violence, evidence of past relationships with anyone other than the alleged assailant is disallowed.” Board Policy 2:260 is now available on the District’s website.⁴

Anti-Harassment Statement

On June 23, 2015, in a memorandum from the District’s Interim Superintendent, the District issued an anti-harassment statement to all students, parents, administrators and staff informing them of the District’s policy that it does not tolerate sexual harassment, including gender-based harassment. The statement made clear that prohibited sexual harassment includes sexual violence, and any verbal or physical conduct of a sexual or sex-based nature, and any other harassment based on sex. The statement encouraged any student who believes he or she has been subjected to sexual or gender-based harassment to report the harassment to the District and noted the District’s commitment to conducting a prompt investigation; the statement included the procedures under which parents or students may file a complaint of sexual harassment. The statement identified the individuals responsible for investigating complaints of sexual harassment, described reasonably prompt designated time frames for completion of such investigations and notice to complainants, stated that the policy provides for appropriate disciplinary sanctions of individuals who engage in sexual harassment, and specified that such discipline may include suspension or expulsion of a student and suspension or termination of an employee. The statement warned that students or employees who retaliate against individuals who report sexual harassment will be promptly disciplined. The statement included identification of the District’s Nondiscrimination Coordinator, who serves as the District’s Title IX coordinator, and included the individual’s name, office address, telephone number, and e-mail address.

The District reported that it distributed the memorandum containing the District’s anti-harassment statement by U.S. Mail to all District parents, students, staff and administrators, and posted it prominently in the District office and school. The District also documented that it posted the memo on its website,⁵ and published the anti-harassment statement in its Handbook, which is also available on the District’s website.⁶ Finally, the District informed all District parents and staff members in a recorded telephone message that it recently revised its policies regarding illegal harassment and

⁴ <http://www.jonesboro43.com/documents/general/bullyingpolicy.pdf>

⁵ <http://www.jonesboro43.com/documents/general/bullyingmemo.pdf>

⁶ <http://www.jonesboro43.com/documents/general/StudentHandbook.pdf>

bullying and directed parents and staff members to the District website to review the revised policies and Handbook.

Facts

During the 2013-2014 school year, Student A was a 6th grade student attending Jonesboro Elementary School.

According to Student A's parent, on April 29, 2014, Student A was involved in an incident during which he was called names and sexually harassed. Specifically, the parent told OCR that a female student (Student B) said she wanted to kick Student A "where the sun doesn't shine," and an 8th grade male student (Student C) called Student A "gay" and said that Student A did not have any genitals (or "male parts"). The parent told OCR that Student A does not engage in gender nonconforming behaviors, but his voice has not changed and he has a lisp when pronouncing the letter "R."

According to the District, on April 29, Student B reported to a District staff member that Student A had made inappropriate sexual remarks to her and also touched her inappropriately. The staff member immediately reported the incident to the Principal, who in turn investigated the incident by interviewing Students A and B separately, and also interviewing three other students who Student B identified as witnessing the incident. According to the Principal, during his interview, Student A admitted to making inappropriate comments about Student B's mother, but denied that he touched Student B. The Principal said that Student A did not mention being called names or suggest that he was otherwise harassed; the Principal said he asked Student A if he had been provoked during the incident but that Student A said no. The Principal told OCR, and his typewritten notes confirm, that all three student witnesses told him that they heard Student A's inappropriate comments and/or saw him touch Student B inappropriately. Following the investigation, the Principal issued Student A a two-day out of school suspension for sexual harassment. The Principal notified Student A's parent in writing of the results of the investigation and Student A's discipline.

The Principal stated that the next day, on April 30, Student A's parent asked to meet with him to discuss Student A's suspension. The Principal stated that the parent asked him details of the investigation. The Principal told her that he interviewed several students who corroborated Student B's report. The parent and Principal told OCR that, during this meeting, she and Student A informed the Principal that other male students had been harassing Student A by calling him names and making fun of his sexual body parts, by indicating Student A does not have male parts. The parent told OCR that she provided the names of two of Student A's harassers, which the Principal denies.

At that meeting, Student A provided the Principal with a letter of apology. In that letter, in addition to apologizing to Student B, Student A wrote that "people ... talk about me ... like calling me gay and stupid idiot and things that make me feel bad ... I just had enough of people calling me names. I deal with that stuff all the time."

The Principal said he told Student A's parent that, during his investigation the day before, Student A did not tell him that he was being harassed or called names by other students, even though the Principal asked him if he had been provoked. The Principal also said that none of the other students who he interviewed mentioned that Student A had been harassed or called inappropriate names during the incident. He said he told Student A and his parent that if Student A was called names or otherwise harassed in the future to report it to him or another staff member immediately and he would handle the incident according to District policy.

The Principal told OCR that he did not investigate Student A's report on April 30 that other students had been calling him "gay" and had made fun of his sexual body parts because neither Student A nor any of the other students he had interviewed on April 29 reported that conduct to him. The Principal indicated that he did not find Student A's April 30 report to be credible, as the Principal specifically asked Student A the day before whether he had been provoked and Student A said no. He did not send Student A or his parent a written determination as to these findings.

Shortly thereafter, Student A's parent initiated proceedings to challenge Student A's two-day out of school suspension through an administrative process specified in the Former Handbook. As part of that process, on July 22, 2014, Student A's attorney sent the Principal an e-mail asking for documentation regarding Student A's suspension and stating that one of Student A's goals was to "get[] through this situation in such a manner as to provide [him] with the confidence that when he is teased or bullied those incidents will be investigated just as vigorously as this incident involving him." The attorney also wrote, "In talking with [Student A] and his [parent] and in reviewing his [apology] letter ... it is clear he is voicing a pattern of being teased and bullied, with his sexual orientation being the focus point."

