



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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DALLAS, TX 75201-6810

REGION VI
ARKANSAS
LOUISIANA
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TEXAS

XXXX XXXX, XXXX

Mr. Phil Worsham, Superintendent
Joaquin Independent School District
11109 Hwy 84 East
Joaquin, TX 75954

Ref: 06141404

Dear Mr. Worsham:

This letter is to notify you that OCR has completed its investigation of the above-referenced complaint, filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, against the Joaquin Independent School District (JISD or District), in Joaquin, Texas. The complaint, received by OCR on XXXX XXXX, XXXX, alleged that the JISD discriminated against coaches and students at Joaquin High School (JHS) on the basis of race, national origin, and sex. The complainant also alleged retaliation. Specifically, the complainant alleged that, during the XXXX XXXX school year, the JISD:

- (1) discriminated against the coaching staff and students at JHS on the basis of race (African-American) when the Athletic Director/Head football coach (AD or Coach) used racial slurs and epithets at coaches' meetings in XXXX XXXX, causing a hostile environment, of which the District had notice and failed to adequately respond;
- (2) discriminated against the coaching staff and students at JHS on the basis of national origin (Mexico) when the AD used slurs and epithets about persons of Mexican descent at coaches meetings' in XXXX XXXX, causing a hostile environment, of which the District had notice and failed to adequately respond;
- (3) discriminated against female coaches and students at JHS based on sex, when the AD made sexual references and comments about female coaches and students during coaches' meetings, causing a hostile environment, of which the District had or should have had notice, but failed to adequately respond; and
- (4) retaliated against the complainant when, after XXXX told the District "you should not be calling people names" and "it's not nice to call people names" after hearing the AD's alleged racial epithets in XXXX XXXX, the JISD XXXX the complainant XXXX and did not XX— to end of sentence redacted— XX.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 *et seq.*, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any education program or activity receiving Federal financial assistance from the Department. OCR is also responsible for enforcing Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. 2000d, and its implementing regulation at 34 C.F.R. Part 100, which prohibits discrimination on the basis of race, color, or national origin in any education program or activity receiving Federal financial assistance from the Department. The Title IX implementing regulation at 34 C.F.R. § 106.71 incorporates by reference the provision against retaliation under Title VI, and its implementing regulation at 34 C.F.R. § 100.7. The JISD was a recipient of Federal financial assistance from the Department. Therefore, OCR had jurisdictional authority to investigate this complaint under Title VI and Title IX.

OCR investigated the following issues:

1. Whether the JISD discriminated against coaches and students at JHS on the basis of race (African-American), during the XXXX school year, by failing to take prompt and effective action to address racially harassing conduct by the AD (use of racial slurs and epithets at coaches' meetings) sufficient to constitute a hostile environment, of which the District had or should have had notice, in violation of Title VI and its implementing regulation at 34 C.F.R. § 100.3.
2. Whether the JISD discriminated against coaches and students at JHS on the basis of national origin (Mexico), during the XXXX school year, by failing to take prompt and effective action to address harassing conduct by the AD (use of slurs and epithets at coaches' meetings regarding persons of Mexican descent) sufficient to constitute a hostile environment, of which the District had or should have had notice, in violation of Title VI and its implementing regulation at 34 C.F.R. § 100.3.
3. Whether the JISD discriminated against coaches and students at JHS on the basis of sex, during the XXXX school year, by failing to take prompt and effective action to address sexually harassing conduct by the AD (sexual references and comments at coaches' meetings about female coaches and students) sufficient to constitute a hostile environment, of which the District had or should have had notice, in violation of Title IX and its implementing regulation at 34 C.F.R. § 106.31.
4. Whether the JISD retaliated against the complainant when, after XXXX reprimanded the District for the AD's "name calling" (use of epithets and slurs based on race and national origin) in the XXXX XXXX XXXX, the District XX- to end of phrase redacted--XX, resulting in the complainant's XXXX, in violation of Title VI and its implementing regulation at 34 C.F.R. § 100.7(e).

During the course of the investigation, OCR received and reviewed data provided by the complainant and the District. OCR also interviewed the complainant and relevant JISD personnel. Based on a review of this information, OCR determined that there is sufficient evidence to support a conclusion of noncompliance by the JISD with respect to issues 1, 2, and 3 above. OCR also determined that there is insufficient evidence to support a conclusion of noncompliance with respect to issue 4. The bases for OCRs determination regarding each issue is set forth below.

Issue 1

Legal Standard

Title VI provides that no individual shall, on the basis of race, color, or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity to which Title VI applies. According to OCR policy, a violation of Title VI may be found if a recipient has created or fostered a racially hostile environment, i.e., harassing conduct (e.g., physical, verbal, graphic or written) that is based on race, color, or national origin and that is sufficiently severe, pervasive, or persistent so as to interfere with or limit the ability of an individual to participate in or benefit from the services, activities, or privileges provided by the recipient. Harassment must consist of more than casual or isolated racial incidents to create a racially hostile environment. Further, a determination of whether conduct is “severe” or “pervasive” must examine the gravity as well as the frequency of the harassing conduct. A recipient has violated Title VI if it has effectively caused, encouraged, accepted, or failed to correct a racially hostile environment of which it has actual or constructive notice.

In order to establish a violation of Title VI based on a racially hostile environment, OCR must find that: (1) a racially hostile environment existed; (2) the recipient had actual or constructive notice of the racially hostile environment; and (3) the recipient failed to respond adequately to redress the racially hostile environment. Whether a racially hostile environment existed must be determined from the totality of the circumstances, such as the frequency and/or severity of the discriminatory conduct, whether the conduct is physically threatening or humiliating, and what kind of psychological harm results from the conduct (psychological harm is not required, but is taken into account). If OCR finds that a hostile environment existed and the recipient had notice of its existence, OCR then determines whether the recipient responded appropriately by taking reasonable, timely, and effective steps to respond to the specific incidents of harassment and discrimination. To be effective, OCR does not require that a recipient’s response to racially harassing conduct ensure that all future harassment or other discriminatory conduct will be prevented, but rather that the response is reasonably calculated to end the harassment, prevent its recurrence, and make whole any victims of the harassment.

