



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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September 26, 2018

*Sent via email only to XXXXX@XXXXX.XXXXX*

XXXXX XXXXX, Esq.  
XXXXX XXXXX, XXXXX  
XXXXX XXXXX XXXXX, XXXXX XXXXX  
Saint Louis, Missouri XXXXX

Re: St. Louis Public Schools  
OCR Compliance Review Number: 07-14-5003

Dear Mr. XXXXX:

On July 17, 2014, the U.S. Department of Education (Department), Office for Civil Rights (OCR), initiated a compliance review of the St. Louis Public Schools (District), St. Louis, Missouri, under Title IX of the Education Amendments of 1972 (Title IX) and Title VI of the Civil Rights Act of 1964 (Title VI). The compliance review assessed whether the District violated Title IX and/or Title VI by failing to take appropriate action to address harassment of students based on sex, race, color, or national origin. This letter is to confirm that the District has voluntarily submitted a Resolution Agreement (Agreement) to OCR to resolve the compliance review.

OCR is responsible for enforcing:

- Title IX, 20 United States Code (U.S.C.) § 1681, and its implementing regulation, 34 Code of Federal Regulations (C.F.R.) Part 106. Title IX prohibits discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance (FFA).
- Title VI, 42 U.S.C. § 2000d, and its implementing regulation, 34 C.F.R. Part 100. Title VI prohibits discrimination on the basis of race, color, or national origin by recipients of FFA.

As a recipient of FFA from the Department, the District is subject to Title IX and Title VI. Additional information about OCR and the laws we enforce is available on our website at <http://www.ed.gov/ocr>.

To protect individuals' privacy, OCR has not used the names of District employees, students, or other individuals in this letter.

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

## **Legal Standards**

Title IX prohibits discrimination on the basis of sex in education programs or activities operated by recipients of FFA, such as school districts. The Title IX implementing regulation, at 34 C.F.R. § 106.31(a), states that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity operated by a recipient of FFA. Sexual harassment is unwelcome conduct of a sexual nature, regardless of the sex of the individuals involved. 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 that creates a hostile environment is a form of sex discrimination prohibited by Title IX.

Under Title VI and its implementing regulation at 34 C.F.R. § 100.3, no individual may be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination on the ground of race, color, or national origin under any program or activity that receives FFA from the Department.<sup>1</sup> The existence of a racially hostile environment that is created, encouraged, accepted, tolerated, or left uncorrected by a recipient constitutes different treatment on the basis of race in violation of Title VI.

## **Preliminary Investigative Findings**

The information set out below is based on documentation the District submitted to OCR for the 2011-12 through 2015-16 school years, including: District policies and procedures; the District's *Parent Information Guide & Student Code of Conduct*; school-specific student handbooks; faculty/staff handbooks and training materials; student discipline records; witness statements and other records from District investigations into alleged harassment; Human Resources files pertaining to alleged employee-on-student harassment; and parent contact logs. OCR also obtained information from the District's website and reviewed news articles regarding alleged sexual harassment of District students.

In addition, OCR obtained information through interviews with District employees. Specifically, in April, May, and June 2016, OCR conducted interviews with the following District officials: chief of staff; chief human resources officer/compliance coordinator; director of information technology; deputy superintendent of student services; coordinator of employee relations; office of innovative pathways hearing officers; special education compliance officer; and safety and security department director.

In May and June 2015, OCR interviewed the 2014-15 school year principals at the following 15 schools: Carnahan High School of the Future; Academy of Environmental Science and Mathematics Middle School; Ford Elementary School; Carver Elementary School; Vashon High School; Bryan Hill Elementary School; Fanning Middle School; Compton-Drew Investigative Learning Center Middle School; Hamilton Elementary School; Soldan International Studies High School; Bush Middle School of Character; Stevens Center for Academic Development;

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<sup>1</sup> In the remainder of this letter, harassment on the basis of race, color, or national origin will be collectively referred to as "racial harassment" unless otherwise noted.

Roosevelt High School; Innovative Concept Academy; and Yeatman-Liddell College Preparatory Middle School.

Additionally, in May 2016, OCR interviewed counselors assigned to the following 11 schools/programs during the 2015-16 school year (OCR interviewed one counselor per school/program): Buder Elementary School; Yeatman-Liddell College Preparatory Middle School; Fanning Middle School; Dewey International Studies Elementary School; Carnahan High School of the Future; Gateway STEM High School; Carr Lane Visual and Performing Arts Middle School; Woerner Elementary School; Roosevelt High School; Virtual Academy; and Carver Elementary School. In May 2016, OCR also interviewed District social workers who were assigned to the following schools/programs (one social worker per school/program): Stevens Center for Academic Development; Yeatman-Liddell College Preparatory Middle School; Educational Therapeutic Support (ETS) at Madison; and Roosevelt High School. Moreover, OCR conducted an interview in May 2016 with a behavioral analyst who was assigned to the ETS program at Madison during the 2015-16 school year.

OCR obtained additional information pursuant to electronic surveys issued to District personnel near the end of the 2014-15 and 2015-16 school years. Specifically, OCR surveyed all District principals and assistant principals (106 individuals total) in May 2015, and surveyed all District counselors and social workers (137 individuals total) in May 2016, seeking information regarding how the District, particularly their school, addresses racial and sexual harassment of students.

Finally, OCR obtained information during an onsite visit to the District on May 2-5, 2016. During the onsite, OCR staff visited 15 District schools for the purpose of reviewing school records related to incidents of sex or race harassment: Adams, Bryan Hill, Buder, Carver, Dewey International Studies, and Hamilton elementary schools; Compton-Drew Investigative Learning Center, Long, and Yeatman-Liddell College Preparatory middle schools; Carnahan, Gateway STEM, Roosevelt, Sumner High, and Vashon high schools; and the Stevens Center for Academic Development.

At 14 of the 15 schools OCR visited during the May 2016 onsite, the District provided OCR with a spreadsheet from the District's *Tyler Student Information System* (SIS), an electronic database used to record student information, including incidents of misconduct. The spreadsheet was intended to list all racial and sexual harassment incidents from the 2015-16 school year perpetrated, or allegedly perpetrated, by one or more students at the respective school. (One school used a different database called Kickboard to record student discipline information.) OCR staff reviewed each printout with a school representative during the site visit to obtain additional information about the listed incidents and about additional sexual and racial harassment incidents not recorded on the spreadsheet. The type of records maintained by school administrators varied considerably and was, at times, incomplete. Some schools provided OCR documents related to racial or sexual harassment investigations such as written witness statements, and others did not have any documents to produce.

During the May 2016 site visit, OCR staff also reviewed records housed in the District's Office of Innovative Pathways (OIP), which holds discipline conferences for District students accused

of committing “Type I” infractions: discipline incidents that severely interfere with an individual’s safety and learning, are of a threatening or harmful nature, violate the Missouri Safe Schools Act (such as rape/forced sexual acts), and warrant immediate response from District administrators or staff.<sup>2</sup> Specifically, OCR reviewed the available OIP files for all Type I incidents involving sexual misconduct (indecent exposure, sexual harassment, and sexual assault/rape) by regular education students (students without an Individualized Education Program (IEP)) that were referred to the OIP during the 2014-15 school year (20 files), and those referred to the OIP during the 2015-16 school year (15 files).<sup>3</sup> In addition, OCR reviewed the OIP files for nine Type I incidents from the 2015-16 school year involving sexual misconduct by students with an IEP (special education students).<sup>4</sup>

### *Background Information*

During the 2015-16 school year, the District had 46 elementary schools, 10 middle schools, 14 high schools, and seven alternative school sites/programs, and there were a total of 24,579 students enrolled in the District (12,561 male students and 12,018 female students).<sup>5</sup> The racial makeup of the District’s students during the 2015-16 school year was: 81.53% African American, 11.89% White, 3.73% Hispanic, 2.66% Asian, and 0.19% Indian.

During the 2015-16 school year, 27 of the District’s schools were specialty schools with a particular focus or curriculum.<sup>6</sup> Most of the specialty schools were designated as magnet schools, and a few were designated as choice schools. In order to attend one of the District’s magnet or choice schools, a student must apply and be selected. Because the number of applicants requesting placement at a magnet or choice school often exceeds the number of open seats, applications received within the application deadline are entered into a lottery to place students. Students who apply to one of the District’s magnet or choice high schools must meet specific school criteria, in addition to residency requirements, in order to move forward in the lottery for school placement, such as academic requirements, attendance requirements, and discipline requirements.

