



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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TEXAS

July 26, 2023

Dr. Ricardo López, Superintendent
Garland Independent School District
P.O. Box 469026
Garland, Texas 75046

Sent Via Email Only (A701@garlandisd.net; temajor@garlandisd.net)

RE: OCR Compliance Review No. 06205001
Garland Independent School District

Dear Dr. López:

This letter is to notify you of the disposition of the above-referenced compliance review initiated by the U.S. Department of Education, Office for Civil Rights (OCR), against the Garland Independent School District (the District) on March 12, 2020. OCR's review examined the District's handling of sexual assault cases, including incidents involving both student-involved and staff-involved misconduct¹ for the 2017-2018, 2018-2019, and 2019-2020 school years.

OCR conducted this compliance review pursuant to our authority under Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. Section 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 operated by a recipient of federal financial assistance from the Department. The District receives federal financial assistance from the Department. Therefore, OCR has jurisdiction to investigate and resolve this compliance review under Title IX.

After a careful review of the evidence gathered during the investigation, OCR identified Title IX violations as well as compliance concerns. The District signed the enclosed resolution agreement (Agreement) to address OCR's compliance concerns and the Title IX violations. When fully implemented, the Agreement will resolve this compliance review.

Summary of Findings

OCR identified Title IX violations and compliance concerns relating to the District's handling of sexual assault complaints during the Review Period. First, OCR found that the District routinely delayed its own investigation of Title IX complaints when law enforcement was involved,

¹ Student-involved misconduct refers to student-on-student incidents. Staff-involved misconduct refers to staff-on-student incidents.

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regardless of whether law enforcement had requested that they do so. In addition, OCR identified the following compliance concerns: OCR found no evidence to show that the District offered or provided any interim measures, beyond stay-away agreements, to ensure the safety and well-being of the allegedly harassed student and the school at large while law enforcement investigations were pending. OCR also identified a Title IX case file lacking not only evidence of other interim measures, but also a several-week delay between completion of the District's investigation and its disciplining the harassers, which occurred only after law enforcement had arrested them.

OCR identified additional compliance concerns regarding the District's lack of a centralized system for tracking and maintaining Title IX complaint files, which resulted in significant gaps in its recordkeeping. The majority of the District's investigative files were not sufficiently documented for OCR to confirm that the District responded promptly and equitably to complaints of sexual assault. Notably, the District's recordkeeping issues may also have contributed to the unusually low number of documented sexual assault incidents reported by the District for the Review Period. As a result of the poor recordkeeping, OCR was unable to confirm that the District considered, offered, and/or provided interim measures, or provided notice of the outcome of the District's investigation.

The District failed to provide adequate training for its Title IX Coordinator, administrators, and staff to ensure designated District personnel were sufficiently knowledgeable to recognize complaints of sexual harassment, including sexual assault, and to respond promptly and equitably. The evidence showed the District did not sufficiently coordinate its Title IX compliance efforts with its Title IX Coordinator. The evidence showed the Title IX Coordinator's ability to coordinate the District's efforts to comply with its Title IX responsibilities was compromised, given the large size of the District, the absence of centralized tracking of Title IX complaints, and the multiple responsibilities assigned to the Coordinator.

OCR has concerns that the District's grievance procedures were unclear regarding its appeal process, particularly the grievance process level at which an appeal should be filed. Finally, the District's notice of nondiscrimination did not comply with the Title IX regulation, as it did not include all the requisite information.

Methodology

OCR requested relevant data from the 2017-2018, 2018-2019, and 2019-2020 school years (the Review Period). OCR reviewed documents and information provided by the District in response to OCR's requests, including the following data: District Title IX policies and procedures; designated Title IX staff information; staff training and professional development materials related to Title IX; Student-Parent and Employee Handbooks and Codes of Conduct; reports of every incident of student-involved sexual assault that occurred during the Review Period; reports of every incident of staff-involved sexual assault that occurred during the Review Period; and information related to the District's system for tracking and maintaining records of complaints and reports of sexual assault.

OCR interviewed District employees, including the District's Title IX Coordinator, Human Resources Investigations Manager and four assistant principals from two District high schools

and two District middle schools. OCR selected these schools by focusing on two large campuses with no reported student-involved incidents (Lakewood Centennial High School and Garland High School) and two campuses with the largest number of reported student-involved incidents for which OCR identified the most concerns regarding the documented responses to those incidents (Coyle Middle School and Lyles Middle School).

Legal Standards

In conducting this compliance review and evaluating the District's compliance with Title IX, OCR applied the Title IX regulation in effect during the 2017-2018, 2018-2019, and 2019-2020 school years.² Citations in this section are to this prior regulation, and the legal standards discussed below were in effect during the school years subject to this compliance review.

The Title IX regulation contains several procedural requirements, including a requirement that recipients designate at least one employee to coordinate the recipient's efforts to comply with Title IX, including the investigation of any complaint communicated to such recipient alleging its noncompliance with Title IX or any actions that Title IX would prohibit, 34 C.F.R. 106.8(a). In addition, the Title IX regulation requires recipients to publish a notice of nondiscrimination covering Title IX, and to adopt and publish procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any actions prohibited by Title IX and its implementing regulation. *See* 34 C.F.R. § 106.9(a); *see also* 34 C.F.R. § 106.8(b).

