



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VI
ARKANSAS
LOUISIANA
MISSISSIPPI
TEXAS

December 27, 2017

VIA MAIL

VIA EMAIL (tdparker@jones.k12.ms.us)

Mr. Tommy Parker, Superintendent
Jones County School District
5204 Highway 11 North
Ellisville, MS 39437

Re: OCR Complaint No. 06-17-1224

Dear Mr. Parker:

This letter is to notify you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has completed its processing of the above-referenced complaint. The complaint was filed against the Jones County School District (District), in Ellisville, Mississippi. The complainant alleged that the District discriminated against his daughter (Student) on the basis of sex (female). The complainant also alleged retaliation.

OCR is responsible for determining whether entities that receive or benefit from Federal financial assistance from the Department, or an agency that has delegated investigative authority to this Department, are in compliance with Title IX of the Education Amendments of 1972 (Title IX), as amended, 20 U.S.C. §1681 *et seq.*, and its implementing regulations at 34 C.F.R. Part 106. Title IX prohibits discrimination on the basis of sex in all of the academic, educational, extracurricular, athletic, and other programs or activities of educational institutions that receive Federal financial assistance. This includes prohibiting discrimination against pregnant and parenting students. The regulation implementing Title IX at 34 C.F.R. § 106.71 incorporates, by reference, the anti-retaliation provision of 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. § 100.7(e), which prohibits retaliation based on a person's exercise of a protected right or because they participated in an investigation into discrimination. The District is a recipient of Federal financial assistance, therefore, OCR has jurisdiction pursuant to Title IX.

Based on the complainant's allegations, OCR opened for investigation the following legal issues:

1. Whether the District discriminated against the Student on the basis of her pregnancy, childbirth, and/or recovery from childbirth when it XX—phrase redacted—XX, in violation of Title IX and its implementing regulation, at 34 C.F.R. § 106.40; and
2. Whether the District retaliated against the complainant when XX—phrase redacted—XX during the 2016-2017 school year, because the complainant addressed his concerns

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with the District and XX—phrase redacted—XX, in violation of Title IX, at 34 C.F.R. § 106.71.

Based on additional information obtained during the course of the investigation, OCR also investigated the following issue:

3. Whether the District complied with the procedural requirements, regarding designation and notice of a responsible employee (Title IX coordinator), notice and dissemination of a nondiscrimination policy, and adoption and publication of grievance procedures, as required by the Title IX implementing regulation at 34 C.F.R §§106.8 and 106.9.

During its investigation, OCR reviewed information that the District and the complainant provided. OCR also conducted interviews with relevant witnesses, including District personnel the complainant, the Student and a third party witness. With respect to Issue 2, OCR provided the complainant the opportunity to rebut the District’s position; however the information that the complainant provided did not alter OCR’s determination.

Prior to the completion of OCR’s investigation as to Issue 1, the District informed OCR that it was interested in resolving the complaint. Section 302 of OCR’s *Case Processing Manual* provides that a complaint may be resolved at any time when, prior to the conclusion of an investigation, the recipient expresses an interest in resolving it. The provisions of the resulting resolution agreement will be aligned with the complaint allegations or the information obtained during the investigation and will be consistent with applicable regulations. OCR approved the District’s request to resolve the complaint as to Issue 1 prior to the conclusion of the investigation.

A finding that a recipient has violated one of the laws that OCR enforces must be supported by a preponderance of the evidence (i.e., sufficient evidence to prove that it is more likely than not that unlawful discrimination or retaliation occurred). When there is a significant conflict in the evidence and OCR is unable to resolve that conflict, for example, due to the lack of corroborating witness statements or additional evidence, OCR generally must conclude that there is insufficient evidence to establish a violation of the law. Based on OCR’s careful review and analysis of the information obtained, we have determined that, with respect to Issue 2, there is insufficient evidence to establish that the District violated Title IX as alleged. With respect to Issue 3, we have determined that there is sufficient evidence to support a finding of noncompliance with Title IX.