Factual Findings

District's Policies and Procedures Regarding Harassment of Students under Title VI

The District had policies and procedures pertaining to race and national origin harassment for both employees and students. The District's governing policies regarding harassment of students were titled "Student Welfare, Freedom from Discrimination, Harassment, and Retaliation" - "FFH Legal" and "FFH Local" (FFH). FFH included the following statement of nondiscrimination - "the District prohibits discrimination, including harassment, against any student on the basis of race, color, religion, gender, national origin, disability, or any other basis prohibited by law."

FFH defined "prohibited harassment" as the following:

Physical, verbal, or nonverbal conduct based on the student's race, color, religion, gender, national origin, disability, or any other basis prohibited by law that is so severe, persistent, or pervasive that the conduct: (1) affects a student's ability to participate in or benefit from an educational program or activity, or creates an intimidating, threatening, hostile, or offensive educational environment; (2) has the purpose or effect of substantially or unreasonably interfering with the student's academic performance; or (3) otherwise adversely affects the student's educational opportunities.

FFH requires that the District conduct an investigation to determine whether prohibited harassment as defined above occurred. The policy provided a timeframe of ten days to complete an investigation, with an exception to allow for additional time to complete an investigation if necessary due to the complexity of any investigation. FFH required the investigator to prepare a written report of the investigation, which includes a determination of whether [harassment] occurred. Further, FFH stated that the report shall be filed with the District official overseeing the investigation and notification of the outcome of the investigation shall be provided to both parties.

If prohibited conduct under FFH was determined to have occurred, examples of corrective action under the policy included "training for those involved in the complaint, a comprehensive education program for the school community, counseling for the victim and the student who engaged in prohibited conduct, follow-up inquiries to determine if any new incidents or instances of retaliation have occurred, involving parents and students in efforts to identify problems and improve the school climate, increasing staff monitoring of areas where harassment has occurred, and reaffirming the District's policy against discrimination and harassment."

As of September 2017, the District's current version of its FFH policy contained essentially the same language as the version that was in place during the time of the alleged discrimination, except that the current version specifically includes "age" as a basis of prohibited discrimination.

District's Policies and Procedures Regarding Harassment of Employees under Title VI

The District's governing policies regarding harassment of employees were titled "Employee Welfare: Freedom from Discrimination, Harassment, and Retaliation" - "DIA Legal" and "DIA Local." DIA included a statement of nondiscrimination similar to the statement in FFH, but applicable to employees. DIA defined "discrimination" as "conduct directed at an employee on the basis of race, color, religion, gender, national origin, age, disability, or any other basis prohibited by law, that adversely affects the employee's employment." The policy defined "harassment" as "physical, verbal, or nonverbal conduct based on an employee's race, color, religion, gender, national origin, age, disability, or any other basis prohibited by law, when the conduct is so severe, persistent, or pervasive that the conduct: (1) has the purpose or effect of unreasonably interfering with the employee's work performance; (2) creates an intimidating, threatening, hostile, or offensive work environment; or (3) otherwise adversely affects the employee's performance, environment or employment opportunities."

DIA Local provided examples of prohibited harassment (derogatory language directed at another person's . . . accent, skin color, gender identity), including "offensive jokes, name calling, slurs, or rumors." DIA Local prohibited retaliation "against an employee who makes a claim alleging to have experienced discrimination or harassment, or another employee who, in good faith, makes a report, serves as a witness, or otherwise participates in an investigation." Regarding reporting procedures, DIA stated that employees may report the alleged acts to his or her supervisor or campus XXXX or one of the District officials identified in DIA. DIA had similar investigatory requirements and timeframes as referenced in FFH above.

As of September 2017, the District's current version of its DIA policy contained no material differences as compared to the version that was in place during the time of the alleged discrimination.

Conduct by the Athletic Director

The complainant alleged that AD made numerous racial slurs and statements about African-Americans to JISD football team coaches. The District provided XXXX XXXX Level I complaint, which was filed with the District on XXXX XXXX XXXX. OCR's review of the XXXX XXXX XXXX complaint revealed that in addition to individual personnel issues, XXXX alleged "racism" regarding racial slurs and epithets made by the AD about African-American football players and "Mexicans." In its data response to OCR, the District produced a written narrative from the JISD high school's (JHS) XXXX XXXX XXXX XXXX investigation at the Level I internal investigation (letter dated XXXX XXXX XXXX). In the written narrative, XXXX reported that during XXXX Level I investigation, XXXX XXXX "provided no proof to any of XXXX allegations . . . XXXX had no witnesses, no written statements from anyone." XXXX wrote that "the racial allegation from XXXX was one of the items that did not meet the timeline" of filing a complaint within 15 days of the alleged occurrence. OCR's review of the District's policies revealed that complaints regarding general personnel issues had a 15-

day filing requirement, but complaints regarding discrimination and harassment did not have a specified time requirement. XXXX also wrote, “Although not within the timeline, I addressed this as soon as I found out about it making it clear to AD that he is not to make comments of this nature.” XXXX reported that “As I investigated these claims through personal interviews with the XXXX XXXX XXXX, I found that AD had made some inappropriate comments about players from another school. AD, by his own admission, made a statement [that] ‘if Joaquin had the niggas [a rival school] has, we would go to state.’” XXXX reported this comment was made during a coaches meeting prior to the start of the XXXX football season. XXXX also wrote that he was presented with no evidence that AD discriminated against students, indicating that AD “and some of the students do joke around with one another from time to time, but it has been mutual.”