While the Title IX regulation in effect during the school years under review did not reference sexual harassment, OCR interpreted Title IX at that time to require school districts to respond to complaints or other notice of sexual harassment involving students and employees. Sexual harassment is a form of sex discrimination prohibited by Title IX. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, such as sexual assault or acts of sexual violence. Sexual harassment can create a hostile educational environment based on sex when the harassment is sufficiently serious to deny or limit the individual's ability to participate in or benefit from the recipient's education program or activity.

In determining whether sexual harassment exists and has created a hostile environment based on sex for students, OCR looks at the totality of the circumstances, and considers a variety of factors, including whether the conduct was unwelcome to the student(s), the degree to which the conduct affected one or more students' education; the type, frequency, and duration of the conduct; the identity of and relationship between the alleged harasser and the subject or subjects of the harassment; the number of individuals involved; the age and sex of the alleged harasser and the subject of the harassment; the size of the school, location of the incidents, and the context in which they occurred; other incidents at the school; and whether there were also incidents of gender-based but non-sexual harassment. OCR examines the conduct from an objective perspective and a subjective perspective.

² Amendments to the Title IX regulation went into effect on August 14, 2020, and can be viewed [here](#). For more information about Title IX, including the new Title IX regulation and related resources, visit OCR's website at https://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html and <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/index.html>.

When evaluating the extent of a recipient's responsibilities if an employee sexually harassed a student, OCR considers if the employee engaged in sexual harassment in the context of carrying out their day-to-day job responsibilities for providing aid, benefits, or services to students that denies or limits a student's ability to participate in or benefit from the school's program on the basis of sex. This type of sexual harassment includes "quid pro quo" harassment, which occurs if a teacher or other employee conditions an educational decision or benefit on the student's submission to unwelcome sexual conduct. Whether the student resists and suffers the threatened harm or submits and avoids the threatened harm, the student has been treated differently on the basis of sex.

The following factors are considered in determining whether an employee has engaged in harassment in the context of the employee's provision of aid, benefits or services to students: 1) the type and degree of responsibility given to the employee, including both formal and informal authority, to provide aid, benefits, or services to students, to direct and control student conduct, or to discipline students generally; 2) the degree of influence the employee has over the particular student involved, including the circumstances in which the harassment took place; 3) where and when the harassment occurred; 4) the age and educational level of the student involved; and 5) as applicable, whether, in light of the student's age and educational level and the way the school is run, it would be reasonable to believe that the employee was in a position of responsibility over the student, even if the employee was not. When an employee sexually harasses a student outside of their daily job responsibilities, OCR evaluates if the harassment created a hostile environment for the student, using the factors discussed above with respect to hostile environment harassment.

Under the Title IX regulation in effect for the time period examined in this review, when the recipient has actual or constructive notice of sexual harassment, it must take appropriate steps to investigate or otherwise determine what occurred, and it may be appropriate for a school to take interim measures prior to or during the investigation of a complaint. Interim measures are individualized services offered as appropriate to either or both the reporting and responding parties involved in an alleged incident of sexual misconduct. Interim measures include counseling, extensions of time or other course-related adjustments, modifications of work or class schedules, campus escort services, restrictions on contact between the parties, changes in work locations, leaves of absence, increased security, and monitoring of certain areas of campus, and other similar accommodations. For instance, if a student alleges that he or she has been sexually assaulted by another student, the school may decide to place the students immediately in separate classes, pending the results of the school's investigation. Similarly, if the alleged harasser is a teacher, allowing the student to transfer to a different class may be appropriate.

If a school's investigation or other appropriate steps to determine what occurred identify staff-involved sexual harassment or student-involved harassment that creates a hostile environment, schools are responsible for taking prompt and effective action to stop the harassment and prevent its recurrence. A school also may be responsible for remedying the effects of the harassment on the student or employee who was harassed.

Once charged with notice of sexual harassment, a school should take steps to prevent any retaliation against the person who made the complaint (or was the subject of harassment) or against those who provided information as witnesses. At a minimum, the school's responsibilities include making sure that the harassed students know how to report any subsequent problems, conducting follow-up inquiries to see if there have been any new incidents or any instances of retaliation, and responding promptly and appropriately to address continuing or new problems. In cases where the harassment is widespread, the school may need to provide training for the larger school community to ensure that individuals can recognize harassment if it recurs and know how to respond.

Findings of Fact

The District's central offices are located in Garland, Texas, which is approximately 20 miles northeast of Dallas. In 2017-2018, the District enrolled 56,280 students, making it the second largest district in Dallas County. The District serves these students across 72 campuses (including 47 elementary schools and two pre-K schools (collectively "49 elementary schools"), 12 middle schools, seven high schools, and four other educational centers).

The 2017-2018 Civil Rights Data Collection data reflect the District received 163 allegations of sex-based harassment reported by 94 students,³ and zero incidents of rape or attempted rape, with 123 students disciplined for sex-based harassment. The District also reported having a written policy or policies prohibiting harassment or bullying on the basis of sex and a Title IX Coordinator on staff.