The District is under the governance of a three-member Special Administrative Board (SAB).<sup>7</sup> One member of the SAB is appointed by the governor, one by the mayor of St. Louis, and one by the president of the St. Louis Board of Aldermen. The SAB appoints a superintendent to manage its budget, supervise the staff and students, and make recommendations for the operations of the schools and support services. The District has both SAB policies and regulations, and policies

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<sup>2</sup> District principals may issue up to a 10-day out-of-school suspension to students who commit a Type I infraction and refer the students to the OIP for additional disciplinary action. More detailed information about Type I infractions and the OIP’s role is provided later in this letter.

<sup>3</sup> The OIP creates a file for each student referred to the OIP for a Type I offense. One file for an incident during the 2014-15 school year was missing/not provided to OCR. According to information provided by the District, no racial harassment incidents were referred to the OIP during the 2014-15 or 2015-16 school years.

<sup>4</sup> These files were housed in the District’s Special Education Department.

<sup>5</sup> One of the alternative school sites/programs for middle school students, the Stevens Center for Academic Development, was closed during the 2016-17 school year.

<sup>6</sup> The District now has 30 specialty schools.

<sup>7</sup> The District also has a separate elected Board of Education.

and regulations enacted by the District’s elected Board of Education. The SAB has governed the District since 2007, when the District lost its state accreditation. The District regained provisional accreditation in 2012. The SAB’s governance of the District, which was previously set to expire in June 2016, was extended through June 30, 2019, by the Missouri State Board of Education.

*District Compliance Coordinator*

The individual who served as the District’s compliance coordinator for Title VI, Title IX, and Section 504/Title II (Compliance Coordinator) during the 2014-15 and 2015-16 school years was also the District’s chief human resources officer at the time. The Compliance Coordinator told OCR in April 2016 that his duties as the Compliance Coordinator were to ensure the District’s policies, as well as federal and state laws, were followed and that District staff members were trained “by the appropriate individuals.” He said he reviewed every racial and sexual harassment case that was handled by the District’s Human Resources (HR) Department, specifically cases alleging employee-on-student, employee-on-employee, and student-on-employee harassment. (Student-on-student incidents were not handled by the HR Department.) The Compliance Coordinator told OCR he did not personally investigate complaints regarding alleged racial or sexual harassment, was not aware of any complaints from the 2014-15 or 2015-16 school year alleging racial harassment of a District student, and only knew of one complaint from that time period alleging sexual harassment of a student (harassment of a female student by a high school principal).

*District’s Sexual and Racial Harassment Policies and Grievance Procedures*

The District has adopted both SAB and Board of Education policies that prohibit racial and sexual harassment of students. Board Policy P5131.7, *Sexual/Racial Harassment*, states that it is the policy of the Board to maintain an educational environment free from discrimination, including sexual harassment and harassment based on race, color, or national origin. The accompanying regulation, R5131.7 (also titled *Sexual/Racial Harassment*), sets out the process District students may use to report sexual or racial harassment by another student.<sup>8</sup> Under the regulation, students who believe they have been or are being subjected to racially or sexually harassing acts or conduct by another student are supposed to notify the principal of their school. The principal must then notify the “associate superintendent for site support/instructional and leadership” (SSIL Associate Superintendent),<sup>9</sup> who will conduct an investigation of the alleged sexual harassment or designate the principal to conduct the investigation. Students who believe a fellow student is being subjected to sexual or racial harassment should also report the suspected harassment to the principal or the SSIL Associate Superintendent. The SSIL Associate Superintendent must make a report to the Superintendent upon completion of the investigation.

Board Regulation R5131.7 states that alleged sexual harassment by a District employee is governed by Board Policy P4843 and Board Regulation R4843. Board Policy P4843 describes

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<sup>8</sup> Unless otherwise specified, the term “Board Regulation” as used in this letter refers to St. Louis Board of Education regulations.

<sup>9</sup> The District no longer has a position titled SSIL Associate Superintendent.

the process employees may use to file a sexual harassment complaint, but does not address sexual harassment complaints made by or on behalf of students. The District does not, however, appear to have a Board Regulation R4843.

Pursuant to Board Regulation R5131.7, investigations of all student sex or race harassment complaints must include contact with parents/legal guardians. The regulation states that the District will respect the confidentiality of the complainant and the individuals against whom the complaint is filed “as much as possible, consistent with the [D]istrict’s legal obligations and the necessity to investigate allegations of harassment and take disciplinary action where the conduct has occurred.”

Board Regulation R5131.7 states that the District will “take such actions as appropriate based on the results of the investigation” into alleged racial or sexual harassment, and students found to have violated the Board’s harassment policy will be subject to suspension, expulsion, and/or possible referral for prosecution. The results of each investigation are required to be reported in writing and include any disciplinary action taken as a result of the complaint.

In a section titled “Investigation of Sexual Harassment Complaints,” the District’s 2015-16 *Parent Information Guide & Student Code of Conduct* (Code of Conduct), 2016-17 Code of Conduct, and 2017-18 Code of Conduct (collectively referred to as “Code of Conduct”) set out grievance procedures for student complaints of sexual harassment that vary from the procedures outlined in Board Regulation R5131.7. According to the Code of Conduct, if a student believes he or she has been sexually harassed, or believes that a fellow student is being sexually harassed, the student must initially report the harassment to his or her teacher or principal. The Code of Conduct then states the following:

If the student believes that reporting such information to their Teacher/Principal, the situation is not satisfactorily resolved by the Principal, or if the **employee** [*emphasis added*] is merely uncomfortable reporting to their Teacher/Principal, the **employee** [*emphasis added*] should contact the District’s Title IX Coordinator at the following location: [Address and phone number removed]

If the student or the Title IX coordinator is of the opposite sex as the reporting **employee** [*emphasis added*], or the reporting **employee** [*emphasis added*] prefers to report the matter to another supervisor/administrator within the District, the **employee** [*emphasis added*] shall have the right to report. However, the report must be made to a district employee who possess the necessary authority and obligation to act upon the **employee’s** [*emphasis added*] concern.

According to the Code of Conduct, any District employee who receives an oral or written complaint from a student alleging sexual harassment must notify the “Title IX compliance officer” (Compliance Coordinator) within 24 hours, or “within a reasonable time thereafter with good cause for the delay.” The Code of Conduct requires all sexual harassment complaints to be put in writing by the student making the complaint or by the employee who receives the complaint.

The Code of Conduct states that “upon the filing” of a student’s sexual harassment complaint, the Compliance Coordinator must immediately conduct a full investigation of the complaint or assign the matter to an investigator “for a prompt and full investigation” of the complaint. In addition, it states that the District will start investigating a complaint no later than 48 hours after receipt of the complaint, but the length and breadth of the investigation will depend on the circumstances.

The Code of Conduct provides that once the District’s investigation into a student’s sexual harassment complaint is completed, the “findings of the investigator” must be reduced to writing and forwarded to the Compliance Coordinator. It states that if the investigation substantiates the complaint, the District will “take appropriate disciplinary or remedial action against the offender(s), up to and including termination of employment/suspension from school,” and if the offender is not an employee of the District, “will take all appropriate action within the scope of its legal authority to eliminate and redress the harassment.”

The Code of Conduct states that if the District’s investigation into a student’s sexual harassment complaint is “indeterminate,” the matter will be designated as unresolved, and the Compliance Coordinator will maintain the investigation file “separately and apart from any student or personnel file.” In the event of indeterminate findings, the District may still take “appropriate remedial actions to minimize the possibility of future complaints.”

Board Policy P5145.4, *Prohibition Against Discrimination on the Basis of Sex*, states that except as permitted by federal law, “no student shall, on the basis of sex, be excluded from participation in, be denied the benefits or, or be subjected to discrimination under, any education program or activity” operated by the Board. The accompanying regulation, R5145.4.1, is titled *Grievance Procedures for Resolution of Student Complaints Alleging Discrimination on the Basis of Sex/Race, Color or National Origin*. The grievance procedures in this regulation conflict with the procedures set out in Board Regulation 5131.7 and with the grievance process detailed in the Code of Conduct. Regulation R5145.4.1 states that students who believe they have been discriminated against on the basis of sex, race, color, or national origin may report such discrimination to the associate superintendent for the grade level in which the student is enrolled. It also provides that if the parent or guardian of a student believes the student is or has been discriminated against on the basis of sex or on the basis of race, the parent/guardian may report the discrimination to the associate superintendent for the grade level in which the student is enrolled.

Under Board Regulation R5145.4.1, once an associate superintendent receives a sex or race discrimination complaint, he or she shall notify the “nondiscrimination officer (also referred to as the Title IX compliance officer)” of the receipt of the complaint on the day the complaint is received. The SSIL Associate Superintendent, or his or her designee, will then immediately investigate the alleged discriminatory practices and submit a written report summarizing the investigation within three working days after the receipt of the complaint. The regulation states that if the investigation is not completed within three working days after the receipt of the complaint, the SSIL Associate Superintendent must submit a report to the Title IX compliance officer indicating: what portions of the investigation have been completed; what other actions

must be taken in order to complete the investigation; and when the investigation will be completed.