The Principal acknowledged that he read the attorney's e-mail, but stated that he did not view it as making a sexual harassment report to the District. Rather, the Principal viewed this e-mail as part of the proceeding challenging Student A's suspension, and he asked the attorney to direct all future communication to the District's attorney. The Principal told OCR that he did not commence an investigation into the attorney's report that Student A had experienced a "pattern" of teasing and bullying based on sexual orientation.

On September 10, 2014, a male classmate (Student D) pulled down Student A's pants during P.E. class. The P.E. teacher reported the incident to the Principal, who investigated it by interviewing Students A and D. The Principal determined that Student D subjected Student A to sexual harassment and issued Student D a two-day out of school suspension pursuant to District policy. The Principal told OCR that he notified the parents of Student D in writing regarding the results of the investigation and Student D's discipline, and that he verbally notified Student A's parent of the results of the investigation that same day.

After the September 10 incident, Student A's attorney sent the District's attorney several e-mails indicating that this incident was part of the same pattern of harassment Student A had reported in April 2014, specifically mentioned Student A's allegation that he had been called "gay," and identified two of Student A's harassers. Student A's attorney also asked that the District provide counseling for Student A.

The District's attorney responded that the April 2014 incident had been investigated already and indicated that matter was closed. The District told OCR that it had offered Student A counseling during the 2013-2014 school year, but that his parent had not provided signed consent so he was not able to receive counseling that school year. Shortly after the attorney requested counseling for Student A in September 2014, the parent submitted her signed consent, and the District provided Student A counseling.

According to both parties, Student A did not report that he was subjected to any further sexual harassment during the 2014-2015 school year.

Conclusion

Prior to the conclusion of OCR's investigation, the District retained an outside attorney to investigate Student A's reports that he had been subjected to a pattern of gender-based harassment during the 2013-2014 school year. The District reported to OCR that the attorney interviewed Student A and several other District students about Student A's allegations that particular students had called Student A inappropriate gender-based derogatory names, and determined that Student A had in fact been subjected to sex-based harassment in violation of the policies and procedure in place during that school year and provided written notice of the outcome of its investigation to Student A's attorney. The District documented that it developed a safety plan for Student A upon his return to school, and that it will meet with the students found to have participating in the harassment of Student A within the first ten days of the 2015-2016 school year and issue disciplinary consequences pursuant to its Former Handbook. The District also offered to provide school counseling to Student A, reimburse him for any out of pocket costs of private counseling received, and arranged for a meeting before the beginning of the 2015-2016 school year between the Superintendent and Student A and his parents to ensure Student A has the full support of the District in maintaining a harassment free environment for Student A in school. The District also invited Student A and/or his parents to request any other remedial actions Student A needed.

Although OCR noted concerns with the sexual harassment policies and procedures in place when Student A reported to the District he was being subjected to gender-based harassment, the District has since substantially revised its policies and procedures such that they now provide adequate specific and continuing steps to notify students, parents, and employees that it does not discriminate on the basis of sex and apprise them of the protections of Title IX. The District currently provides 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. In addition, the procedures now identify provisions for steps to protect the alleged target of harassment as necessary, including interim steps before the final outcome of the District's investigation, state that the preponderance of the evidence standard will be used for investigating allegations of sexual harassment, provide an equal opportunity to present evidence and call witnesses, require designated and reasonably prompt timeframes for the major stages of the complaint process, require written notice to both parties of the outcome of the complaint and any appeal, and provide an equal opportunity to appeal for both parties.

In addition, the procedures also now contain several of OCR's recommendations and best practices. Specifically, the grievance procedures now state that sexual harassment complaints are not to be mediated, notify the complainant of the right to proceed with a criminal investigation and a Title IX complaint simultaneously, and specify that complainants will be informed at regular intervals of the status of the investigation.

In accordance with Section 302 of OCR's *Case Processing Manual*, a complaint may be resolved at any time when, before the conclusion of an investigation, the recipient expresses an interest in resolving the complaint. Prior to the conclusion of OCR's investigation, the District expressed interest in resolving the complaint.

Based on the above, OCR determined that a Resolution Agreement is appropriate under the circumstances present in this particular case to resolve the outstanding issues. In particular, the District agreed to: provide its Title IX Coordinator, and all District administrators, faculty, and relevant staff with effective training on the District's revised sexual harassment policies and procedures, including training on how to conduct and document adequate reliable and impartial Title IX investigations for staff who are directly involved in processing, investigating, and/or resolving reports of sexual harassment or who are likely to receive confidential reports of sexual harassment; provide effective age-appropriate training to all District students, which will address sexual harassment and retaliation in order to promote respect and tolerance for others and to avert the establishment of a hostile environment based on sex for students enrolled in the District; take any steps necessary to ensure that Student A is not subjected to a hostile environment on the basis of sex on District grounds and in District sponsored activities; and maintain documents relating to specific complaints or other reports of sexual harassment of students and provide OCR documentation of all such complaints or reports and data on all actions, including sanctions and remedies, taken in response to those complaints and reports.

The enclosed Agreement, when fully implemented, will address all of OCR's compliance concerns. The provisions of the Agreement are aligned with the complaint allegation and the information obtained during OCR's investigation, and are consistent with the applicable regulations. OCR will monitor the implementation of the Agreement until the District is in compliance with the Title IX 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 wish to thank you and your staff for your cooperation and courtesy during our investigation. In particular, we would like to thank Mr. Shawn McLain. If you have any questions, please contact Mark Erickson at 312-730-1574 or by email at mark.erickson@ed.gov.

Sincerely,

Jeffrey Turnbull
Team Leader

Enclosure

cc: Mr. Shawn McLain