In reviewing the District's compliance with Title IX and its implementing regulation during the Review Period, OCR analyzed whether the District had designated and provided notice of a Title IX Coordinator, issued notice that it does not discriminate on the basis of sex, and adopted and published grievance procedures providing for the prompt and equitable resolution of student complaints of sex discrimination, including harassment. OCR also examined the District's handling of individual complaints of sexual assault, the Title IX training the District provided, and its Title IX recordkeeping procedures.

Title IX Policies and Grievance Procedures

OCR reviewed the notices of nondiscrimination that the District published during the Review Period. The notices reviewed were published on the District's website, and in the 2017-2018 and 2019-2020 Student Handbooks (the District did not provide the 2018-2019 student handbook). OCR found that the notice in the 2017-2018 Student Handbook was the same as in the 2019-2020 student handbook except for the identity of the Title IX Coordinator, as the Title IX Coordinator changed in 2019-2020.

The notice of nondiscrimination stated that the District does not discriminate on the basis of race, religion, color, national origin, gender, sex, disability, age, or any other basis prohibited by law,

³ There is no distinction between student-on-student and staff-on-student incidents in the CRDC.

in providing education services, activities, and programs, including career and technical education programs, and provides equal access to the Boy Scouts and other designated youth groups. The notice of nondiscrimination provided the name, address, and phone number of the District representatives designated to coordinate compliance with these legal requirements. The notice also informed individuals that inquiries related to discrimination based on sex should be referred to a specific person who was identified by title and name (although not always identified as “Title IX Coordinator.”) The notices did not include reference to OCR as a resource for Title IX inquiries. OCR verified that at all times during the Review Period, the District had a Title IX Coordinator.

During the Review Period, the District maintained two Title IX resolution processes, which were dependent upon the alleged harasser’s status, i.e., whether the alleged harasser was a student or an employee. If the alleged harasser was a student, the resolution was typically handled by one or more campus administrators at the location of the alleged incident and/or the location of the school the students attended. This process was to be overseen by the District’s Title IX Coordinator. If the alleged harasser was an employee, the resolution was handled by the District’s Human Resources (HR) Department. This process was overseen by the HR Director of Secondary Schools or the HR Director of Elementary Schools, depending on whether the allegation was against an employee at the elementary or secondary school level.

OCR reviewed the District’s procedures for resolving complaints and reports of sexual assault committed against students. The District’s Board Policy FFH Local “Student Welfare - Freedom from Discrimination, Harassment, and Retaliation” (hereinafter “the Policy”) set forth the District’s grievance procedures for addressing all complaints of sexual assault allegedly committed against students, including acts committed by District students, by District employees, and third parties. The version of the Policy pertinent to OCR’s review was issued in March 2016 and remained in effect through the 2019-2020 school year. OCR found that the Policy was included in the Student Handbook, the Employee Handbook and was posted on the District’s website.

The Policy defined sexual harassment generally 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.

With respect to employees, the Policy defined sexual harassment by a District 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) a 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.

With respect to students, the Policy provided that sexual harassment of a student may include sexual advances, touching intimate body parts or coercing physical contact that is sexual in nature, jokes or conversations of a sexual nature, and other sexually motivated conduct, communications, or contact. Romantic or inappropriate social relationships between students and District employees are prohibited, and any sexual relationship between a student and a District employee is always prohibited, even if consensual.

The Policy further provided that students may report complaints of sexual harassment to a teacher, school counselor, principal, other District employee, the Title IX Coordinator, or the Superintendent, and required the District to investigate all allegations that, if proven true, would constitute prohibited conduct as defined by the Policy. The District was required, by the Policy, to provide interim measures when appropriate, regardless of whether a criminal or regulatory investigation was pending.

If a law enforcement or regulatory agency notified the District that a criminal or regulatory investigation had been initiated, the District was required to confer with the agency to determine if the District investigation would impede the criminal or regulatory investigation; the District was required to proceed with its investigation only to the extent that it did not impede the ongoing criminal or regulatory investigation; and after the law enforcement or regulatory agency had finished gathering its evidence, the District was required to promptly resume its investigation. Absent extenuating circumstances, such as a request by a law enforcement or regulatory agency for the District to delay its investigation, the investigation was to be completed within ten District business days from the date of the report; however, the investigator was permitted to take additional time if necessary to complete a thorough investigation.

The Policy stated that the Title IX investigation may consist of personal interviews with the person making the report, the person against whom the report is filed, and others with knowledge of the circumstances surrounding the allegations; the investigation may also include analysis of other relevant information or documents. The Policy required the investigator to prepare a written report of the investigation, which was to include a determination of whether prohibited conduct occurred; the investigator was to file the report with the District official overseeing the investigation, e.g., the Title IX Coordinator. Further, the Policy required the District to notify both parties of the outcome of the investigation. If the results of an investigation indicated that prohibited conduct occurred, the District was to promptly respond by taking appropriate disciplinary action in accordance with the Student Code of Conduct and corrective action reasonably calculated to address the conduct. Examples of corrective action included a training program for those involved in the complaint, a comprehensive education program for the school community, counseling to the allegedly harassed student and the student who engaged in prohibited conduct, follow-up inquiries to determine if any new incidents or any 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 prohibited conduct has occurred, and reaffirming the District's policy against discrimination and harassment.