OCR interviewed XXXX. OCR asked XXXX if the “15 day rule” regarding the filing of allegations applied to XXXX race and national origin based harassment allegations against AD, and XXXX said “no, that’s addressed in the policy somewhere.” He stated that the 15 day rule was for “minor incidents.” OCR asked why the written narrative stated that complainant’s Level 1 allegations regarding race and national origin were “dismissed” under the 15 day rule, and XXXX reported “I somehow deleted the ‘racial’ part [from the determination letter] but it was still part of the investigation.” XXXX reported that he interviewed some of the football coaches to determine if AD used the “N-word.” He reported that XXXX XXXX XXXX XXXX told him AD had used the word “nigger” in XXXX XXXX at a coaches meeting when describing the football players from an opposing school. XXXX reported that AD himself also admitted to using the word at that XXXX XXXX meeting. During his investigation, XXXX also found out that, in XXXX XXXX during a coaches meeting, AD said, regarding the opposing team on film, “they have niggers and we have black kids.” XXXX reported that AD received a formal reprimand letter on or about XXXX XXXX XXXX and was required to attend diversity training.

OCR interviewed AD. He stated that he used the word “negro” to describe opposing players during the XXXX XXXX coach’s meeting referenced above. AD reported the incident occurred before the football coaches at lunch in the athletic office. When asked whether he used the term “nigger” or “nigga” with coaches or players during the XXXX season, the AD reported “Yes. We had a few black athletes and they said I was one of them. Every once in a while I’d look at them and say the ‘niggas’ word toward them, with no hate. They call themselves that and they join me in on it. I never had a student complaint about me saying it. They call themselves that. They laugh at it.”

OCR interviewed XXXX XXXX XXXX XXXX at JHS and asked them whether they heard or observed AD using racially harassing language. XX– to end of phrase redacted–XX reported to OCR that XXXX heard AD use the word “nigger” toward two black students. XXXX XXXX reported that during a pep rally in XXXX XXXX, XXXX was taking pictures of XXXX XXXX (White) and XXXX two friends (Black) and AD called the black students “niggers.” OCR requested an interview with the XXXX XXXX XXXX XXXX XXXX, who have subsequently graduated

from JHS, but OCR was not granted consent to conduct the interviews. XXXX XXXX stated that XXXX also heard AD use the term “nigger” when describing athletes from opposing teams to other coaches. OCR interviewed XXXX XXXX XXXX XXXX XXXX XXXX, who reported that XXXX heard AD use the term “nigger” “at least four or five times” during the XXXX football season. XXXX XXXX reported that AD used the term describing opposing players during coach’s meetings and when talking to coaches on the practice field. XXXX reported having no knowledge of the term being used toward other JISD students.

OCR’s interview of XXXX XXXX XXXX XXXX XXXX XXXX revealed that XXXX heard AD use the term “nigger” in front of a black student football player in XXXX. OCR requested an interview with XXXX XXXX XXXX XXXX XXXX XXXX XXXX, who has since graduated from JHS, but was not granted consent to conduct the interview. XXXX XXXX also corroborated that AD used the term “nigger” during the above-referenced XXXX XXXX coach’s meeting, telling OCR that AD specifically said “the only reason they [opposing school] win championships is because they have a lot of fast-ass niggers out there.” XXXX XXXX also corroborated an incident mentioned by XXXX to OCR, in that AD, when reviewing game film for a playoff game in XXXX XXXX, said in front of JHS coaches, when describing the opposing team, “they have niggers and we have black kids.” When asked about AD’s statement, XXXX XXXX told OCR “I can’t tell you [it was] exactly in XXXX but I’ve heard that statement before from [AD].” While XXXX XXXX did not give any details regarding further racially harassing statements by AD, he reported “A lot of times things are said freely by AD but those [incidents referenced above] were said and there were other incidents I’m sure.”

OCR interviewed XXXX XXXX XXXX XXXX XXXX XXXX XXXX who also confirmed AD used the term “nigger” during AD’s coaching of football. XXXX XXXX reported that “the few times I’ve heard it in conversation was with young male students of that race (black), in the field house. A young African-American male calls you that (‘nigger’), it’s giving you respect, and AD used it back to him (student) in that same manner.” OCR obtained the identity of XXXX XXXX XXXX XXXX XXXX XXXX XXXX and requested an interview with XXXX XXXX, but did not receive consent for the interview. XXXX XXXX XXXX XXXX XXXX XXXX interviewed by OCR also corroborated AD’s use of the term “nigger” during the XXXX season. XXXX XXXX reported that XXXX heard AD use the term when “telling stories” to other coaches in the field house or athletic office. XXXX XXXX also stated “we don’t have many [African American students] in the district, so he [AD] said it [“nigger”] in front of them, but it would be along the lines of [AD] saying “hey nigger,” in interacting with the black students.” XXXX XXXX identified XXXX XXXX XXXX XXXX who AD used the term with as referenced above. XXXX XXXX have since graduated from JHS. OCR requested an interview with XXXX XXXX but did not receive consent.

Analysis

Based on OCR’s review of the above information, OCR determined that there is sufficient evidence to support a conclusion that JISD is in violation of Title VI regarding

issue 1. As noted above, several recipient interviewees, the JHS XXXX, and AD himself, indicated that AD used the term “nigger” in front of coaches and students in XXXX. OCR corroborated that the term was used multiple times, regularly. Based on both the nature of the term used and its frequency, OCR determined that the AD’s conduct was severe, persistent, and pervasive enough to constitute a hostile environment based on race on the JHS campus. Further, as AD made the statements acting in his capacity as an employee of the District, JISD had constructive notice of all above-referenced statements by AD. OCR has determined that the JISD failed to respond adequately to redress the racially hostile environment. Particularly, the JISD did not respond appropriately by taking reasonable, timely, and effective steps to respond to the specific incidents of harassment and discrimination. While the XXXX initiated an investigation within approximately three days of receipt of the complaint, and the AD received one letter of reprimand from XXXX after the investigation was conducted, the letter did not find identify specific violations committed by the AD of the District’s harassment policy, nor was OCR provided evidence that the hostile environment created by AD was eliminated or that those students and staff that were subjected to the identified racially discriminatory behavior were made whole. Thus, the JISD’s response was not reasonably calculated to end the harassment, or prevent its recurrence, and OCR has determined that the JISD violated Title VI as alleged.