I. Issue 2 (Retaliation):

A. Findings of Fact

At the start of the 2016-2017 school year, the complainant XX—to end of sentence redacted—XX. The complainant alleged that early in the school year, he XX—to end of sentence redacted—XX. Specifically, the complainant informed OCR XX—phrase redacted—XX. However, several other witnesses recall that the complainant XX—to end of sentence redacted—

XX. The complainant alleged that XX—to end of sentence redacted—XX. XXXX, on the other hand, denied to OCR that XX—to end of sentence redacted—XX. Similarly, XXXX and XXXX told OCR that they were not aware of XXXX making such a request. The District maintains that booster clubs are independent parent volunteer organizations and that District staff members do not have influence over booster club decisions. However, District Policy JHA, which governs booster clubs, states that the program director/ coach or his/her designee, must be present at all booster club meetings, must be apprised of all potential booster club functions and the director, coach or principal may review and revoke any action taken at a booster club meeting. Additionally, OCR conducted an interview with a third-party witness (Witness), who XX—to end of sentence redacted—XX. The witness stated XX—to end of sentence redacted—XX. The Witness stated that XX—to end of sentence redacted—XX.

Upon being XX—phrase redacted—XX, the complainant requested a meeting with XXXX, XXXX, and XXXX. The meeting took place in XXXX. During the meeting, the complainant XX—to end of sentence redacted—XX. The complainant was informed XX—to end of sentence redacted—XX. XX—sentence redacted—XX. The complainant contacted the District's Superintendent (Superintendent) on XXXX and XXXX, to discuss his concerns, and the two met on XXXX. On January 9, 2017, upon returning from winter break, the Superintendent received notice that the complainant had filed this OCR complaint. As a result, the Superintendent met with XXXX and XXXX on January 12, 2017 and, XX—to end of sentence redacted—XX.

B. Legal Standard

OCR interprets the regulations it enforces to require satisfaction of the following three elements to find a *prima facie* case of retaliation:

- (1) The individual experienced an adverse action caused by the recipient; and
- (2) The recipient knew that the individual engaged in a protected activity or believed the individual might engage in a protected activity; and
- (3) There is some evidence of a causal connection between the adverse action and the protected activity.

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 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 conducts a pretext inquiry to determine whether this reason is genuine or is a cover for retaliation.

C. Analysis

In order to find a *prima facie* case of retaliation in this case, OCR must first determine whether the complainant experienced an adverse action caused by the District. In this case, the complainant alleged that XX—phrase redacted—XX. While the weight of the evidence establishes that the complainant XX—to end of sentence redacted—XX. Assuming, for the

purposes of this analysis, that XX—phrase redacted—XX, the evidence would establish that an adverse action took place.

Looking to the second element, OCR must determine whether the recipient knew that the individual engaged in a protected activity or believed the individual might engaged in a protected activity. An individual will be considered to have engaged in a protected activity if he or she exercised a right or privilege secured by the statutes and regulations enforced by OCR. In this case, the weight of the evidence establishes that complainant XX—to end of sentence redacted—XX. Advocating for the Student XX—phrase redacted—XX is a protected activity under Title IX. Because the complainant made his request to XXXX, XXXX, and XXXX, OCR concludes that there is sufficient evidence to establish that the District was aware the complaint engaged in a protected activity.

However, with respect to the third element, OCR cannot conclude that there is evidence of a causal connection between the adverse action and the protected activity. Originally, the complainant told OCR that XX—to end of sentence redacted—XX. However, during the investigation, the complainant clarified that XX—to end of sentence redacted—XX. The weight of the evidence established that XX—to end of sentence redacted—XX.

Accordingly, because the weight of the evidence establishes the alleged adverse action would have taken place prior to the complainant engaging in the protected activity at issue, OCR cannot find a prima facie case that the District retaliated against the complainant. OCR therefore finds there is insufficient evidence to support a conclusion of noncompliance with the regulations as to Allegation 2 of this investigation and will take no further action regarding this allegation.