The Policy also referred to an appeal process for students and parents dissatisfied with the investigative outcome, which was set forth in the District’s Board Policy labeled as FNG (Local) and titled “Student Rights and Responsibilities: Student and Parent Complaints/Grievances.” The Policy was unclear, however, regarding the grievance process level at which an appeal should be filed, only stating that a student or parent could appeal utilizing FNG (Local) “beginning at the appropriate level.”

OCR reviewed the District’s Student Code of Conduct (Code), which, as described in its section pertaining to “general conduct violations,” specifically prohibited students from engaging in “conduct that constitutes sexual or gender-based harassment or sexual abuse” and from engaging in “inappropriate verbal, physical, or sexual conduct directed toward another person.” The Code provided that discipline was to be based on the seriousness of the offense, the student’s age and grade level, the frequency of misbehavior, the student’s attitude, the effect of the misconduct on the school environment, and statutory requirements.

For general conduct violations, the Code allowed disciplinarians to select from a range of disciplinary management techniques from verbal or written correction up to expulsion. However, for conduct punishable as a felony under state law (e.g., “sexual assault” as defined in Section 22.011 of the Texas Penal Code), the Code provided that a student charged with this offense *must* be placed in a disciplinary alternative education program (DAEP) and that if the sexual assault occurred outside of a school property or activity, the student *may* be expelled; if the sexual assault occurred on school property or while attending a school activity, the student *must* be expelled. The Code provided that the general one-year limit on the length of a DAEP assignment did not apply to the DAEP placement of a student who engaged in the sexual assault of another student; this was intended to ensure that the students involved would not be assigned to the same campus.

Law Enforcement Involvement

For student-involved incidents with law enforcement involvement, the Title IX Coordinator informed OCR that the District waited until the law enforcement investigation was complete before it conducted its Title IX investigation. The Title IX Coordinator further stated that if law enforcement concluded that the alleged incident occurred, the District relied on law enforcement’s findings and did not conduct an independent Title IX investigation; the findings simply informed the District’s decision regarding the appropriate discipline for the alleged harasser. Some of the assistant principals, however, informed OCR that the District’s investigation would continue concurrently with a criminal investigation, contradicting the Title IX Coordinator. With regard to staff-involved incidents, the HR Investigations Manager informed OCR that the District put its investigation on hold and waited until the law enforcement investigation was complete before the District conducted its own investigation.

Reports of Possible Sexual Harassment, Including Sexual Assault

OCR requested documentation associated with all incidents of possible student-involved sexual assault and staff-involved sexual assault during the 2017-2018, 2018-2019 and 2019-2020 school years. For student-involved incidents, the District provided documentation of 48 incidents

(including zero incidents in the 2017-2018 school year, one incident in the 2018-2019 school year, and 47 incidents in the 2019-2020 school year). For staff-involved incidents, the District provided documentation of nine incidents (including zero incidents in the 2017-2018 school year, three incidents in the 2018-2019 school year, and six incidents in the 2019-2020 school year).

OCR found reports of eight student-involved incidents at the elementary school level which came from six of the 49 elementary campuses; 25 student-involved incidents were reported at the middle school level from 11 of the 12 campuses; 14 student-involved incidents were reported at the high school level from five of the seven campuses; and two student-involved incidents were reported at the District's other educational centers,⁴ both of which came from only one of the four educational centers. Two of the high schools, one of the middle schools, three of the educational centers, and 43 of the elementary schools reported zero student-involved incidents during the Review Period. The nine total staff-involved incidents came from four campuses (two high school and two middle school). The other 68 campuses in the District reported zero staff-involved incidents during the Review Period.

The District's documentation of student-involved incidents generally consisted of a Discipline Incident report, which typically included a description of the incident, identification of individuals involved, and the disciplinary action taken. Some (but fewer than half) of the Discipline Incident reports also included a summary of the information obtained from the parties and/or witnesses and/or other sources of evidence (e.g., video surveillance). For incidents in which law enforcement was involved, the file also included witness statements and/or interview notes, documents related to a disciplinary hearing, and assignment to an alternative education program (AEP) and/or expulsion. The District's documentation of staff-involved incidents typically consisted of correspondence containing a description of the allegation, notice of interim personnel action (administrative leave pending investigation), investigation documents (e.g., interviews, written statements, documentary evidence, and/or investigator notes), and documents indicating the investigatory determination and final personnel action.