Board Regulation R5145.4.1 states that within one day after receiving the written report on the investigation of the alleged discriminatory practice, the nondiscrimination officer shall review the report and forward it to the Board's legal counsel for review. The Board's legal counsel and the nondiscrimination officer "shall then determine what action should be taken to promptly and equitably resolve the complaint."

#### *Implementation of District Process for Reporting and Investigating Sexual and Racial Harassment Complaints*

During his April 2016 interview, the Compliance Coordinator told OCR students should report a racial or sexual harassment complaint to a teacher, administrator, or any adult at their school, who should, in turn, report it to the building principal. The building principal should then notify his or her network superintendent about the harassment complaint. According to the Compliance Coordinator, if students report alleged harassment verbally, they are asked to prepare a written statement describing what happened, but the District will investigate the alleged harassment even if the student refuses to submit a written statement.

The Compliance Coordinator told OCR that depending on the outcome of a school's investigation into alleged racial or sexual harassment, the harasser may be sent to the OIP for a discipline hearing and, based on the hearing, a recommendation may be made for future placement or discipline for the harasser. The Compliance Coordinator could not recall any situations where he was involved in determining the disciplinary consequence for a student who engaged in racial or sexual harassment.

The Compliance Coordinator told OCR that if a parent wants to report racial or sexual harassment of a District student, the parent should report the harassment to the building principal or, if the parent felt comfortable with a particular teacher, could inform the teacher, who would convey the report to the principal. In the event the building principal is the alleged harasser, the parent could report the harassment to the deputy superintendent or could go directly to the HR office to file a complaint, which would then be handled by HR's Employee Relations office.

According to the Compliance Officer, students and parents are made aware of the process for reporting alleged racial and sexual harassment through the District's website, the *Parent Information Guide and Student Code of Conduct*, and written District policies. He said they may also visit the District's Central Office, and District personnel will walk them through the steps for filing a formal complaint.

In a written response to an April 2015 Data Request from OCR, the District indicated that building principals are primarily responsible for investigating complaints of discrimination and harassment based on race and sex filed by or on behalf of students. Building principals will occasionally assign this responsibility to an assistant or vice principal depending the size of the school and how the staff delegates student discipline, but the principal remains responsible for the investigation. According to information provided by the District, the District's principals

each have their own system for documenting incidents of harassment, and schools may use different forms with different names for documenting the harassment.

OCR interviewed 15 District principals: four elementary school principals, five middle school principals, four high school principals, and two alternative school principals. In the interviews, OCR asked the principals about the process they use in their respective schools for investigating alleged racial and sexual harassment of students, including how students should make a harassment complaint, who is responsible for investigating such complaints, if and how parents are notified about the investigation and outcome, and how and where the investigations are documented. Most of the principals told OCR that if a student at their school wanted to file a complaint about racial or sexual harassment, the student could report the harassment to any school administrator or staff member, including a teacher or school counselor. Most of the principals also indicated that students who complain of racial or sexual harassment are asked to put their complaint in writing, but the complaint would be investigated even if a student refused to put it in writing.

The principals' responses to OCR about who at their school is responsible for investigating racial and sexual harassment complaints made by or on behalf of students varied. A few principals said they would handle such investigations on their own, and others said a team of individuals at their school, which may or may not include the principal, would investigate alleged racial and sexual harassment of students. The makeup of the investigative teams described by the principals varied and sometimes included an assistant principal, counselor, social worker, school nurse, and/or school safety officer. (A few of the principals noted that their school also reports, or hotlines, certain sexual harassment allegations, particularly ones involving physical contact, to child protective services.) Many of the principals OCR interviewed said they would be responsible for determining, based on the results of an investigation, whether racial or sexual harassment of a student occurred. Some said they would seek input from others at their building or the District level in making that determination, depending on the nature or severity of the alleged misconduct. All of the principals told OCR that their school follows the District's Code of Conduct in determining what disciplinary consequences to impose for racial and sexual harassment.

OCR received varying responses from the principals it interviewed regarding how they, or other individuals at their school, document an investigation into the alleged racial or sexual harassment of a student, including the investigation findings. Several principals said their school primarily uses the District's SIS database to document when a student has been found to have engaged in racial or sexual harassment, and also puts together a "Type I packet" for harassment that rises to the level of a Type I offense.<sup>10</sup> Some principals stated that school personnel may also utilize the parent log section of SIS to document contact with the parents of the alleged harasser and/or the parents of the victim of harassment about the school's investigation or investigation findings.

OCR surveyed all District principals and assistant principals electronically in May 2015 (Harassment Survey 1) about the District's process for reporting and investigating sexual and racial harassment complaints (and notifying students and parents of the investigation outcome),

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<sup>10</sup> Type I packets are discussed in more detail later in the letter.

and received varying responses. The survey asked separately about the process used for sexual harassment complaints and the process used for racial harassment complaints. Seventy-five of the 85 administrators who fully or partially responded to Harassment Survey 1 indicated that their school investigates all incidents of sexual harassment of a student that are witnessed by a District employee or are reported to the school, regardless of whether the incidents are reported in writing. Only five of the responding administrators indicated that sexual harassment of students occurs often (more than one incident per month) or very frequently (one or more incidents per week) at their school or a school event. Most of the administrators who participated in the survey indicated that either the principal, assistant principal, or dean of students at their school was responsible for investigating reports alleging the sexual harassment of one or more students. Many administrators also indicated that school guidance counselors and social workers may be involved in investigating such reports. A limited number of administrators indicated on Harassment Survey 1 that members of the District's School Safety and Security Department or HR Department may be involved in investigating reports of sexual harassment.

Harassment Survey 1 asked administrators whether students who are victims of sexual harassment and students who engage in sexual harassment are notified of the outcome of the school's investigation into the harassment, and gave administrators several options from which to choose. Forty-nine administrators indicated that the alleged harasser is notified of the outcome, and 48 marked that the victim is notified of the outcome. Nine administrators said the harasser is only notified of the outcome of the investigation if disciplinary action is imposed, and one administrator marked that neither the victim nor the harasser is notified of the outcome. Ten administrators marked that they did not know the answer, and 19 administrators did not respond to the question.

Seventy-four of the 85 administrators who responded to Harassment Survey 1 indicated that their school investigates all incidents of racial harassment of a student that are reported to the school or witnessed by a District employee. Only two responding administrators indicated that racial harassment occurs often or very frequently at their school or a school event. Most of the administrators who responded indicated that the principal, assistant principal, or dean of students at their school was responsible for investigating reports alleging the racial harassment of one or more students. Some administrators indicated that school guidance counselors and social workers may be involved in investigating such reports. A limited number of administrators indicated members of the District's School Safety and Security Division or HR Department may be involved in investigating reports of racial harassment, and one administrator indicated that a staff member from the District's ESOL Bilingual Migrant Program Office may be assigned to assist in investigating the potential student victim's claims if the student speaks a language other than English and/or the student lives in a home where a language other than English is spoken. Another administrator indicated that a school site's Family and Community Specialist may be involved in investigating reports of racial harassment.

#### *Role of Security/Law Enforcement*

As part of its investigation, OCR obtained information regarding what role, if any, the District's safety officers and school resource officers play in responding to incidents of alleged racial or

sexual harassment of students, including sexual assault.<sup>11</sup> The District's Safety and Security Department (Safety Department) is composed of stationary safety officers, mobile safety officers, supervisory safety officers, and school resource officers (SROs). There are approximately 126 stationary safety officers total stationed inside all of the District's middle and high schools. These safety officers are charged with maintaining a safe environment that is conducive to teaching and learning, which includes making sure exterior building doors are secured so no unwanted visitors enter the building, manning the metal detectors at building entrances, monitoring school hallways and bathrooms, monitoring school surveillance cameras, and checking the interior and exterior of buildings for drugs and weapons. The number of safety officers assigned to a middle or high school depends primarily on the number of students at the school and the climate of the area in which the school is located. The safety officers are not commissioned law enforcement officers. The District's elementary schools are monitored daily by approximately 10 mobile safety officers, who travel throughout the District. The mobile safety officers are not commissioned law enforcement officers.

In June 2016, the District's Safety Department director (Safety Director) told OCR the District typically has access during the school day to two or three school resource officers (SROs), who are commissioned police officers employed by the Saint Louis Metropolitan Police Department. The SROs are assigned to specific locations based on need. According to the Safety Director, 99% of the time, the SROs respond to incidents that constitute, or may constitute, a crime. Although the SROs may be assigned to a specific location, they may report to other District schools as needed. The District may also call the Juvenile Department if immediate assistance from law enforcement is needed and the SROs are not available.