Issue 2

Legal Standard

The legal standard regarding harassment based on national origin mirrors the standard regarding harassment based on race referenced above.

Factual Findings

The District’s policies and procedures for reports and investigations of harassment based on national origin are the same as those regarding harassment based on race referenced above. The complainant reported to OCR that AD called Latino and Hispanic students “Mexicans” (regardless of whether they were from Mexico) and stated to football coaches in JISD that “[Hispanics] are all farmworkers” and JISD “wouldn’t have any Mexicans if their parents didn’t all work at the local chicken farms.” XXXX reported that XXXX alleged in XXXX XXXX XXXX complaint filed with the District that AD made derogatory statements about Hispanics. XXXX told OCR that in XXXX investigation of XXXX XXXX XXXX complaint, XXXX investigated this allegation and found no discrimination occurred. XXXX told OCR that many of the District’s Hispanic students are from families who are chicken farmers residing in the District. Thus, XXXX did not find such a statement to be considered harassment.

XXXX reported that during XXXX XXXX XXXX XXXX, an incident occurred regarding AD’s comments to XXXX XXXX XXXX XXXX XXXX in the coach’s office. XXXX reported that XXXX XXXX reported to Superintendent that AD made a comment about shooting Mexicans crossing the border. XXXX reported that

Superintendent questioned AD about the statement and AD confirmed he made the statement. In OCR's interview with AD, OCR asked AD if he had made a statement about "shooting Mexicans crossing the border" and he said: "Yes. Some of my coaches were present. We had already XXXX XXXX XXXX and we XXXX XXXX XXXX started talking about Hispanics coming in over the border, what's the solution? And I made the statement about shooting immigrants at deer stands in a joking manner." XXXX told OCR, AD was disciplined with a reprimand and placed on administrative leave for five days based on his comment.

OCR interviewed all XXXX XXXX regarding whether AD made harassing statements based on national origin. OCR interviewed XXXX XXXX XXXX XXXX XXXX XXXX who reported that during "XXXX XXXX XXXX XXXX XXXX" "I heard of an incident in the field house regarding the issues of migrant workers in the presence XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX, that AD mentioned something about "lining them [Hispanics] up at the border." XXXX XXXX reported to OCR that XXXX heard AD mention "Mexicans coming over the border" but had no further information. XXXX XXXX, who reported the XXXX XXXX incident to Superintendent, told OCR that the incident occurred in XXXX XXXX. XXXX told OCR, "I walked over to coach's [athletic] office and XXXX XXXX XXXX XXXX, there were XXXX XXXX there and XXXX XXXX XXXX XXXX XXXX in the XXXX XXXX XXXX the office."

XXXX XXXX told OCR that "on the blackboard, AD drew a line as the Mexican border and said if Texas set up a deer hunting stand every 100-200 yards, they'd shoot a Mexican when they come across." XXXX reported that when AD was saying this, XXXX XXXX students came over and looked at the board. XXXX told OCR that one student who heard AD and looked at the board XX-to the end of sentence redacted-XX. XXXX said the students walked out after hearing AD's statement. OCR attempted to interview XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX, but did not receive consent.

XXXX XXXX also reported that XXXX heard AD use the term "wetback" when referring to Hispanics. OCR asked XXXX to explain the context of when XXXX heard AD use the term "wetback" and he reported: "that was when the AD explaining to XXXX XXXX XXXX XXXX XXXX why enrollment was increasing [in JISD]. AD said we have closed enrollment [in JISD] because we don't want no blacks and don't want no wetbacks but we're getting them because the chicken farmers are getting them for cheap work."

Analysis

Based on the above information, OCR determined that there is sufficient evidence to support a conclusion that JISD violated Title VI regarding issue 2. As noted above, AD himself admitted that he made the statement about shooting immigrants at deer stands in XXXX XXXX. The evidence indicated XXXX XXXX students were in the athletic office at the time of AD's comment. Additionally, as noted above, XXXX XXXX also

reported that he's heard AD use the term "wetback" when referring to Hispanics. XXXX XXXX report to OCR corroborated the complainant's allegation that AD on national origin. Based on the above-referenced reports from XXXX XXXX XXXX, OCR determined that AD's use of the term "wetback" during the XXXX football season, and his statement during the XXXX XXXX XXXX about "shooting immigrants [at the Mexican border] at deer stands," are severe enough to constitute a hostile environment based on national origin. The District never investigated AD's use of the term "wetback" XXXX XXXX XXXX and, while not reported to the District, had constructive notice of the epithet because AD is an employee of the District. While OCR determined that the District did conduct a prompt investigation of the XXXX XXXX "shooting immigrants at the Mexican border" statement by AD, it did not offer counseling services to the XXXX students present to hear the comment. Nor did the District take steps to prevent the harassment's reoccurrence. AD was suspended with pay for five days. No other steps were taken to protect the school community. OCR notes that the AD's comments in XXXX XXXX came *after* AD completed "diversity training" based on his XXXX XXXX letter of reprimand. Thus, JISD violated Title VI.

Issue 3

Legal Standard

The regulation implementing Title IX, at 34 C.F.R. § 106.31, provides generally that, except as provided elsewhere in the regulation, "... no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any ... education program or activity" operated by recipients of Federal financial assistance. The Title IX implementing regulation, at 34 C.F.R. §§ 106.8 and 106.9, also requires a recipient to designate a Title IX Coordinator, adopt grievance procedures, and implement specific and continuing steps to provide notice that it does not discriminate on the basis of sex in its education programs or activities.