II. Issue 3 (Procedural Requirements):

A. Findings of Fact

During the investigation, OCR also reviewed the District’s Title IX policies and procedures. OCR reviewed the District’s nondiscrimination notice in the District’s 2016-2017 Handbook. The notice of nondiscrimination provides, in relevant part, “the Jones County School District does not discriminate on the basis of... sex... in its programs and activities. The District’s 2016-2017 Handbook listed the name and office address of the District’s 2016-2017 Title IX Coordinator below the nondiscrimination notice. The District’s 2016-2017 Handbook did not list the 2016-2017 Title IX Coordinator’s phone number. However, the SJHS 2017-2018 Student Handbook, lists the name, office address and phone number of the 2017-2018 Title IX Coordinator.* Both the District’s 2016-2017 Handbook and the 2017-2018 SJHS Student

*For the 2017-2018 school year, the District posted separate handbooks online for each of its 3 middle/high schools, an elementary school handbook and a personnel handbook. With the exception of the elementary school handbook, each handbook contains the name, office address and phone number of the 2017-2018 Title IX Coordinator. Because the 2017-2018 elementary school handbook lacked the phone number of the 2017-2018 Title IX Coordinator, OCR provided the District with technical assistance regarding this omission. OCR also provided technical assistance to the District because the non-discrimination notice on the District’s website contains the name and address of the 2016-2017 Title IX Coordinator and also lacked a phone number. OCR provided additional technical assistance to the District because the District’s nondiscrimination notice does not reference the District’s obligations under the Boy Scouts of America Act.

Handbook provide OCR’s contact information following the notice of nondiscrimination.

In response to OCR’s request for copies of the District’s grievance procedures related to Title IX, the District submitted a copy of District Policy JB, entitled “Students [sic] Complaints of Sexual Discrimination/Harassment – Title IX” (Title IX Harassment Policy), which sets forth the District’s policy regarding sexual harassment, but does not include information regarding other types of sex-based discrimination.

The District also submitted a copy of District Policy JB-P, entitled “Students sic Complaints of Sexual Discrimination/Harassment – Title IX Procedures” (Title IX Grievance Procedures), which states, “Students in this School District are protected from sexual discrimination, including sexual harassment.... It is the intent of the Board to maintain an environment free from sexual harassment of any kind. Therefore, unwelcomed sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature amounting to or constituting harassment are prohibited. This complaint procedure shall provide a process for filing, processing and resolving complaints on such matters.” The Title IX Grievance Procedures go on to define types of sexual harassment and then to set forth the general rules and procedures of the grievance process. The District did not submit any policies or procedures in response to OCR’s request for policies specific to pregnant and parenting students. The District did not submit any additional policies or procedures related to Title IX.

B. Legal Standards

In accordance with the Title IX regulations, each recipient is required to “implement specific and continuing steps to notify . . . students and parents of elementary and secondary school students . . . 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.” 34 C.F.R. § 106.9(a). Title IX also requires that each recipient “designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX, including any investigation of any complaint communicated to such recipient alleging its noncompliance with Title IX or alleging any actions which would be prohibited by Title IX.” 34 C.F.R. § 106.8(a). Recipients are further required to notify all of their students and employees of the name, office address, and telephone number of the employee or employees designated as their Title IX Coordinator(s). 34 C.F.R. § 106.8(a). Finally, the Title IX regulations require that each recipient “adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by Title IX.” 34 C.F.R. § 106.8(b).

C. Analysis

i. Notice of Nondiscrimination

The regulation implementing Title IX, at 34 C.F.R. § 106.9, requires that recipients notify applicants for admission and employment, 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 its education programs or activities and that it is required by Title IX not to discriminate in such a manner. Such notification shall state at least that the requirement not to discriminate in the education program or activity extends to employment. The notice must also state that questions regarding Title IX may be referred to the recipient's Title IX coordinator or to OCR.

The District's notice of nondiscrimination, as published in the 2017-2018 SJHS Student Handbook, notifies individuals that it does not discriminate based on sex with regard to its programs or activities. It also states that questions may be directed to either the Title IX Coordinator or to OCR and provides contact information. Therefore, OCR concludes that the notice of nondiscrimination complies with the requirements of Title IX.

ii. Designation of Title IX Coordinator & Notification of Title IX Coordinator and Contact Information

The District's 2016-2017 Handbook listed the name and office address of the District's 2016-2017 Title IX Coordinator. The District's 2016-2017 Handbook did not list the 2016-2017 Coordinator's phone number. However, the SJHS 2017-2018 Student Handbook, lists the name, office address and phone number of the 2017-2018 Title IX Coordinator. Because the District provided notice of the Title IX Coordinator's name, office address and phone number in the current 2017-2018 SJHS Student Handbook, OCR finds there is insufficient evidence to support a conclusion of noncompliance with the 34 C.F.R. §106.8(a).