The Safety Director stated in June 2016 that the District's stationary and mobile safety officers receive training at the beginning of each school year from the HR Department, which includes a review of District policies, including sexual and racial harassment policies. She said the SROs assigned to the District sometimes participate in the training if they are available. The Safety Director told OCR she generally would not expect a stationary or mobile safety officer to get involved in the investigation of an alleged racial harassment incident because school-based administrators are responsible for those investigations. She said if a student told a safety officer about an alleged incident of racial harassment, the safety officer would report the incident to the administration. The Safety Director stated that if a student accused another student of touching him or her inappropriately, the SROs would be called in by the building principal or the Safety Department. She noted that a school administrator is present whenever a SRO interviews a student on school property.

According to information the Safety Director provided in June 2016, if safety officers witness racial or sexual harassment of a student, they are supposed to report it to an administrator immediately and prepare a written incident report describing what they witnessed. The Safety Director said all of the incident reports eventually come to her. SROs do not prepare a District incident report; they prepare a police report that is shared with the Safety Department. The Safety Director told OCR the only way she or others in the Safety Department could track the

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<sup>11</sup> As discussed in more detail later, the District's Student Code of Conduct indicates that the District's Safety and Security Department or law enforcement will be notified about certain student offenses.

number of racial and sexual harassment incidents referred to law enforcement by the District would be by reviewing completed incident reports, which should note when a safety officer, or other District personnel, contacted the police. The Safety Director did not recall being informed about several student-on-student and employee-on-student incidents involving sexual assault that occurred between 2011 and 2015, including incidents that occurred at school and incidents for which employees were criminally charged.

### *Training Regarding Sexual and Racial Harassment*

During the 2015-16 school year, each District school was responsible for training students about sexual and racial harassment, including the District's policies on reporting such harassment. This building-level training occurred within the first month of the school year in connection with reviewing the District's Student Code of Conduct. Specific training times varied by school and students' home classroom. OCR obtained information during its investigation indicating that schools may provide additional training to students regarding sexual and/or racial harassment as they determine necessary, sometimes in response to a particular harassment incident. The additional training was often provided by administrators, school counselors, or outside organizations.

According to OCR's principal interviews and documentation provided by the District, the District provides professional development training for principals at the beginning of each school year that includes a section on sexual and racial harassment conducted by the District's legal counsel. The majority of the 85 principals and assistant principals who partially or fully completed Harassment Survey 1 indicated that they had received training during the 2013-14 and/or 2014-15 school year regarding how to handle sexual and racial harassment, but more reported having sexual harassment training than racial harassment training.

### *Disciplinary Consequences for Students Who Engage in Sexual Harassment*

As part of its investigation into whether the District promptly and equitably addresses student-on-student sexual harassment, OCR gathered information regarding the District's disciplinary consequences for such harassment. The District's Code of Conduct has four classifications for student discipline incidents: Type I, Type II, Type III, and Type IV. Type I infractions are discipline incidents that "severely interfere with anyone's safety and learning, are of a threatening or harmful nature, are Safe Schools violations<sup>12</sup> and warrant immediate response from administration, crisis team, entire staff, and/or community support." Type II infractions are defined by the Code of Conduct as discipline incidents that interfere with anyone's safety and

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<sup>12</sup> "Safe Schools violations" are incidents that fall within the Missouri Safe Schools Act. The Safe Schools Act mandates school districts to establish a written discipline policy that requires school administrators to report acts of school violence to particular school district employees. Each district's written discipline policy must require school administrators to report to the appropriate law enforcement agency certain crimes committed on school property, including, but not limited to: first or second degree assault; forcible rape; rape in the second degree; forcible sodomy; sodomy in the second degree; child molestation in the first degree; sexual misconduct involving a child; sexual abuse in the first degree; harassment/harassment in the first degree; and stalking. The District's 2014-15, 2015-16, and 2016-17 Codes of Conduct all state that student conduct and discipline will be handled in a manner consistent with the Safe Schools Act.

learning, are of a threatening or harmful nature, are legal violations, and warrant administrative interventions. Type III infractions are “discipline incidents that can be handled by the teacher and do not warrant a discipline referral to the principal or designee; any behavior that is of low level intensity, passive in nature and/or of a non-threatening manner.” Type IV infractions are discipline incidents that occur on District provided transportation. Since Spring 2015, at the direction of the Superintendent, the District has been reassessing and revising its disciplinary practices and procedures to focus on keeping students in school by reducing out-of-school suspensions.

The District’s 2014-15 and 2015-16 Codes of Conduct identify “sexual misconduct/harassment” as a Type II infraction. They both state that Type II infractions require a mandatory office referral, and provide a “corrective strategies” chart for all Type II infractions, which says, “Multiple strategies may be used depending on individual student’s needs. Selections from this list will be made by school officials in a least-restrictive and progressive manner.” The chart includes the following corrective strategies: conference with student; parent contact; loss of privilege; re-teach; create a behavior contract; require the student to complete a community service task; written reflection; have the student choose a method of apologizing or making amends to those harmed or offended (Restorative Justice Practice); refer to intervention team; restitution; arrange linkage with counseling agency; create a home-to-school school-to-home communication system; require daily or weekly check-ins with administrator for a set period of time; identify a mentor and establish a schedule of activities related to school performance; office referral; detention; in-school suspension; Saturday School; out-of-school suspension; call District Security or Law Enforcement; and file charges if law is broken.

The 2016-17 Code of Conduct states that all Type II infractions require a referral to an administrator or student support team, and identifies “sexual misconduct” and “violation of District’s Sexual Harassment/Gender Discrimination Policy” as two different types of Type II infractions.<sup>13</sup> It provides Level 1, Level 2, and Level 3 interventions for both sexual misconduct and violations of the District’s Sexual Harassment/Gender Discrimination Policy.<sup>14</sup> For Level 1 interventions, the Code of Conduct lists: conference with parent/student/school staff (identified as required); restitution-community service task; peer mediation, restorative circle; and arrange linkage with counseling agency. For Level 2 interventions, it lists: restorative circle, functional

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<sup>13</sup> The 2016-17 Code of Conduct defines sexual misconduct as “those who forcibly, intentionally or consensually touch another person’s body and/or clothing in a way that constitutes or results in sexual contact,” and states that sexual misconduct includes indecent exposure, sexual gestures, and possession and/or distribution of sexual paraphernalia and/or magazines.

<sup>14</sup> Level 1, Level 2, and Level 3 refer to the three levels of the Schoolwide Positive Behavior Support system approach District schools are supposed to utilize to reduce the loss of students’ instructional time due to out-of-school suspension and expulsion by implementing a variety of preventative and corrective strategies. Level 1 applies to “universal strategies” or “primary preventions” that are for all students, including but not limited to effective academic instruction and classroom management, positive reinforcement, and active supervision and monitoring by all teachers. Level 2 applies to “selected strategies” or “secondary preventions,” which are geared towards students who are at-risk and include classroom and small group strategies. Level 2 strategies include intensive social skills teaching, loss of privileges, reflective activities, and referral to the school social worker or counselor. Level 3 applies to “targeted strategies” or “tertiary prevention.” Level 3 strategies are for students who are high-risk, and include individual interventions such as intensive academic support, community services, and alternatives to suspension and expulsion.

behavior assessment, behavior improvement plan (BIP) (referral to student support team); identify a mentor and establish a schedule of activities related to school performance; group counseling/behavior lessons; conference with parent/student/school staff (required); and individualized student safety plan. For Level 3 interventions, the Code of Conduct lists: removal of privileges; alternative programming (change teacher/class); suspension; and referral for District Discipline Conference.

The Code of Conduct includes additional categories into which sexually harassing conduct by students may fall. For example, the Code of Conduct identifies “indecent exposure” as a Type II infraction, and defines it as “knowingly exposing the genitals, breasts, buttocks, and/or sagging<sup>15</sup> under circumstances in which such actions are likely to cause an affront or alarm.” It also outlines types of clothing that are prohibited, such as see-through garments and clothing that promotes sex, drugs, or alcohol. The 2014-15 and 2015-16 Codes of Conduct provide the same corrective strategies outlined for sexual misconduct/harassment incidents, and the 2016-17 Code of Conduct lists the following Level 1 interventions for indecent exposure: conference with parent/student/school staff (required); arrange linkage with counseling agency; removal of privileges; and change in environment (teacher proximity, extra supervision, etc.). In addition, the 2016-17 Code of Conduct provides the following Level 2 interventions for indecent exposure: functional behavior assessment; BIP (referral to student support team); group counseling/behavior lessons; conference with parent/student/school staff (required); and individualized student safety plan. Finally, it lists two Level 3 interventions: suspension and referral for District Discipline Conference.