Student-Involved Harassment Examples of Concern

OCR's file review revealed significant gaps in District records. For instance, only six of the 48 records of student-involved sexual assault evidenced that the allegedly harassed student was offered or provided some form of interim measures, e.g., counseling services or that the school took steps to separate the alleged harasser from the allegedly harassed student. Also, in one record, the allegedly harassed student identified another student who had also allegedly been harassed by the same alleged harasser, but the record contained no information indicating the investigator followed up with the other potentially harassed student. More than half of the records lacked the following relevant information: documentation showing that the alleged harasser was provided an opportunity to provide evidence; information regarding the sanctions given to the alleged harasser; and references to evidence that buttressed its investigative

⁴ Garland Alternative Education Center (a disciplinary alternative school for grades K-12), Gilbreath-Reed Career and Technical Center (available to all district juniors and seniors to attend for technical courses while remaining enrolled at their home campus), Memorial Pathway Academy (a non-traditional, blended, year-round school), and Pathfinder Achievement Center (alternative learning for grades 4-12; school was closed in 2021).

conclusions. Notably, only one of the 48 records contained documentation showing that the District provided notice of the outcome to both parties.

- *File 1*

One example of student-involved harassment involved overlapping incidents where two middle school male students allegedly acted in concert against two female students daily over several weeks. They repeatedly touched the female students' breasts and buttocks, trying to force the female students to kiss them and other male students. According to the District files, the two male students called the female students "inappropriate names," making "dirty comments," gathering around one of the female students, and putting their arms around her neck. One male student would touch his genitals and ask one of the female students if she "would like to touch it." When the female students objected to the male students' conduct the male students hit them and/or pulled their hair.

Although the record indicated the District completed its investigation within nine days, the District took no disciplinary action until 35 days after the complaining parties made their reports, when law enforcement arrested the two alleged harassers for the alleged behavior. Further, while the record indicated that the District instituted stay-away agreements seven days after it received the reports, there was no evidence that the District provided any other interim measures either during the investigation or after the District determined the alleged behavior had occurred. Additionally, the record contained no evidence to show that the District provided notice of outcome to the complaining parties.

- *File 2*

In another example of student-involved harassment, an incident caught on campus video surveillance showed a male [redacted content] student apparently forcing a female [redacted content] student to perform oral sex on the male student [redacted content]. The file indicated that the alleged harasser was arrested and charged with felony rape; however, records demonstrate that the District responded to the incident solely in the disciplinary context. The alleged harasser was given disciplinary sanctions including half and full day suspensions, a 45-day assignment to the Alternative Education Center, and following a formal hearing was expelled and placed in a Juvenile Justice Alternative Education Program (JJAEP) for 90 days.

The record primarily consisted of documentation related to law enforcement actions and the District's discipline of the alleged harasser but was devoid of evidence showing that the District provided a prompt and equitable Title IX response to the harassed student. While there was a note in the file stating that the allegedly harassed student and other students indicated that the alleged harasser placed his hand around the allegedly harassed student's neck, forcing her to perform the act, the file contained no statements from the allegedly harassed student, the alleged harasser, or other student witnesses. The file contained no evidence to show the District offered or provided the allegedly harassed student interim measures, considered whether the allegedly harassed student had been subjected to a sexually hostile environment, or that the District provided the allegedly harassed student notice of the outcome.

Staff-Involved Harassment Examples of Concern

The records of staff-involved sexual assaults revealed that one of the nine files did not identify the allegation and contained no identification of the allegedly harassed student(s) or information regarding the investigation or the findings. The only documentation in the file showed that the District placed the employee on administrative leave and that he returned to work and continued working at the District. Another record contained unclear identification of the allegedly harassed students (e.g., students' grade level and/or age and enrollment status were not included), no indication that the District placed the alleged harasser employee on administrative leave pending investigation (as was customary), and no record of the investigative findings.

One record indicated the District transferred the allegedly harassed student out of the alleged harasser's class, and one record demonstrated that the District had plans to provide counseling to the allegedly harassed student. However, the District provided no confirmation that such counseling was provided. The other seven records lacked confirmation that the District provided or offered the allegedly harassed student any form of interim measures. None of the records contained evidence corroborating that the District provided notice of the outcome to the complaining party.

- *File 3*

In one example, a female [redacted content] student complained that a male teacher placed his hand on her bottom while she was at the teacher's desk, nudged her breast with his elbow while he was at her desk, and touched her bottom again as she was leaving class. Upon receipt of this allegation, the District placed the alleged harasser on leave through the end of the academic school year, but there is no indication that the District provided interim measures to the allegedly harassed student. During the following summer, the District determined the allegations were unsubstantiated, and permitted the alleged harasser to return to campus at the beginning of the fall semester. OCR found no indication that the District notified the allegedly harassed student of this determination.

Upon becoming aware that the alleged harasser had returned to campus, in absence of notice of the outcome of her complaint, the allegedly harassed student's parent immediately transferred her to a different school. The parent resubmitted her complaint, that had already been investigated, with an additional allegation that the same alleged harasser was rumored to have "slept with" a different student. The District again placed the alleged harasser on leave. The District interviewed the new student identified in the complaint. That student denied the allegation during interviews with both the District and the local police department. Within seven days of receiving the complaint, the District found the new allegation unsubstantiated, and the alleged harasser was again permitted to return to campus. Again, there is no indication that the District notified the complainant of this determination.