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 nature, which may include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal or physical conduct of a sexual nature. Sexual harassment creates a hostile environment if the conduct by an employee, another student, or a third party is so severe, persistent or pervasive that it denies or limits a student's ability to participate in or benefit from the recipient's program. To investigate or otherwise resolve issues of sexual harassment, OCR considers whether: (1) the recipient has disseminated a policy prohibiting sex discrimination under Title IX and effective grievance procedures; (2) the recipient appropriately investigated or otherwise responded to allegations of sexual harassment; and (3) the recipient has taken immediate and effective corrective action responsive to any harassment that the investigation determined took place, including effective actions to end the harassment, prevent its recurrence, and, as appropriate, remedy its effects. The Title IX regulation, at 34 C.F.R. § 106.8(a), specifically requires that each recipient designate at least one employee to coordinate its responsibilities to comply with and carry out its responsibilities under Title IX, including any investigation

of any complaint communicated to such recipient alleging its noncompliance with Title IX. This provision further requires that the recipient notify all of its students and employees of the name (or title), and office address and telephone number of the employee(s) so designated. The recipient must ensure that employees designated to serve as Title IX coordinators have adequate training on what constitutes sex discrimination (including gender-based harassment) and that they understand how the recipient's grievance procedures operate.

Additionally, the Title IX regulation, at 34 C.F.R. Section 106.8(b), requires recipients to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints alleging any action that would be prohibited by Title IX. In evaluating whether a recipient's grievance procedures are prompt and equitable, OCR considers whether the procedures provide for:

1. notice to students and employees of the procedures, including where complaints may be filed;
2. application of the procedures to complaints alleging harassment carried out by employees, other students, or third parties;
3. adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence;
4. designated and reasonably prompt timeframes for the major stages of the complaint process;
5. notice to the parties of the outcome of the complaint and any appeal; and
6. an assurance that the recipient will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

Further, the Title IX regulation, at 34 C.F.R. 106.9, requires recipients to notify applicants for admission and employment, students, parents, employees and other interested parties that it does not discriminate on the basis of sex in the educational program or activity which it operates and that inquiries concerning the application of Title IX to such recipient may be referred to the employee designated pursuant to § 106.8. Recipients are required to include the name, address, and telephone number of the designated coordinator in their notifications.

Factual Findings

District's Policies and Procedures Regarding Harassment under Title IX

As noted above, the District's policies and procedures pertaining to harassment of students (FFH) and employees (DIA) applied to harassment based on sex. In addition to

the information described above regarding the policies and procedures on harassment, FFH and DIA included the following language specific to harassment based on sex: FFH defined “sexual harassment by an employee” as: “both welcome and unwelcome sexual advances; requests for sexual favors; sexually motivated physical, verbal, or nonverbal conduct; or other conduct or communication of a sexual nature when: (1) the District employee causes the student to believe that the student must submit to the conduct in order to participate in a school program or activity, or that the employee will make an educational decision based on whether or not the student submits to the conduct; or (2) the conduct is so severe, persistent, or pervasive that it: (a) affects the student’s ability to participate in or benefit from an educational program or activity, or otherwise adversely affects the student’s educational opportunities; or (b) creates an intimidating, threatening, hostile, or abusive educational environment.”

FFH defined “sexual harassment of a student by others, including another student,” as “unwelcome sexual advances; requests for sexual favors; or sexually motivated physical, verbal, or nonverbal conduct when the conduct is so severe, persistent, or pervasive that it: (1) affects a student’s ability to participate in or benefit from an educational program or activity, or creates an intimidating, threatening, hostile, or offensive educational environment; (2) has the purpose or effect of substantially or unreasonably interfering with the student’s academic performance; or (3) otherwise adversely affects the student’s educational opportunities.” FFH provided examples of student on student sexual harassment, including “sexual advances, touching intimate body parts, jokes or conversations of a sexual nature, and other sexually motivated conduct, communications, or contact.”

FFH also prohibited gender-based harassment, defined as “physical, verbal, or non-verbal conduct based on the student’s gender, the student’s expression of characteristics perceived as stereotypical of a student’s gender, or the student’s failure to conform to stereotypical notions of masculinity or femininity.” The policy listed examples of gender-based harassment, including “offensive jokes, name-calling, slurs, or rumors; physical aggression or assault, threatening or intimidating conduct, or other kinds of aggressive conduct such as theft or damage to property.” FFH stated that reports of discrimination and harassment based on sex or gender may be directed to the Title IX coordinator, who was identified in FFH by name, position, address and telephone number. FFH provided that upon notice of a report of harassment, the District official shall determine whether the allegations, if proven, would constitute prohibited conduct” and “if so, the District shall immediately [conduct] an investigation,to the extent that it does not impede [an] ongoing criminal or regulatory investigation.” The policy further stated, “If appropriate and regardless of whether a criminal or regulatory investigation regarding the alleged conduct is pending, the District shall promptly take interim action calculated to address prohibited conduct or bullying prior to the completion of the District’s investigation.”

FFH provided that the District’s investigation may include interviews with the person who made the report, the person against whom the report was filed, others with information regarding the allegation, and analysis of documents related to the allegations.

The policy provided a timeframe of ten days to complete an investigation, with an exception to allow for additional time to complete an investigation if necessary due to the complexity of any investigation. FFH required the investigator to prepare a written report of the investigation, which includes a determination of whether [harassment] occurred. Further, FFH stated that the report shall be filed with the District official overseeing the investigation and notification of the outcome of the investigation shall be provided to both parties. FFH did not state the standard of review for investigations of sexual harassment or violence.