The 2014-15 and 2015-16 Codes of Conduct identify “rape/forced sexual acts” as a Type I infraction, and also have a Type I infraction titled “other illegal or very serious misconduct” that applies to Safe Schools Act violations. Both Codes of Conduct state that Type I infractions require an out-of-school suspension with a referral for a District Discipline Conference, and provide a list of corrective strategies applicable to all Type I infractions. The Codes of Conduct state that: Type I infractions require an up to 10-day out-of-school suspension with a referral for a District Discipline Conference; students with an IEP will not be given a Type I for “chronic rules violation” if the behaviors are related to the student’s diagnosis; when referring students for “chronic rules violation,” building administrators must submit documented interventions that have been previously implemented; and students who commit a Type I infraction will not be returned to the school they last attended.

The 2016-17 Code of Conduct identifies “rape/forced sexual acts” as a Type I infraction and Safe Schools Act violation that must be reported by school administrators to an appropriate law enforcement agency. The “interventions” chart in the 2016-17 Code of Conduct contains the following required interventions for rape/forced sexual acts: parent contact, law enforcement contact, and up to a 10-day out-of-school suspension with a referral for a District Discipline Conference. In addition, the interventions chart contains “possible outcomes” for rape/forced sexual acts: placement in an alternative program; extended suspension; and expulsion. The 2016-17 Code of Conduct also includes a Type I infraction titled “other illegal activity,” and the

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<sup>15</sup> “Sagging” is wearing pants or shorts in such a manner that the top of the pants/shorts is down around the hips significantly below an individual’s waistline.

“interventions” chart for the infraction contains the same required interventions and possible outcomes as those for rape/forced sexual acts.

Type I infractions implicating sexual harassment, specifically infractions coded by the school where the incident occurred as “rape/forced sexual acts” and incidents of a sexual nature designated as “other illegal or very serious misconduct,” result in a mandatory referral to the OIP for a Type I discipline conference.

During the majority of the 2015-16 school year (from November 2015 on), the OIP was staffed by three discipline conference hearing officers and an administrative assistant. The administrative assistant assigned each Type I referral submitted to the OIP by District schools to one of the three hearing officers, who are responsible for holding student discipline conferences. Prior to November 2015, Hearing Officer 1 was the sole hearing officer for discipline conferences involving general education students who engaged in conduct resulting in a Type I referral. In November 2015, Hearing Officer 2 was hired by the District and assumed a proportional share of the conferences involving general education students. Hearing Officer 3 oversaw conferences involving special education students who engaged in conduct resulting in a Type I referral. During the 2015-16 school year, Hearing Officers 1 and 2 reported to the District’s chief of staff, and Hearing Officer 3 reported to the interim director of special education services.

Schools refer a variety of Type I offenses to the OIP, including: possession and use of weapons; possession, use, and distribution of drugs or alcohol; assault/battery; arson; bomb threats; certain technology offenses, like sharing confidential information regarding other students or employees; and gang activity. Hearing Officer 1 told OCR in June 2016 that the OIP handles around 700 to 800 Type I discipline conferences a year (approximately 350 of which are for students with an IEP), and an extremely small number of the conferences involve sexual or racial harassment. The OIP hearing officers generally handle racial and sexual harassment offenses the same way as other Type I offenses brought before them.

The District’s *2015-16 Administrator Discipline Resource Book* (2015-16 Resource Book) outlines the protocol for processing Type I disciplinary infractions by students. According to the Resource Book, if a student commits a Type I infraction, the school administrator should “conduct and document” an initial investigation into the infraction. The administrator should then put together a Type I packet for the OIP. Required documentation for a Type I packet includes: 1) a “Documentation of Services” form, which asks if the student receives special education services, has a Section 504 plan, is currently being evaluated, or receives services from the Division of Children’s Services; 2) an “Offense” form where administrators are supposed to select, from a list with 11 categories of Type I offenses, the type of offense the student committed; 3) a “Principal’s Summary” form, where the administrator provides a narrative description of the student’s Type I offense; and 5) “Victim’s Statement,” “Accused Statement,”

and “Witness Statement” forms that are to be filled out by the victim, student who allegedly committed the offense, and witnesses.<sup>16</sup>

OCR received conflicting information about grade level limitations for Type I referrals to the OIP. Hearing Officer 1 told OCR that during the 2015-16 school year, OIP only accepted referrals for students in grades 4 through 12. Hearing Officer 2 stated that during the 2015-16 school year, the OIP accepted Type I referrals of all students, including students in kindergarten through third grade. Hearing Officer 2 noted, however, that as of the 2016-17 school year, students in kindergarten through second grade could no longer receive out-of-school suspensions or be referred to the OIP; the focus would be on the provision of prevention and intervention services instead. Hearing Officer 3 reported that during the 2015-16 school year, students of all ages could be referred to the OIP for Type I infractions. The District’s chief of staff, who supervised the District’s alternative education programs as well as the OIP, told OCR in April 2016 that students in pre-kindergarten through second grade may be referred to the District’s Office of Family and Community Engagement but not to the OIP. He indicated that third grade students may be referred to the OIP for a Type I offense, but it is rare for students below fourth grade to receive a Type I referral.<sup>17</sup>

The 2015-16 Resource Book states that completed Type I packets must be couriered to the OIP within 24 hours of the alleged Type I offense. It says that the OIP will review a submitted Type I packet and notify the sending school within 24 hours of any discrepancies or if the OIP needs additional information. Hearing Officers 1 and 2 confirmed that the prescribed protocol is for the referring school to complete and submit a Type I packet for a student to the OIP within 24 hours of the alleged Type I offense. OCR asked what happens if a school wants to refer a student to the OIP for a Type I offense such as sexual assault, but is unable to complete its investigation into the offense within 24 hours. Hearing Officer 1 stated that school administrators should submit as complete of a Type I packet as possible to the OIP within 24 hours of the incident so the OIP may start processing the Type I referral. She acknowledged that it may take a school longer than 24 hours to investigate an incident, and said schools may supplement their Type I packet after completing their investigation.

Hearing Officer 1 told OCR in June 2016 that the OIP attempts to schedule a discipline conference for a student within 10 days of the student’s alleged Type I offense. Generally, the administrator who refers a student to the OIP for a Type I offense has issued the student a 10-day

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<sup>16</sup> If the student being referred to the OIP is a student with a disability who has an IEP, the sending administrator is also supposed to include the following items with the student’s Type I packet: 1) the student’s current IEP and most recent evaluation; 2) a copy of the manifestation determination that is supposed to already have been completed for the student’s Type I offense; 3) the student’s Functional Behavior Assessment; and 4) a copy of the student’s Behavior Intervention Plan. If a student has a Section 504 plan, the current 504 plan must be submitted in lieu of an IEP.

<sup>17</sup> An elementary school principal told OCR in May 2015 that students in kindergarten through third grade could not be referred to the OIP for a Type I offense unless the referral was approved by an associate superintendent. The principal said she attempted to refer two male first grade students to the OIP because they cornered a female student with whom they were angry and touched her in a sexual, aggressive way, and had previously engaged in inappropriate sexual behavior. The associate superintendent did not approve the Type I referral, so the principal was not permitted to refer the male students to the OIP, and the maximum disciplinary consequence she could impose on each student was a 10-day out-of-school suspension.

out-of-school suspension for the offense, and the OIP's goal is to complete the student's discipline conference before the 10-day suspension has ended. (If the discipline conference is completed before a student's suspension has ended, the student generally does not have to serve the remainder of his or her suspension.) Hearing Officer 1 said the OIP wants building administrators to submit Type I packets within 24 hours of the alleged Type I offense so it has the information necessary to contact a student's parents and schedule the student's discipline conference. Hearing Officer 2 told OCR there is a certain degree of flexibility to the process, and that building principals who are still gathering information for a Type I referral after the 24-hour window for submitting their Type I packet should advise the OIP that they are doing so.

All three hearing officers told OCR Type I packets/referrals may be rejected by the OIP under certain circumstances, and that the hearing officers determine whether or not to accept a Type I referral. Hearing Officer 1 said a Type I packet may be rejected by the OIP if the packet is incomplete, submitted in an untimely manner, or if the offense resulting in the referral is "not a true Type I offense." According to Hearing Officer 1, if a Type I packet is rejected for incompleteness, the sending school is given an opportunity to complete the packet and resubmit it to the OIP within 10 days of the date of the incident. Hearing Officer 2 stated that a Type I packet may be rejected by the OIP if, "when looking at all of the information and the evidence presented in the Type I packet, the disciplinary incident does not fit the policy definition of a Type I infraction," or if there was a violation of the student's due process rights during the course of the investigation. Hearing Officer 2 indicated that in those situations, the building principal is given the opportunity to resubmit the disciplinary referral.