Two months later, the District received three additional complaints alleging the same harasser had inappropriate physical contact with three other female students. In its investigative report,

the District concluded, based on an email from the local police department, that it “appear[ed]” the alleged harasser violated the Texas Penal Code by committing Class C assault (a misdemeanor assault charge for intentionally or knowingly causing physical contact with another person when such contact can be regarded as offensive or provocative). In its “Letter of Reprimand,” the District stated that the alleged harasser’s “collective actions have appeared to diminish [his] effectiveness as an educator, and appear to violate District Policies DH (Local), DH (Exhibit)⁵ and FFH (Legal) (Local).⁶” Although, as noted above, District Policy FFH (Local) addresses sexual harassment, the District gave no details to indicate the particular provisions of the policies that were violated, nor did the record contain information regarding whether the District provided an equitable response under Title IX to the last three female students. The record is devoid of evidence that the District provided the allegedly harassed students interim measures either during or after the investigation, and that it issued notice of the outcome. The record also did not reflect that the District assessed whether steps were necessary to ensure no hostile environment operated for students in the school community. Notably, the alleged harasser admitted having physical contact not of a sexual nature, with some female students. The alleged harasser subsequently resigned from the District [redacted content].

Potential Causes of Low Number of Reports

OCR interviewed assistant principals from two of the high schools with zero documented incidents across the three years reviewed by OCR; each campus served approximately 2,300 to 2,500 students. The assistant principals interviewed did not recall receiving or investigating any sexual assault (or sexual harassment) complaints during those three years. The assistant principals explained that the lack of reports for the 2019-2020 school year may have been due to virtual learning resulting from the COVID-19 pandemic.

The Title IX Coordinator opined that the District’s low number of documented student-involved incidents could be due to: (1) incidents being incorrectly coded in the system; (2) employees not consistently recognizing sexual assault; and/or (3) students not consistently reporting it. A District-level administrator stated that the District’s low number of documented staff-involved incidents is probably not an accurate reflection of the number of incidents in the District and that the low number could be due to: (1) incidents not being reported; or (2) incidents being incorrectly coded in the system. Some assistant principals similarly reported that coding issues or lack of reporting by students may have caused the low number of documented incidents.

Title IX Recordkeeping

According to the Policy, the District was to “retain copies of allegations, investigation reports, and related records” concerning Title IX complaints in accordance with “the District’s records retention schedules, but for no less than the minimum amount of time required by law.” The Title IX Coordinator and assistant principals reported that student-involved incidents were recorded in the District’s disciplinary tracking system, *Review 360*, and that staff-involved records were maintained by the Human Resources Department.

⁵ Both DH policies relate to “Employee Standards of Conduct.”

⁶ Both FFH policies relate to “Student Welfare: Freedom from Discrimination, Harassment, and Retaliation.”

The Title IX Coordinator was unable to explain to OCR why the incident records lacked information showing the District offered and/or provided interim measures to the allegedly harassed students, although it was her position that such services had been offered and provided. One assistant principal of a campus from which documented incidents were provided to OCR was unable to explain why certain relevant records were not included in the file. Other assistant principals reported that the individual assistant principals maintained paper files for any investigative information not reflected in *Review 360*. The District did not produce any such files to corroborate this testimony.

Title IX Training

OCR requested documentation of all Title IX training related to sexual assault provided during the Review Period. The District provided evidence of training for the Title IX Coordinator in October 2020 (and October 2021, which was outside of the Review Period), but it did not provide any further documentary evidence of training to any employees prior to those dates. The Title IX Coordinator informed OCR that the District did not provide her with Title IX coordinator training until October 2020, after she had already served in her position for a year and a half. She further reported that principals, assistant principals, and supervisors received training in Spring 2020, but that the District did not require other staff and employees to complete Title IX training during the Review Period.

While some of the assistant principals reported that the District provided Title IX training to principals and assistant principals during the Review Period, one assistant principal was unable to detail the process she would have followed to investigate a Title IX complaint.

Title IX Coordinator

In addition to her Title IX responsibilities, the Title IX Coordinator served as the Chief of Academics and Leadership. As such, the Coordinator supervised human resources, public relations, student services, curriculum and instruction, special education, fine arts and athletics, and school leadership. The Title IX Investigator also held additional responsibilities, serving as the Assistant Director of Student Services. Although not reflected in the incident records provided by the District, the Title IX Coordinator reported that prior to commencing an investigation, campus administrators notified her so that she could coordinate the District's response; either she or the Title IX investigator delegated the investigation to a campus administrator.

Campus administrators indicated inconsistency in coordinating/communicating with the Title IX Coordinator regarding processing Title IX complaints. For example, an assistant principal reported he would contact the Title IX Coordinator if there was law enforcement involvement, such as, hypothetically, with a rape allegation, and depending on the circumstances of the case, he would consult with the Assistant Director of Student Services/Title IX Investigator. Another assistant principal reported notifying and corresponding with the Assistant Director of Student Services/Title IX Investigator regarding all Title IX issues. Although the other assistant principals did not report coordination with the Title IX Coordinator, one witness stated that the principal provided notification of an investigation “up the chain of command.” Moreover, none

of the student-involved or staff-involved incident files OCR reviewed showed any indication of coordination with the Title IX Coordinator.