If prohibited conduct under FFH was determined to have occurred, examples of corrective action under the policy included “training for those involved in the complaint, a comprehensive education program for the school community, counseling for the victim and the student who engaged in prohibited conduct, follow-up inquiries to determine if any new incidents or instances of retaliation have occurred, involving parents and students in efforts to identify problems and improve the school climate, increasing staff monitoring of areas where harassment has occurred, and reaffirming the District’s policy against discrimination and harassment.”

DIA defined “sexual harassment” as: “a form of sex discrimination defined as unwelcome sexual advances; requests for sexual favors; sexually motivated physical, verbal, or nonverbal conduct; or other conduct or communication of a sexual nature when: (1) submission to the conduct is either explicitly or implicitly a condition of an employee’s employment, or when submission to or rejection of the conduct is the basis for an employment action affecting the employee; or (2) the conduct is so severe, persistent, or pervasive that it has the purpose or effect of unreasonably interfering with the employee’s work performance or creates an intimidating, threatening, hostile, or offensive work environment.”

DIA provided examples of sexual harassment, including “sexual advances, touching intimate body parts, coercing or forcing a sexual act on another; jokes or conversations of a sexual nature, and other sexually motivated conduct, communication, or contact.”

DIA identified where complaints may be filed, including the name, position, address and telephone number of the employee designated as the Title IX coordinator. DIA provided a timeframe of ten days to complete an investigation, with an exception to allow for additional time to complete an investigation if necessary due to the complexity of any investigation. DIA indicated that the District will conduct its own investigation of any allegation of sexual harassment, regardless of any law enforcement investigation. DIA did not state the standard of review for investigations of sexual harassment or violence.

The District’s policies, both FFH and DIA Local, allowed for the appeal of the District’s determination regarding the investigation of a race or national origin, sexual harassment or violence allegation. The FFH policy regarding appeals stated, “A student who is dissatisfied with the outcome of the investigation may appeal through FNG Local, beginning at the appropriate level.” Similar language was found regarding employees under policy DIA Local to file appeals through DGBA Local. However, FNG Local and

DGBA Local did not indicate what the “appropriate level” is for appeal of determinations under FFH and DIA, respectively. As a result, it is unclear whether appeals must be filed within ten days or within 15 days of the investigative determination.

The District also maintained a statement of nondiscrimination, which informed students, parents, employees, and others that the District does not discriminate on the basis of sex under Title IX. The statement indicated that questions regarding Title IX may be referred to the school’s Title IX Coordinator or to OCR. The District also had a Title IX Coordinator, whose identity and contact information was posted within policies FFH and DIA, online, and in the District’s student and employee handbooks.

Conduct by the AD

The complainant told OCR that AD made harassing comments to female coaches in JISD. XXXX also reported AD made sexually harassing comments about coaches and students to other football coaches in XXXX. The complainant’s internal XXXX XXXX XXXX complaint with the District alleges that the AD made sexually harassing statements in XXXX presence about XXXX female coaches. OCR’s review of the District’s Level I determination regarding complainant’s XXXX XXXX allegation of sexual harassment by AD of female coaches at JHS indicates that the District’s investigation was ongoing and a determination had not been made.

In OCR’s interview of XXXX, XXXX indicated that XXXX investigated the complainant’s allegations. Specifically, XXXX said XXXX investigated the allegation that AD said, during a coach’s meeting in XXXX XXXX, that, “if [XXXX XXXX XXXX XXXX] wants to play, she’ll have to f**k me” but was provided no corroboration through his interviews that the statement occurred. However, XXXX determined that in XXXX XXXX, AD made a statement to XXXX XXXX XXXX XXXX XXXX at JHS regarding the sale of XXXX XXXX XXXX, in which AD told her “if you go to Wal-Mart and raise your shirt, I’m sure you’ll sell tickets.” XXXX said XXXX interviewed the JHS coaches present and they confirmed the statement was made by AD. AD himself also confirmed the statement to XXXX.

XXXX also interviewed XXXX XXXX XXXX XXXX to determine if they experienced sexual harassment by AD. XXXX told OCR these interviews yielded no reports by anyone of sexual harassment by AD, other than the XXXX XXXX incident regarding XXXX XXXX referenced above. OCR asked if the District offered counseling to XXXX XXXX, and XXXX said XXXX offered to have a guidance counselor in the room while talking to XXXX about the incident, but XXXX XXXX did not want counselor involved. XXXX told OCR XXXX gave XXXX XXXX a complaint form and told her she can file a formal complaint against AD, but she did not. As noted above, AD received a formal reprimand letter and underwent diversity training and online sexual harassment training.

OCR interviewed AD. He denied making the statement in XXXX XXXX referenced above during a coach’s meeting. He admitted making the XXXX XXXX statement to

XXXX XXXX. He told OCR he did not make any other sexually harassing statements to coaches or students at JHS.

OCR interviewed all coaches at JHS and asked whether they were aware of sexually harassing statements by AD. XXXX XXXX reported “not personally, but I heard from XXXX XXXX XXXX that there was an off-color comment, “I like M and M’s” because XXXX XXXX XXXX had a shirt on where the word “mom” was spelled across her chest and the M and M were on each breast, so [AD] said that.” XXXX XXXX also reported that AD has repeated the “I like M and M’s” statement to XXXX XXXX XXXX during the XXXX school year. Further, XXXX XXXX reported that she’s been told that AD is “a pervert” by XXXX . XXXX XXXX also reported an incident where AD was “running behind” XXXX XXXX XXXX to observe her physique. XXXX XXXX also said she was told by another coach that AD made the statement about XXXX XXXX having to have sex with AD in order for XXXX XXXX to receive playing time during a coaches meeting in XXXX.