Hearing Officer 3 also reported that a Type I packet may be rejected by the OIP for incompleteness, and provided the example of a Type I packet that was missing documentation of a student with a disability's manifestation determination review. Manifestation determination reviews for students receiving special education services are to be held at the referring school prior to the OIP conference. Hearing Officer 3 indicated that when incomplete packets are received by the OIP, the referring school may resubmit the Type I packet with the necessary paperwork if it is still submitted within 10 days of the date of the alleged misconduct.

Once the OIP has accepted a Type I referral, it sends a letter to the referring school and to the student's home informing them of the date and time for the student's discipline conference. An administrator from the school and another staff member familiar with the alleged offense must attend the conference, along with the student, student's parent, and anyone else the parent wants to bring to the conference. During each discipline conference, school personnel, as well as the student and parent, are given an opportunity to discuss the alleged offense, and the hearing officers may ask questions of the parties.

The District does not make audio or video recordings of the OIP discipline conferences. All of the OIP hearing officers told OCR that they make handwritten notes during discipline conferences on an "OIP Decision/Conclusion Form." The officers' handwritten notes typically

reflect comments or concerns shared during the conference by the school representative, student, and/or the student's parent.<sup>18</sup>

At the end of a student's Type I disciplinary hearing, Hearing Officer 1 and Hearing Officer 2 determine whether to: 1) return the student to the school that referred the student to the OIP, without any additional disciplinary consequences; 2) assign the student to an alternative school/program within the District; or 3) transfer the student to a different non-alternative school within the District. They both told OCR that they make their determination based on the information provided by all parties during a student's discipline conference and the information provided in the student's Type I packet. The hearing officers rarely, if ever, issue additional days of suspension to students, recommend expulsion, or assign any other type of disciplinary consequence to students. Hearing Officer 2 said, "The main role of the hearing officer is to determine where a student will attend school from that day forward." If the hearing officers determine that a student committed the Type I infraction reported by the sending school, they typically assign the student to a new school: either an alternative school/program or a different, non-alternative school. If the hearing officers determine that the student did not commit the Type I infraction, they generally return the student to the referring school. Also, if a school administrator fails to attend a student's OIP discipline conference, the hearing officers automatically return the student to the referring school.

Hearing Officer 3 told OCR that at the end of the discipline conferences she handles for special education students, she makes a recommendation regarding the student's school assignment, e.g., whether the student should be returned to the sending school, assigned to an alternative school/program, or assigned to another school in the District. Hearing Officer 3 does not have the authority to unilaterally transfer a special education student to a different school/program; the transfer must be approved by the student's IEP team. When recommending that a special education student be transferred out of the school that referred the student to the OIP, Hearing Officer 3 confers with a special education process coordinator about which schools offer appropriate special education services for the student and have an opening. Unlike Hearing Officer 1 and Hearing Officer 2, Hearing Officer 3 told OCR that while her job is to "read the information" submitted to the OIP in a Type I packet and make a determination/recommendation based on information provided by the referring school, for Type I infractions that are more "severe," she may conduct her own independent investigation prior to making a determination. Specifically, she may visit the school where the alleged infraction occurred and interview staff and students about what happened.<sup>19</sup>

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<sup>18</sup> OCR's review of OIP files revealed that many of the hearing officers' notes on the OIP Decision/Conclusion Form referred to students' living situation, past educational placements and success in a particular educational placement, and physical, mental, or behavioral health services and other interventions students were receiving at the time of the conference.

<sup>19</sup> For example, in April 2016, Hearing Officer 3 received a Type I packet for an eighth grade male student who allegedly displayed his genitalia to a female student under his desk and ejaculated during class. The male student claimed that the female student disliked him and fabricated the incident. Hearing Office 3 conducted her own investigation prior to holding the discipline conference for the male student and, based on her interviews with school staff and students, as well as information presented during the discipline conference, concluded that the alleged misconduct did not occur and the male student could return to his school.

For regular education students, if Hearing Officer 1 or Hearing Officer 2 determines that a student should be assigned to a different school site than the one that referred the student to the OIP, the OIP's administrative assistant immediately prepares a "school placement and decision letter." The student's parent is given a copy of the letter, which states the student's new school assignment, and may use the letter to enroll the student in the new school as soon as possible, sometimes as soon as the day of the discipline conference. The OIP also sends a copy of the letter to both the referring school and receiving school. One of the alternative school principals OCR interviewed in June 2015 indicated that she generally receives information about the educational history of a student who is placed at her school by the OIP, including a basic description of the offense for which the student was transferred, but does not always receive the information in a timely fashion or receive as detailed information as she would like. She told OCR that the staff at her school could have prevented some behavioral incidents if they had received adequate information about a student prior to the student showing up at the school.

During the 2015-16 school year, when the OIP hearing officers decided to assign a student who committed a Type I offense, including an offense involving sexual harassment, to an alternative educational setting, they selected from the following options, most of which were limited to students within a certain grade level range:

1. High school students (grades 9-12) could be assigned to the Innovative Concept Academy (ICA) at Blewett, the Multiple Pathways Program at Beaumont, the Fresh Start Academy at Sumner, or the Virtual Academy (also referred to as the Virtual School).
  - The ICA is a community partnership school for District students who have committed a Type I offense. Students generally stay at the ICA for at least one school year and must meet certain attendance, academic, and behavioral requirements in order to transfer out of the ICA. Hearing Officer 3 told OCR in June 2016 that the ICA does not offer any special education services, so she has not recommended it as a placement for any of the special education students whose discipline conferences she handled. During the 2015-16 school year, approximately 66 students attended the ICA.<sup>20</sup>
  - The Multiple Pathways Program focuses on academics, attendance, and conduct. Students accumulate points for completing classes and achieving a certain attendance rate, and have points deducted for disciplinary infractions. Students may also earn points for performing community service, participating in sessions with a school social worker, and showing improvements in attendance, conduct, and course progress. Students must accumulate a certain number of points before they can exit the program and return to a traditional high school setting. During the 2015-16 school year, there were approximately 65 students in the program at one time.
  - The Fresh Start Academy at Sumner is a GED program for students who are at least 17 years old.
  - The Virtual Academy offers online courses for students in kindergarten through 12<sup>th</sup> grade. Fulltime Academy students must be 17 years of age or older and have a low

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<sup>20</sup> In an April 2016 interview, the District's chief of staff told OCR that the ICA would become an alternative placement for students in grades 6-12 at the beginning of the 2016-17 school year.

number of academic credits. Approximately 555 students participated in the Virtual Academy during the 2015-16 school year.

2. Middle school students (grades 6-8) could be assigned to the Stevens Center for Academic Development or the Virtual Academy.
  - All of the students who attended Stevens during the 2014-15 and 2015-16 school years were placed there because they committed a Type I offense. During those school years, Stevens partnered with local community based organizations to provide volunteers, mentoring, and additional services to youth struggling with mental health, substance abuse, and family related issues. Non-special education students had to meet certain criteria in order to transfer out, including a 90% attendance rate, minimum 2.5 GPA, and zero disciplinary infractions. Approximately 100 hundred students were enrolled at Stevens during the 2014-15 school year, and approximately 28 students were enrolled at Stevens during the 2015-16 school year. (As noted previously, the District closed Stevens prior to the start of the 2016-17 school year.)
3. Elementary school students could be assigned to the Educational Therapeutic Support (ETS) Program at Madison School, with limitations.
  - The ETS Program opened at the beginning of the 2015-16 school year and has two separate components: a special education component, and an alternative general education component.
  - The special education component, which consists of nine classrooms with approximately eight to 12 students per class, operates as a separate day facility and provides intensive therapeutic support to special education students in kindergarten through eighth grade. Many of the students in the special education component of the program have issues with aggression, and the majority of the students were exposed to trauma in their childhood and have significant behavioral concerns. Hearing Officer 3 told OCR she generally refers students with consistent behavior issues that therapy can address to the ETS Program. All of the students in the special education component of the ETS Program were placed there by an IEP team.
  - The alternative, general education component of the ETS Program has two classrooms: one that provides “full day educational and social-emotional instruction and support” to fourth and fifth grade students serving a long-term suspension from their school (this classroom is limited to 10 students total), and one for first through third grade students with significant behavioral and/or emotional issues. According to the 2015-16 Resource Book, fourth and fifth grade students are assigned to the general education component of the program as a result of a Type I offense, and in order to transition out of the ETS to a neighborhood school, must follow class rules on a consistent basis, have satisfactory grades, have at least a 90% attendance rate, not have any behavior offenses, and have their ETS teacher recommend the transition.
  - According to the Resource Book, first through third grade students must meet certain requirements before being recommended for the general education classroom in the ETS Program; among other factors, students must have exhibited behaviors that are potentially harmful to themselves on a consistent basis for at least eight weeks, and tiered interventions must have been tried with the students for at least six weeks.