Analysis

The Title IX regulation in effect during the Review Period held recipients responsible for responding promptly and equitably to actual or constructive notice of sexual harassment, including sexual violence, notwithstanding any investigation that had been conducted by law enforcement. The District's Title IX obligations were separate and apart from any obligations to report incidents to authorities and separate from any investigations those entities may have undertaken and, upon notice of sexual harassment, the District was required to take appropriate steps to investigate or otherwise determine what occurred, and to take interim measures prior to or during the investigation of a complaint, as appropriate. Law enforcement and Title IX inquiries differ because, whereas law enforcement consider whether criminal prosecution should follow, Title IX requires schools to investigate whether discrimination has occurred and if so to take prompt and effective steps to end discrimination. The District had, and has, a Title IX obligation to ensure its students do not experience discrimination in its educational program. Abdicating its responsibility to law enforcement left the District without information it needed to evaluate what Title IX steps may be necessary in each case. Moreover here, the District's policies also required the District to take prompt interim action prior to the completion of the District's investigation, regardless of whether a criminal investigation was pending. The District clearly deviated from its policies and in so doing violated Title IX.

Both the Title IX Coordinator and HR Investigations Manager informed OCR that the District routinely delayed its investigations until after law enforcement concluded its activities, and based on OCR's file review, coupled with the testimony of the District's witnesses, it appears the District deviated from its policies in failing to confer with law enforcement prior to delaying its response. Moreover, OCR found no evidence to show that the District provided interim measures, other than stay-away orders on one occasion, either before, during, or after the conclusion of law enforcement investigations. OCR found that in 42 of the 48 student-involved files reviewed, none contained any evidence that interim measures were considered, offered, and/or provided to the allegedly harassed student at any juncture of the Title IX process.

In the case discussed as File 1 above, middle school students, who had endured weeks of daily peer sex-based harassment including actual assault, received no supports from the District (other than a stay away order imposed seven days after they reported), either during or following the District's investigation of their reports. Moreover, the District took no steps to ensure that they and other students did not experience a hostile environment that may have persisted subsequent to the harassing conduct.

In the case of the student-involved assault discussed as File 2 above, where the alleged harasser was ultimately charged by the local police department with felony sexual assault for raping a student [redacted content], aside from disciplining the alleged harasser pursuant to the Student Code of Conduct, the file contains no evidence that the District took action to address the possible sexual harassment in compliance with Title IX. The files do not indicate that the District provided interim measures to any of the involved students or considered whether the

possible sexual harassment created a hostile environment for the allegedly harassed student or any other students. There was no evidence in the file that the allegedly harassed student was notified of the outcome, compromising her ability to fully participate in the District's educational program after the incident.

The Title IX regulation requires that recipients “keep such records . . . containing such information, as the responsible Department official or . . . designee may determine to be necessary to enable him [or her] to ascertain whether the recipient has complied or is complying with this part.” Coordination of recordkeeping ensures that the District can and will resolve any possible recurring compliance issues and identify repeat offenders. The dearth of documentation provided by the District regarding its responses to student-involved incidents was severely lacking and insufficient for OCR to assess the adequacy of the District's compliance with Title IX. This absence of documentation may also have left students more vulnerable to serial harassment because the District could not coordinate adequate responses without effective recordkeeping. The student-involved incident files generally contained only a description of the incident, identification of individuals involved, and the disciplinary action taken, with less than half of the files including a summary of the information obtained from the parties, witnesses and/or other sources of evidence.

In OCR's evaluation of a District's response, OCR examines the District's procedures for notice to the parties of the outcome of the complaint. Here, the District's policies provided that the investigator prepare a written report of the investigation and that notification of the outcome be provided to both parties. However, the District failed to produce evidence of written reports. OCR's review found that all except one of the 48 files for student-involved incidents, and all of the records of staff-involved incidents, were lacking proof of notice of the outcome to both parties. The impact of this failure to notify complaining parties of the outcome was evident, as demonstrated by the case, discussed as File 3 above, in which a parent transferred their child to a different school in apparent absence of notice of the outcome for their complaint involving a District staff member (whom the District later reprimanded for violating the District policy that addresses sexual harassment).

OCR found additional compliance concerns with the District's recordkeeping. Although *Review 360* is not a system specifically dedicated to documenting incidents requiring District response pursuant to Title IX but is rather a system designed to track student discipline, the District used it to document its Title IX complaints and investigations. This resulted in the records the District produced from this system lacking investigative documentation and details. Moreover, the investigative information not reflected in *Review 360* would have been documented in paper files maintained by the individual assistant principals, for which there was no District maintenance policy or procedure. This lack of centralized recordkeeping and possible miscoding in *Review 360* could have contributed to the low number of documented incidents and could have hampered the District's ability to search or track repeat offenders.

Title IX training for administrators, teachers, and staff, as well as dissemination of age-appropriate information for students, can help to ensure that all understand what types of conduct can cause sexual harassment, including sexual assault, and that responsible persons know how to respond. However, the District's Title IX Coordinator did not receive training for a year and a

half after she assumed the position. Although some school administrators reported receiving Title IX training during the Review Period, according to the Title IX Coordinator, the rest of the staff did not receive similar training. The paucity of training likely explains why one assistant principal was unable to detail the investigative steps of a Title IX investigation.