iii. Grievance Procedures

The Title IX regulation, at 34 C.F.R. § 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 reviews all aspects of a recipient's practices and procedures/policies, including the following elements that are critical to achieve compliance with Title IX:

1. notice to students, parents of elementary and secondary students, and employees of the procedures, including where complaints may be filed;
2. application of the procedures to complaints alleging discrimination and harassment carried out by employees, other students, or third parties;
3. provision for adequate, reliable, and impartial investigation of complaints, including the opportunity for both the complainant and respondent to present witnesses and other evidence;
4. designated and reasonably prompt timeframes for the major stages of the complaint process;
5. notice to both parties of the outcome of the complaint and any appeal; and

6. assurance that the recipient will take steps to prevent recurrence of any sex discrimination or harassment found to have occurred and to correct its discriminatory effects on the complainant and others, if appropriate.

OCR’s review of the six elements that are critical to achieve compliance with Title IX and additional considerations are outlined below.

- (a) Notice to students, parents of elementary and secondary students, and employees of the procedures, including where complaints may be filed

The Title IX Grievance Procedures includes “Procedures for Processing a Complaint.” According to the Title IX Grievance Procedures, complainants may file complaints with the Title IX Coordinator by submitting a “Title IX Report” form. The Title IX Grievance Procedures does not identify the Title IX Coordinator or provide his contact information.

Although the Title IX Grievance Procedures include information regarding filing complaints, the evidence shows that the Title IX Grievance Procedures were not widely disseminated and the District did not provide effective notice to students, parents and employees of the Title IX Grievance Procedures. When asked where a parent or student could find a copy of the Title IX Grievance Procedures, XXXX said it could be found in the Student Handbook.

XXXX stated she was provided with a copy of the Title IX Grievance Procedures at the beginning of each school year. She stated she was not sure where a parent could obtain a copy of the Title IX Grievance Procedures, but thought a parent could find it online or at the District’s office. When asked where to find the Title IX Grievance Procedures, XXXX stated that as part of the review of the policies at the beginning of the school year, the Principal informed the staff to contact the Principal and then the Title IX Coordinator to find a copy of the procedures or to report a complaint.

The 2016-2017 Title IX Coordinator stated that parents or students could find a copy of the Title IX Grievance Procedures via a link on the District’s website. The 2017-2018 Title IX Coordinator stated that individuals could find some of the information regarding the Title IX Grievance Procedures in the Student Handbook and that all policies are available online through the District’s website.

OCR reviewed the District’s 2016-2017 Student Handbook, as well as the 2017-2018 SJHS Student Handbook, and did not find any information regarding the Title IX Grievance Procedures. OCR also reviewed the District’s website and did not find a link to the Title IX Grievance Procedures as referenced by the 2016-2017 Title IX Coordinator. *OCR did find the Title IX Grievance Procedures on the District’s website as part of the District’s online policy manual.*

However, a policy manual is not the sort of publication that is widely circulated to or understood by all members of the school community. A policy manual is the type of publication that is most often used and understood by administrators, lawyers, school board members and other sophisticated parties who need to access a district’s policies; it is less likely to be easily

navigated or understood by parents, students and members of the public. The evidence shows that District staff members, including the incoming and outgoing Title IX Coordinators, are not well-informed about where to find the Title IX Grievance Procedures and would have difficulty directing a parent or student to a copy of the policy. The evidence shows that the District does not make copies of the Title IX Grievance Procedures readily available at various locations throughout SJHS, nor does the District publish the Title IX Grievance Procedures or a summary in major publications issued by the school. Grievance procedures cannot be prompt or equitable unless students et. al., know it exists, how it works and how to file a complaint. OCR's guidance states that, procedures should be written in a language appropriate to the age of the school's students, easily understandable and widely disseminated. In sum, by not widely disseminating the Title IX Grievance Procedures, the District failed to provide adequate notice to students, parents, and employees of the District's grievance procedures, including where complaints may be filed.