OCR interviewed XXXX XXXX. XXXX reported that XXXX was notified by XXXX XXXX of AD’s statement about XXXX XXXX and XXXX regarding sex with AD at a coach’s meeting. XXXX told OCR XXXX was upset about the statement and left school early on the day complainant notified XXXX. XXXX said XXXX was interviewed by XXXX about the matter. As XXXX was not at the meeting where the statement was made, XXXX did not have personal knowledge of the statement.

However, OCR interviewed XX-phrase redacted-XX, two of whom corroborated the statement. Specifically, OCR interviewed XXXX XXXX, who reported that XXXX heard AD make the following statement regarding XXXX XXXX and XXXX XXXX at the above-referenced coach’s meeting: “if XXXX XXXX XXXX XXXX keeps blocking like that, XXXX XXXX going to start giving out some p***y.” OCR also interviewed XXXX XXXX also confirmed that XXXX was at the above meeting, where football coaches were “breaking down film” of an opposing team when AD made the comment. XXXX XXXX told OCR “we were in the office, probably Saturday morning to break down film, and there was a comment made like that [AD’s comment referenced above], there was a statement made like that by the AD, yes.” OCR’s interview of XXXX XXXX also corroborated that AD made the above-referenced statement at a coach’s meeting during the XXXX season, where XXXX XXXX reported “Yes. I don’t know exactly the words he used but it was something to that extent.” XXXX XXXX also corroborated that the statement by AD was made at the above-referenced meeting.

XXXX XXXX also confirmed that AD told XXXX to “lift her shirt up” to sell XXXX XXXX tickets when she and AD were conversing at XXXX XXXX in XXXX XXXX. In OCR’s interview with XXXX XXXX, XXXX stated “It was at XXXX XXXX XXXX, XXXX XXXX XXXX XXXX and I were there and XX-redacted to end of sentence-XX [AD] said to me ‘I know how you can sell them, you can stand outside of Walmart and raise your shirt and that will sell them.’” XXXX XXXX told OCR XXXX told AD “I’ll

pretend I didn't hear that." OCR confirmed that XXXX interviewed XXXX about the comment and that AD admitted to, and was disciplined for, the comment.

OCR's interviews with JHS coaches indicated that AD also made other comments about female coaches and students to JHS male coaches. XXXX XXXX XXXX XXXX reported that AD made a comment to a XXXX XXXX XXXX XXXX XXXX XXXX in XXXX, where XXXX XXXX was running at the track, and the XXXX XXXX heard AD say "if we're going to run, I want to run behind you." OCR interviewed AD who confirmed he made this statement, but did so because he was too slow to run with XXXX. However, XXXX XXXX indicated XXXX assumed AD said this regarding looking at XXXX XXXX physique.

XXXX XXXX also told OCR AD made comments about the physique of female student XXXX XXXX. XXXX told OCR that "around the time of the district track meet in XXXX XXXX, XXXX XXXX and [AD] were having a discussion about track and running times generally, and he comments about why girls [female track students] are getting too slow, AD said because 'their titties were getting too big.'" XXXX did not indicate that this comment was reported to XXXX, but XXXX told OCR. "In response, I probably told him to shut up. I've heard so many off color comments from [AD] for so long we brush it off while we can."

When asked whether AD made any comments about the appearance of female students in JISD, XXXX XXXX reported to OCR "Yes. Maybe just the way some of them may be dressed. Referring to a student's low cut blouse or tight pants." These comments were in conversation between AD and XXXX XXXX. When asked whether AD made comments about the appearance of female students, in XXXX interview with OCR, JISD's XXXX XXXX XXXX stated "doesn't everybody?" XXXX stated that AD's comments were "not in a derogatory way. He's said you [female student] look nice today." When asked the same question by OCR, XXXX XXXX reported, "Yes. He [AD] says 'have you seen so and so today, what she's wearing.' I never heard him say he'd like to 'do something' with a student, more along the lines of 'have you seen what so and so has on today.'" When asked the same question by OCR, XXXX XXXX stated "Yes, [AD] has commented on appearance of students to XXXX XXXX. He has said a student 'does look nice, or doesn't look nice,' saying a young lady 'she looks nice today.'" In the same context, XXXX XXXX told OCR that AD "has said 'she's [a female student] an attractive young lady.'"

OCR requested interviews with XX-redacted to end of sentence-XX. OCR interviewed XX-redacted to end of sentence-XX. XXXX reported that AD made a sexually harassing comment to her in the XXXX XXXX XXXX after the XXXX XXXX XXXX. Student reported that, XX-redacted to end of sentence-XX. XX-redacted full sentence-XX. XXXX XXXX XXXX XXXX XXXX, Student told OCR that AD asked her "are there any bikini pics?" Student was XXXX XXXX XXXX at the time of AD's statement. Student told OCR that she did not report AD's comment to anyone in the District at the time, but that she told XXXX prior to her interview with OCR, who informed her she could file a complaint with the District.

Analysis

OCR's review of the above information indicates that there is sufficient evidence of a violation of Title IX regarding issue 3.

OCR's review of the District's Title IX grievance procedures and found that they failed to provide 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.

With regard to the alleged harassment by AD, while AD denied stating that XXXX XXXX would have to "f**k" him if XXXX wanted XXXX XXXX to play [football], several XXXX XXXX XXXX corroborated the complainant's allegation, or that AD made a statement "to that effect." OCR found that AD himself admitted to making the sexually harassing statement to XXXX XXXX about "lifting her shirt" to sell XXXX tickets at an XXXX XXXX track meet. Other coaches, both male and female, reported that AD made harassing statements about other coaches at JHS, students at JHS, and students generally (for example, AD's statement to XXXX XXXX that the reason female track participants are not faster is "because their titties were getting too big.") XXXX XXXX XXXX XXXX corroborated the complainant's allegation that AD made statements to football coaches about the appearance of JHS female students, as referenced above. Moreover, OCR's interview with XXXX indicated that, when AD was presented with XXXX XXXX XXXX XXXX for the JHS trophy case, he asked XXXX XXXX XXXX XXXX XXXX XXXX, "are there any good bikini pics?" As AD made the above statements in his capacity as an employee of JISD, the District has constructive notice of all of the above-referenced sexually harassing statements by AD. Furthermore, the XXXX only investigated two of the above-referenced statements, finding that there was insufficient evidence to determine that harassment occurred regarding AD's statement at a coach's meeting regarding XXXX XXXX and XXXX XXXX.