OCR's review revealed additional compliance concerns regarding the Title IX Coordinator's ability to adequately coordinate the District's compliance with Title IX. While OCR verified that at all times during the Review Period, the District had a Title IX Coordinator who was tasked with carrying out the District's duties under Title IX, witnesses reported inconsistency in coordinating/communicating with the Title IX Coordinator regarding processing Title IX complaints. Based on witness testimony, it appears that the Title IX Coordinator was not necessarily notified of all Title IX complaints for purposes of coordination, and OCR's review of the incident files showed no evidence that the Title IX Coordinator was involved in the investigations or resolutions of any of those complaints.

The Title IX Coordinator was also overextended, serving as the Chief of Academics and Leadership with supervisory responsibility in human resources, public relations, student services, curriculum and instruction, special education, fine arts and athletics, and school leadership. Accordingly, OCR has a compliance concern regarding the Title IX Coordinator's ability to appropriately coordinate the District's efforts to comply with its Title IX responsibilities, given the large size of the District, the lack of centralized tracking of Title IX complaints, the inconsistent witness reports regarding her role in Title IX investigations, and the multiple responsibilities assigned to the Coordinator.

While the Title IX regulation in effect during the academic years under review did not require recipients to provide parties an opportunity to appeal the findings and/or remedy, where the right to appeal is provided, it must be prompt and equitable. The District's Title IX grievance procedures generally provided for the prompt and equitable resolution of complaints alleging sex-based discrimination and harassment, including sexual assault. However, although the Title IX regulation did not require an appeal process, to the extent the District identified such a procedure in its FNG (Local) Policy, the procedure did not clearly specify at what point in the grievance process an appeal should be filed.

Finally, the Title IX regulations require a recipient to implement specific and continuing steps to notify all applicants for admission and employment, students and parents, 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 educational programs or activities, and that it is required by Title IX not to discriminate in such a manner. 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 notices of nondiscrimination contained most of the information required by the Title IX regulation, including the contact information of the employee designated to answer concerns regarding discrimination based on sex, but the notice of nondiscrimination did not refer inquiries to OCR.

Based upon the foregoing, OCR identified a Title IX violation regarding the District's undue reliance upon law enforcement investigations rather than conducting its own independent Title IX investigations and its delayed response when there was a law enforcement investigation.

OCR identified Title IX compliance concerns regarding inadequate and inappropriate recordkeeping; failure of the District to appropriately consider, offer and/or provide interim measures or provide notice of the outcome of the District's investigation; insufficient Title IX training for the Title IX Coordinator, administrators, and staff responsible for responding Title IX complaints; and the ability of the Title IX Coordinator to coordinate the District's compliance, all of which affect the District's ability to respond to complaints of student-involved and staff-involved sexual assault in a prompt and equitable manner. OCR also identified a compliance concern with the lack of clarity regarding the appeal process in its grievance procedures. Finally, OCR identified a Title IX violation regarding the District's lack of reference to OCR in its notice of nondiscrimination.

Conclusion

The District signed the enclosed Agreement, which, when fully implemented, will address the evidence obtained, the issue investigated, and the violations of Title IX and compliance concerns OCR identified. The Agreement requires the District to:

- Review and revise as necessary its Title IX grievance procedures, and its notice of nondiscrimination, to ensure compliance with the Title IX regulation.
- Develop and implement a centralized record-keeping system and procedures that adequately and accurately document and preserve all complaints of sexual harassment and sexual assault.
- Provide OCR with information regarding the District's processing of each formal complaint of sexual harassment and sexual assault filed with the District during 2022-2023 and 2023-2024 school years, including how the District responded to all such complaints.
- Provide training on Title IX and its revised grievance procedures to District staff.
- Provide age-appropriate student education or other resources districtwide regarding sexual harassment, including sexual assault, including how and to whom to report sexual harassment.
- Develop and conduct a climate survey to be distributed to its students and staff regarding sexual harassment, including sexual assault.

OCR will monitor the District's implementation of the Agreement until the District is in compliance with the terms of the Agreement and the statutes and regulations at issue in the case.

This concludes OCR's compliance review of the District's handling of sexual assault cases, including incidents involving both student-involved and staff-involved misconduct. This letter should not be interpreted to address the District'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.

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 individual may file a complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and other related correspondence and records upon request. In the event we receive 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 privacy.

OCR looks forward to receiving the District's first monitoring report. For questions about implementation of the Agreement, please contact the attorney investigators assigned to this case, Tiffany Gray, by telephone at 202-987-1522 or by email at Tiffany.Gray@ed.gov, or Natasha Gonzalez Rojas, by telephone at 214-661-9680 or by e-mail at Natasha.Rojas@ed.gov, both of whom will be overseeing the monitoring of this Agreement.

Sincerely,

/s/

Angela Hights
Regional Director
Office for Civil Rights
Dallas Office

Enclosures: Resolution Agreement

cc: [redacted content], GISD General Counsel, via email [redacted content]
[redacted content], GISD Assistant General Counsel, via email [redacted content]