- (b) Application of the procedures to complaints alleging discrimination and harassment carried out by employees, other students, or third parties

The Title IX Grievance Procedures provide that “a ‘complaint’ is a report by any student, a parent, legal guardian or custodian of a student or any employee which alleges that a policy or practice of the District or a practice or act of any of its employees or students has discriminated against a student on the basis of sex, including sexual harassment.” Accordingly, on its face, the Title IX Grievance Procedures applies to complaints alleging conduct by employees or other students but not by third parties. Although the 2016-2017 Title IX Coordinator stated that the policy applies to harassment carried out by employees, other students and third parties, she also stated that the grievance procedures had not been used during her 4 year tenure as Title IX Coordinator because no there had been no allegations of sex discrimination. The 2017-2018 Title IX Coordinator also stated that the policy applies to discrimination carried out by employees, other students and third parties. But, he also stated he has never personally dealt with the policies. In fact, the 2017-2018 Title IX Coordinator had only been approved by the board to fulfill that position the night before his interview with OCR; he had not yet received any training in his capacity as Title IX Coordinator and stated he did not fully know what his role as Title IX Coordinator would entail.

Additionally, although the Title IX Harassment Policy and the Title IX Grievance Procedures reference “discrimination” in their titles and in the definition of a complaint, the substance of the policies and procedures only address sexual harassment, to the exclusion of other types of sex discrimination. The Title IX Harassment Policy and the Title IX Grievance Procedures do not provide definitions or examples of pregnancy discrimination, different treatment discrimination, or harassment based on non-conformance with gender stereotypes. Therefore, on their face, the policies and procedures appear to apply only to sexual harassment and not other types of sex based discrimination. Although the 2016-2017 Title IX Coordinator told OCR that the policies and procedures apply to “all facets of discrimination,” she does not have any personal experience with how the grievance procedures are applied in practice. When asked to which types of sex based discrimination the Title IX Grievances Procedures apply, the 2017-2018 Title IX

Coordinator did not have independent knowledge beyond what is listed in the policies and procedures.

Insofar as the policy on its face does not apply to all types of sex discrimination or to discrimination carried out by third parties, and no witness had knowledge or experience in how the policies are used in practice, OCR cannot conclude that the Title IX Grievance Procedures provide for the prompt and equitable resolution of complaints of discrimination prohibited by Title IX.

- (c) Provision for adequate, reliable, and impartial investigation of complaints, including the opportunity for both the complainant and respondent to present witnesses and other evidence

As written, the District's the Title IX Grievance Procedures provide respondents the opportunity to respond in writing to the complainant's allegations during the first stage of the complaint process. After this first stage, the complainant or respondent may request a hearing on the matter, at which time the Title IX Coordinator must notify the complainant, respondent, student's principal or employee's supervisor, superintendent, and other appropriate witnesses of the hearing. At the hearing, the complainant and respondent are permitted to submit written evidence and bring witnesses before the hearing panel, which is "an unbiased panel of 3-5 district employees." The complainant and respondent may make a statement before the panel and may examine their witnesses and cross-examine the other party's witnesses, and the hearing panel members may question any witnesses. If the complainant or respondent is not satisfied with the hearing panel's decision, he or she may request review by the superintendent, who will receive the record of the case. The complainant and respondent can also request that the Board of Trustees review the superintendent's decision and related records, and Board must do so at a Board meeting. The Board may, in its discretion, require that the review take place in closed or executive session. The Board may permit statements from the complainant and respondent, also in its discretion. The Board's decision is final.

OCR concludes that the Title IX Grievance Procedures, on their face, provide for adequate, reliable, and impartial investigation of complaints, including the opportunity for both the complainant and respondent to present witnesses and other evidence. However, some aspects of the District's grievance procedures and surrounding circumstances give OCR cause for concern with respect to whether the procedures in practice provide for adequate, reliable, and impartial investigation of complaints in practice.

First, the evidence indicates that the people involved in implementing the Title IX Grievance Procedures do not have training or experience in handling complaints of sexual harassment or the Title IX Grievance Procedures. The 2016-2017 Title IX Coordinator stated that she received training on Title IX in the form of a Department of Education webinar when she became the Title IX Coordinator four years ago. However, during her time as Title IX Coordinator, she had not received any additional training and had not received any training specific to pregnant and parenting students. During her tenure as Title IX Coordinator, she did not provide any training to faculty or staff regarding Title IX. She had also never used the grievance procedures and seemed unfamiliar with how they would function in practice. The incoming 2017-2018 Title IX

Coordinator stated he had not yet received any training in preparation for his new role, but he planned to attend a conference that included a training session on unknown Title IX topics. The 2017-2018 Title IX Coordinator did not have personal experience utilizing the grievance procedures, and seemed unfamiliar with how they would function in practice.