Hearing Officer 1 told OCR she had not received clear guidance about which students were allowed participate in the ETS Program classrooms.

Prior to August 2015, the OIP had a certified school counselor on staff in the position of “transition specialist.” The transition specialist’s duties included completing students’ school site assignment paperwork following a discipline conference, visiting schools to which the OIP assigned students, to assess the students’ progress at the placement, helping determine what wraparound services and/or referrals for services the students needed, and helping facilitate the transition of students from an alternative education setting back to a general education setting. Prior to the start of the 2015-16 school year, the counselor who served as the transition specialist transferred into another position in the District. Hearing Officer 1 told OCR in June 2016 that she attempted to perform some of the duties previously handled by the transition specialist but did not have time to perform all of the duties, such as visiting the receiving schools to assess student progress or facilitating students’ transition out of the alternative education setting.

According to the 2016-17 Code of Conduct, detentions, in-school suspensions, and out-of-school suspensions not exceeding 10 days are not open to appeal beyond the building principal. A student assigned to an alternative site due to a Type I infraction (of any type, not just a sexual harassment offense) may appeal the assignment to the Office of Family and Community Engagement by filling out an appeal form or writing a letter of appeal. The student must submit the completed form or appeal letter to the Office of Family and Community engagement within five business days from the date of the alternative placement. The basis for the appeal is limited to “statements of fact directly pertaining to the infraction that resulted in imposition of the alternative placement assignment.” The Code of Conduct states that notification of the status of an appeal will be sent to the student’s guardian within 10 school days of receipt of the written appeal, and that the Office of Family and Community Engagement’s decision regarding the appeal is final. The Code of Conduct states that a student’s alternative placement will remain in effect until a ruling is made on the student’s appeal.<sup>21</sup>

The OIP does not address employee-on-student harassment, only harassment committed by a student (including student-on-student and student-on-staff harassment) that rises to the level of a Type I offense. Incidents involving known or suspected sexual harassment of a student by an employee are referred to and investigated by the District’s HR Department.

#### *Remedial Measures Offered to Victims of Sexual Harassment and Harassers*

The District does not consistently create or maintain documentation regarding remedial measures offered or provided to students who are subjected to sexual harassment at school or school-related events, or to students who engage in sexual harassment, nor is there a District-wide system for documenting or maintaining such information. Moreover, because District schools generally only include information in the SIS database about the student who engaged in the inappropriate conduct, not the target of the conduct, OCR was only able to find information

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<sup>21</sup> Students, or their parents, may appeal a suspension longer than 10 days to the SAB. They must notify the Office of Family and Community Engagement of their intent to appeal within five business days from the date of the long-term suspension.

about remedial measures that were offered or provided to address student-on-student sexual harassment if the District administrators and staff interviewed by OCR were able to remember the name of the victim, except for Type I referrals where the victim was identified in the Type I packet submitted to the OIP. Some of the school counselors and social workers OCR interviewed indicated that they may record in the Parent Contact Log section of the SIS database when they had contact with a student's parent about remedial measures for a sexual harassment incident, but stated that when they did so, they generally would not put any details in SIS about what was discussed due to confidentiality concerns.

In Harassment Survey 1, 63 of 74 responding administrators indicated that students who are victims of sexual harassment are provided assistance such as counseling with the school counselor and/or social worker. Three administrators marked that victims do not receive such assistance, and eight administrators indicated that they did not know. Some administrators indicated that referrals for outside services are sometimes given.

In May 2016, OCR issued an electronic survey (Harassment Survey 2) to all District counselors and social workers (137 individuals total) seeking information regarding how the District, particularly their school, addresses racial and sexual harassment of students. In Harassment Survey 2, 22 of 35 respondents indicated that students who are the victim of sexual harassment are offered services like counseling. (The other 13 respondents did not know if such services are offered.) Similarly, in response to a question about whether students who engage in sexual harassment are offered services such as counseling, 20 of the 34 counselors and social workers who responded indicated that they are. (The other 14 respondents did not know if such services are offered to harassers.)

Hearing Officer 1 told OCR that when she holds a discipline conference for a student who has engaged in a Type I offense involving student-on-student sexual harassment (or racial harassment) the alleged victim is not present. She said she generally does not have any contact with victims of student-on-student harassment and has not suggested or required any remedies for victims of sexual (or racial) harassment as part of the OIP process. Hearing Officer 1 told OCR that she hoped the needs of student victims would be addressed at the school level by a principal, counselor, or social worker. Hearing Officer 1 further stated that if either the harasser and his or her family, or the victim and his or her family, approached the OIP for assistance with matters related to remedying the effects of harassment, she would attempt to provide assistance in the form of referrals to outside services. Hearing Officer 2 also told OCR that he is not involved in recommending or requiring remedial services for a victim of sexual (or racial) harassment because in most cases, the victim of the alleged harassment does not have contact with the OIP. Hearing Officer 2 stated that the provision of supports and services for a victim of sexual (or racial) harassment would probably occur at the school. Similarly, Hearing Officer 3 said she has no involvement in requesting or arranging services for either perpetrators or victims in sexual or racial harassment cases that are referred to the OIP.

The District's chief of staff told OCR in April 2016 that the OIP does not arrange services for student victims of sexual or racial harassment. He indicated that if access to those types of services were requested or deemed necessary, building principals and staff in the Office of Family and Community Engagement would likely work with the family of the victim to facilitate

the delivery of counseling services by District-employed social workers or counselors at the victim's school or, in the alternate, provide referrals to therapeutic services offered by outside agencies. The chief of staff noted that while a student victim's name may be included in a Type I hearing packet for incidents involving racial and sexual harassment, the names of student victims and student witnesses are not identified during the OIP discipline conference for the alleged harasser.

The Compliance Coordinator told OCR that school counselors and/or social workers are available at all District schools to provide counseling or other assistance to students who are victims of sexual or racial harassment. He said that if a school believes it does not have the resources to address a student's needs, it can contact the District's Central Administrative Office, which can arrange for the student to receive services at another school site or in the community through an outside agency.

The deputy superintendent of student services, who has oversight over the Office of Family and Community Engagement, informed OCR that building principals may contact the Office of Family and Community Engagement if they believe a student victim of sexual or racial harassment needs counseling or other support services beyond what is available at the student's school. The deputy superintendent was unable to identify any situations where a building principal made a request for assistance to provide services for a student victim of sexual or racial harassment, and stated that such requests are extremely rare.

The coordinator of employee relations, who deals with cases of employee-on-student harassment, told OCR in May 2016 that the Human Resources Office has no involvement in providing remedial services to student victims of sexual or racial harassment and that arranging remedial services, such as counseling, is within the purview of the Family and Community Engagement Office. The coordinator indicated that the building principal would likely initiate communication with the Family and Community Engagement Office if these types of services were necessary for a student. He also indicated that parents may contact the Family and Community Engagement Office directly to request access to counseling services for their child.

Generally, when District-level administrators were asked by OCR about specific incidents of sexual and racial harassment that occurred during the previous three school years, they could not recall or were unaware of what remedial services, if any, were provided to the student victims. District Administrators frequently cited their lack of contact with victims of sexual and racial harassment.

#### *Sexual Harassment Incidents by Students During 2011-12, 2012-13, and 2013-14 School Years*

In July 2014, OCR asked the District to provide, for each elementary, middle, and high school, copies of any records reflecting incidents of alleged discrimination, harassment, bullying, or violence (including allegations of actual or attempted assault), against students based on race or sex that were reported to the District from the beginning of the 2011-12 school year through the date of the request. For each incident, OCR asked the District to provide: a) the name, race, and gender of the alleged target of the incident; b) the names, address, and contact information for the parents of the alleged target of the incident; c) the name, race and gender of the alleged

perpetrator, if known; d) whether the alleged perpetrator was a District student, teacher, administrator, or other staff member; e) the type of discrimination alleged; and f) copies of records reflecting the investigation/resolution, discipline imposed, or other corrective or remedial actions taken in response to the allegation.