OCR determined that there were several incidents of possible sexual harassment by AD that were not investigated by XXXX, and regardless of whether XXXX was notified about the alleged harassment by AD, the District is responsible via constructive notice for its employee's conduct. While XXXX found AD in violation of its policies regarding the statement he made to Female Coach 1 in XXXX XXXX, he did not conduct an investigation of the other harassing statements by the AD.

Issue 4

Legal Standard

In order for an allegation of retaliation to be sustained, OCR must determine whether:

(1) A prima facie case of retaliation can be established, which involves consideration of whether:

- a. an individual experienced an adverse action caused by the recipient; *and*

- b. the recipient knew that the individual engaged in a protected activity or believed the individual might engage in a protected activity in the future; *and*
 - c. there is some evidence of a causal connection between the adverse action and the protected activity
- (2) The recipient identifies a facially legitimate reason for taking the adverse action other than the protected activity; and
- (3) Whether the recipient's reason is a pretext for retaliation and/or whether multiple motives exist for the recipient taking the adverse action.

If OCR does not find that a *prima facie* case exists, OCR will conclude that there is insufficient evidence to support a finding of retaliation. If, however, the evidence demonstrates a *prima facie* case of retaliation, an inference of unlawful retaliation is raised and OCR proceeds to the next stage of the analysis. To ascertain whether this inference might be rebutted, OCR will then determine whether the recipient can identify a non-retaliatory reason for its actions. If such a reason is identified, OCR's investigation proceeds to the third stage. At the third stage, OCR examines the evidence to resolve what the real reason was (or reasons were) for the intimidation, threat, coercion, or discrimination.

Facts and Analysis

The complainant alleges that, after he told JISD personnel (XXXX) in the XXXX XXXX XXXX that AD was making derogatory comments based on race, national origin, and sex, XXXX was XXXX XXXX XXXX XXXX XXXX in XXXX XXXX, and XXXX met with him in XXXX XXXX and told him XXXX XXXX contract would not be renewed. Complainant alleged that these adverse acts occurred as a result of XXXX previously telling XXXX about AD's comments. OCR interviewed XXXX and AD, who were at the XXXX meeting in which complainant was notified XXXX would not have a XXXX contract for the upcoming school year. Both XXXX and AD reported that complainant never made any verbal or written statements to them about derogatory statements made by the AD. Furthermore, XXXX provided OCR with a laundry list of reasons why complainant was not offered a XXXX contract for the XXXX school year, including the following: "because XXXX complained about XXXX right away, couldn't do the job, lacked professionalism with other employees, didn't turn in lesson plans, didn't follow grading policy of the District, was supposed to have XXXX XXXX grades and XXXX only gave XXXX XXXX grades, was directed not to give XXXX grades but he did (insubordination). XXXX violated policy regarding letting students make up work, and was not grading assignments."

Based on the above, OCR determined that there is insufficient evidence of a violation of Title VI or IX regarding issue 4. Specifically, OCR was provided no corroborating evidence that the complainant participated in a protected activity, prior to being told in XXXX XXXX that XXXX would not be offered another XXXX contract for the XXXX

school year. Interviews with JISD personnel indicate that the first time XXXX or AD were made aware of the allegations as set forth in complainant's complaint were when XXXX filed a complaint with the District in XXXX XXXX, approximately two months after the adverse action of the District's failure to offer complainant a new XXXX contract. Because OCR was not provided any corroboration that a protected activity occurred, OCR finds insufficient evidence to support a conclusion that retaliation occurred.

On XXXX XXXX XXXX, the District notified OCR that the AD's contract would not be renewed and that the AD would resign from the District effective XXXX XXXX XXXX. On XXXX XXXX XXXX, the District informed OCR that the AD has not been employed at the District and has not participated in any activities of the school district since his resignation in XXXX XXXX.

Resolution Agreement

On XXXX XXXX XXXX, OCR secured a Resolution Agreement (Agreement) from the JISD to address the above-referenced compliance concerns. In the Agreement, with regard to the Title VI concerns, the JISD will: provide training to the JHS XXXX on addressing and responding to allegations of harassment; and offer counseling services to individuals affected by the incidents of harassment discussed in this letter of findings. With regard to the Title IX concerns, the JISD will: revise its grievance procedure; provide training to the Title IX Coordinator and the JHS XXXX on addressing and responding to allegations of harassment; and offer counseling services to individuals affected by the incidents of harassment discussed in this letter of findings. Because AD's employment with the JISD terminated in XXXX XXXX, the Agreement does not contain provisions specifically regarding actions the JISD will take with the AD.

OCR has determined that the Agreement, when fully implemented, will resolve the compliance concerns identified during the investigation. Accordingly, as of the date of this letter, OCR is closing its investigation of this complaint; however, OCR will actively monitor the District's implementation of the Agreement. Please be advised that if the District fails to take the action required under the Agreement, OCR will immediately resume its compliance efforts.

This concludes the investigation stage of this complaint and should not be interpreted to address the JISD's compliance with any other regulatory provision or to address any issues other than those addressed in this letter.

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

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, it 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.

If you have any questions about this letter, you may contact, Tiffany Gray, OCR Attorney, at 214-661-9611, Tiffany.Gray@ed.gov, or Adriane P. Martin, Team Leader, at 214-661-9678, Adriane.Martin@ed.gov.

Sincerely,

Taylor D. August
Regional Director
OCR Dallas Office

Enclosure