Second, the Title IX Grievance Procedures forbid “representation of the complainant or respondent by other individuals” during the hearing process. OCR does not require schools to permit parties to have lawyers at any stage of the proceedings, as long as the restriction on lawyers applies equally to both parties. However, OCR strongly discourages schools from allowing the parties to personally question or cross examine each other during the hearing. By prohibiting representation, the Title IX Grievance Procedures may force an alleged victim to submit to questioning by an alleged perpetrator, thereby possibly escalating or perpetuating a hostile environment. It is also problematic that the Title IX Grievance Procedures does not have a provision to bypass the Superintendent if he or she is the alleged harasser, which could affect the impartiality of the investigation.

(d) Designated and reasonably prompt timeframes for the major stages of the complaint process

The Title IX Grievance Procedures set forth the following timeframes for each stage of the complaint process:

- “Within 5 days from the time a complaint becomes known, the complainant must complete and submit to the Title IX Coordinator a written ‘Title IX Report’ form”;
- “Within 2 days from receipt of the written complaint, the Title IX Coordinator shall notify the respondent”;
- “Within 5 days, the respondent shall be required to respond in writing to the Title IX Coordinator”;
- “Within 5 days of receipt or the respondent’s response, the Title IX Coordinator shall provide an initial response to the complainant and respondent”;
- “Within 5 days of receiving the initial response, the complainant or respondent may request, in writing, a hearing on the matter”;
- “Upon receipt of a written request for hearing, the Title IX Coordinator shall schedule a hearing to be held within 5-10 days before an unbiased panel”;
- “Within 5 days after the hearing, the Title IX Hearing Panel shall issue a written decision”;
- “The request for such review by the superintendent must be made in writing to the Title IX Coordinator within 5 days of receipt of the Panel’s decision”;
- “Within 10 days of notice of request for review, the superintendent shall review the record and Panel decision and shall issue a decision”;
- “Within 5 days of receipt of the superintendent’s decision, if dissatisfied with the decision, the complainant or respondent must submit a written request for review by the school board to the Title IX Coordinator”;
- “Upon receipt of the request for review, the Title IX Coordinator must schedule a review before the governing school board to be held at the Board’s next regular or special meeting, but in no event more than 30 days from such request”; and

- “Within 10 days of the review, the board shall issue a final written decision.”

According to the Title IX Grievance Procedures, “Since it is important that complaints be filed and processed as rapidly as possible, the number of days indicated at each step are considered to be maximum and every effort will be made to expedite the process.” The policy further provides that “in no event shall these procedures be extended for more than a 90 day period.” If the District took the maximum time for each step after receiving a complaint, and the parties utilized each step of the appeal process, the policy would allow 92 days to process the complaint. The policy allows 32 days from the receipt of a complaint for the hearing panel to issue its decision.

Based on OCR experience, a typical investigation takes approximately 60 days following receipt of the complaint. The 60-day timeframe does not include appeals, but an unduly long appeals process may impact whether a school’s response was prompt and equitable under Title IX. Whether OCR considers resolutions to be timely will vary depending on the complexity of the investigation and the severity and extent of the harassment. OCR concludes that the Title IX Grievance Procedures sets forth designated and reasonably prompt baseline timeframes for the major stages of the complaint process, following receipt of a complaint.

However, OCR also concludes that the District’s deadline for complainants to submit a complaint is unreasonable. The Title IX Grievance Procedures allows only “5 days from the time a complaint becomes known” for a complainant to submit a complaint. Additionally, since district personnel have little to no knowledge of the practical application of these procedures, OCR concludes that it is unreasonable for the District to require complainants to file their complaints in such a short timeframe after the harassment occurs.

(e) Notice to both parties of the outcome of the complaint and any appeal

At the first stage of the grievance process, the Title IX Coordinator is required to “provide an initial response to the complainant and respondent, stating initial conclusions of fact and proposed action, if any.” If the complainant or respondent requests a hearing, the hearing panel must “issue a written decision which shall include findings of fact and recommended action.” If the complainant or respondent requests that the superintendent review the hearing panel’s decision, the superintendent must provide his decision to the Title IX Coordinator, complainant, respondent, and principal or supervisor. The Title IX Grievance Procedures requires the Board of Trustees to issue a final written decision, if the complainant or respondent requests that the Board review the superintendent’s decision.

OCR concludes that the Title IX Grievance Procedures require notice to both parties of the outcome of the complaint and any appeal.

(f) Assurance that the recipient will take steps to prevent recurrence of any sex discrimination or harassment found to have occurred and to correct its discriminatory effects on the complainant and others, if appropriate

The Title IX Grievance Procedures state, “It is the intent of the Board to maintain an

environment free from sexual harassment of any kind.” However, apart from this general statement, the Title IX Grievance Procedures includes no assurance that the District will take steps to prevent recurrence of any sex discrimination or harassment found to have occurred and to correct its discriminatory effects on the complainant and others, if appropriate. The Title IX Grievance Procedures include no references to disciplinary action against a harasser, beyond the statement that “facts elicited during the complaint procedure that result in adverse disciplinary action against an employee become part of that employee’s personnel file.” The Title IX Grievance Procedures also include no references to remedies for the complainant or other possible corrective actions, such as changes to the school’s overall services or policies. Instead, the Title IX Grievance Procedures place the initial burden on the complainant to “request action” and allows the decision maker to recommend “action” at each step of the grievance process, without including even a minimal explanation of what that “action” may be. Finally, the Title IX Grievance Procedures make no reference to the District’s obligation to protect the complainant as necessary, including taking interim steps before the final outcome of the investigation. Neither the 2016-2017 or 2017-2018 Title IX Coordinator were aware of what if any steps or interim measures the District would take in practice to prevent the recurrence of discrimination.

OCR concludes that as written, the Title IX Grievance Procedures do not include adequate assurances that the District will take steps to prevent the recurrence of any sex discrimination found to have occurred and to correct its discriminatory effects on the complainant and others, if appropriate.

III. **Conclusion:**

In conclusion, OCR has approved the District’s request to resolve the complaint prior to the conclusion of the investigation as to Issue 1.

With respect to Issue 2, OCR has determined that, under a preponderance of evidence standard, there is insufficient evidence to find that the District violated Title IX as alleged with respect to Issue 2. OCR therefore will take no further action regarding this allegation.

With respect to Issue 3, OCR has determined that the District designated a Title IX Coordinator and notified students and employees of his identity and contact information. OCR has also concluded that the District’s notice of nondiscrimination complies with Title IX. However, OCR has determined that the District’s grievance procedures do not meet Title IX’s requirements because (1) the District has failed to adequately notify students, parents, and employees of the procedures; (2) the procedures do not apply to complaints alleging discrimination other than sexual harassment or complaints regarding discrimination by third parties; (3) the procedures include an unreasonably short timeframe for complainants to file complaints of harassment with the District; and (4) the procedures do not include adequate assurance that the District will take steps to prevent the recurrence of any sex discrimination found to have occurred and to correct its discriminatory effects on the complainant and others, if appropriate.

The District submitted the enclosed Resolution Agreement (Agreement) to resolve this complaint; the District’s representative signed the Agreement on December 22, 2017. OCR has

determined the provisions of the Agreement are aligned with the complaint allegations and appropriately resolves them. Further, OCR accepts the Agreement as an assurance the District will fulfill its obligations under Title IX with respect to this complaint. The dates for implementation and specific actions are detailed in the enclosed Agreement. OCR will actively monitor the District's implementation of the Agreement. Please be advised that if the District fails to adhere to the actions outlined in the Agreement, OCR will immediately resume its compliance efforts.

There are no further complaint allegations appropriate for resolution; therefore, OCR is closing the investigation of the above-referenced complaint as of the date of this letter. The complainant has been notified of this action. This letter is not intended, nor should it be construed to cover, any other matters may exist and are not specifically discussed herein.

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 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.

Thank you for your cooperation with OCR during our efforts to resolve this complaint. If you have any questions regarding this letter, please contact Stephanie Inman, the attorney assigned to the matter, at (214) 661-9651 or stephanie.inman@ed.gov, or the Team Leader, Melissa Huling Malonson, at (214) 661-9600.

Sincerely,

Taylor D. August, Director
Office for Civil Rights
Dallas Office

Enclosure: Resolution Agreement

CC Via Email
XXXX