In response, the District provided OCR an electronic Excel spreadsheet in December 2014 (December 2014 Spreadsheet) with 784 total entries describing “sexual misconduct” and “racial misconduct” incidents that took place during the 2011-12, 2012-13, and 2013-14 school years. For each incident, the spreadsheet provided: the school where the incident occurred; the name, grade, gender, and ethnicity of the perpetrator/harasser; the type of incident (sexual or racial); the date of the incident; the “teacher name”<sup>22</sup>; the number of days of “discipline” imposed on the perpetrator (which did not distinguish between in-school and out-of-school suspensions); and a comment describing the incident, which in some instances provided additional details about what disciplinary action was imposed on the harasser.

To create the December 2014 Spreadsheet, the District searched its SIS database for disciplinary infractions by students that fell within the following discipline codes used by the District: 1) rape/forced sexual (Code #07-1); 2) racial harassment, Type I (Code #12-2); 3) racial harassment, Type II (Code #23-2); 4) sexual misconduct/harassment (Code #13-2); 5) indecent exposure (Code #14-2); and 6) bullying/hazing/cyberbullying/harassment (Code #21-2). The District did not include specific discipline codes on the December 2014 Spreadsheet. Instead, it labelled the incidents on the spreadsheet as either “racial misconduct” or “sexual misconduct.”

The December 2014 Spreadsheet addresses misconduct by students, not misconduct by District employees or third parties. In some cases, the harassing behavior described on the spreadsheet was directed toward another student, and in some cases, it was directed toward a staff member or other individual.<sup>23</sup> The types of sexual misconduct reported in the spreadsheet vary considerably. Some offenses listed include students urinating in public (e.g., in class, in the gym, on the playground, on a school bus), students making sexual noises and gestures, students making inappropriate sexual comments to other students and staff, students exposing their genitalia and buttocks to other students and staff, students engaging in voluntary sexual behavior (ranging from kissing to having intercourse at school), students pulling down the pants of other students, students making unwanted sexual advances towards others, and students inappropriately touching other students and staff.

In most cases, the December 2014 Spreadsheet does not identify the name of the victims of alleged, or confirmed, racial or sexual misconduct, does not provide any demographic information about the victims (grade, gender, ethnicity), and does not provide any contact information for the victims’ parents. The District indicated that based on its current system and

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<sup>22</sup> The District indicated the name listed on the spreadsheet in the “teacher name” column for a particular incident should reflect the employee who witnessed the incident or referred the alleged harasser to the office for the incident, but may instead be the name of the person who entered the incident into the District’s student database.

<sup>23</sup> Although the focus of this compliance review is the racial and sexual harassment of students, not student-on-staff harassment, for purposes of tallying the number of entries recorded on the December 2014 Spreadsheet by school and by year, OCR included both student-on-student and student-on-staff incidents since separating the two would have been extremely time intensive.

data entry, it would be “nearly impossible” for the District to provide OCR the requested victim information for all of the incidents on the spreadsheet because victims’ names are generally not entered into the SIS database from which the information about the incidents on the spreadsheet was drawn.<sup>24</sup>

The December 2014 Spreadsheet contained a total of 294 entries regarding incidents that occurred during the 2011-12 school year: 281 sexual misconduct entries and 13 racial misconduct entries. (A single sexual or racial misconduct incident may have resulted in more than one entry on the spreadsheet if there was more than one alleged perpetrator.) The 281 sexual misconduct entries described incidents that occurred at a total of 59 different schools: 35 elementary schools, 12 middle schools, 11 high schools, and one alternative school.

The December 2014 Spreadsheet contained a total of 279 entries regarding incidents that occurred during the 2012-13 school year: 11 racial misconduct entries and 268 sexual misconduct entries. The 268 sexual misconduct entries described incidents that occurred at a total of 50 different schools: 29 elementary schools, 10 middle schools, eight high schools, and three alternative schools/programs.

The December 2014 Spreadsheet contained a total of 209 entries regarding incidents that occurred during the 2013-14 school year: 10 racial misconduct incidents and 199 sexual misconduct incidents. The 199 sexual misconduct incidents occurred at a total of 45 different schools: 30 elementary schools, eight middle schools, six high schools, and one alternative school.

#### *Sexual Harassment Incidents by Students During 2014-15 School Year*

In April 2015, OCR asked the District to provide another spreadsheet reflecting, for each school in the District, each incident of alleged discrimination, harassment, bullying, or violence against students based on race and/or sex that was reported to the District or witnessed by a District employee from the beginning of the 2014-15 school year through the date of the request, including student-on-student incidents and staff-on-students incidents. OCR requested similar information about the incidents as it did for the December 2014 Spreadsheet.

In response, the District provided OCR an electronic Excel spreadsheet in June 2015 (June 2015 Spreadsheet) with 215 total entries describing “sexual misconduct” and “racial misconduct” incidents that took place during the 2014-15 school year. The June 2015 Spreadsheet contains the same categories of information as the December 2014 Spreadsheet, and only addresses misconduct by students. To create the spreadsheet, the District searched its SIS database for

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<sup>24</sup> In April 2015, OCR requested a copy of all documentation created or maintained by the District regarding 14 specific incidents described on the December 2014 Spreadsheet, including documentation of the District’s investigation into and resolution of each incident. The District provided varying amounts of documentation for seven of the incidents, and stated that it did not have any documentation about the other seven incidents other than the information entered into the SIS database that was already provided on the December 2014 Spreadsheet.

disciplinary infractions by students that fell within the same discipline codes used by the District to create the December 2014 Spreadsheet. As done previously, the District did not include discipline codes on the June 2015 Spreadsheet, but rather identified entries as either “racial misconduct” or “sexual misconduct,” and the June 2015 Spreadsheet does not provide the names of victims of alleged, or confirmed, racial or sexual misconduct, provide any demographic information about victims (grade, gender, ethnicity), or provide any contact information for victims’ parents. The types of sexual misconduct reported on the June 2015 Spreadsheet vary considerably.

Two-hundred-eleven of the 215 entries from the 2014-15 school year listed on the June 2015 Spreadsheet were classified by the District as sexual misconduct. The 211 sexual misconduct entries describe incidents that occurred at a total of 49 different schools: 31 elementary schools, nine middle schools, eight high schools, and one alternative school.

While reviewing school and OIP records during OCR’s May 2016 site visit to the District, OCR determined that the District sometimes used discipline code #11-1, “other illegal or very serious misconduct,” for serious sexual harassment or sexual violence incidents. In a June 30, 2016 supplemental data request, OCR asked the District to provide OCR with a new electronic Excel spreadsheet with specific information about each incident of alleged discrimination, harassment, bullying, or violence against students based on race and/or sex that was reported to the District or witnessed by a District employee from the beginning of the 2014-15 school year through the date of the request (excluding employee-on-student incidents already provided to OCR). OCR specified in the supplemental data request that the new spreadsheet should include incidents that were assigned District discipline code #11-1.

In response to OCR’s June 30, 2016 data request, the District provided OCR an electronic spreadsheet in July 2016 (July 2016 Spreadsheet) with 1,435 total entries that were supposed to describe racial and sexual harassment incidents that took place during the 2014-15 and 2015-16 school years. The spreadsheet includes a total of 620 entries from the 2014-15 school year, and a total of 815 entries from the 2015-16 school year. For each entry listed, the July 2016 Spreadsheet provides: 1) the school building by site code where an incident occurred; 2) the unique student identifier, name, grade, gender, and ethnicity of the perpetrator/harasser; 3) the type of incident by incident code; 4) the date of the incident; 5) the location where the incident occurred; 6) the name of the “reporting employee”; 7) the action code corresponding to the type of action taken by the school site or District, the date the action was taken, and the number of days for which the action was imposed<sup>25</sup>; and 8) a comment describing the incident and, in some instances, giving additional details about what disciplinary action was imposed on the perpetrator.<sup>26</sup> Again, information related to the identification of the victim was generally not available as this information is not entered into the SIS database from which the information about the incidents on the spreadsheet was drawn.

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<sup>25</sup> None of the action codes provided indicated when a student was referred to law enforcement for his or her misconduct.

<sup>26</sup> One racial or sexual harassment incident may be included on the July 2016 Spreadsheet more than one time if there were multiple alleged harassers for the same incident; based on the method the District used to create the spreadsheet, there should be a separate entry on the spreadsheet for each harasser.

To create the July 2016 Spreadsheet, the District searched its SIS database for disciplinary infractions by students that fell within the following discipline codes used by the District: 1) rape/forced sexual acts (Code #07-1); 2) other illegal or very serious misconduct (Code #11-1); 3) racial harassment, Type I (Code #12-2); 4) racial harassment, Type II (Code #23-2); 5) sexual misconduct/harassment (Code #13-2); 6) indecent exposure (Code #14-2); and 7) bullying/hazing/cyberbullying/harassment (Code #21-2).

Twenty-three of the entries on the July 2016 Spreadsheet from the 2014-15 school year were coded by the District as “rape/forced sexual acts,” and took place at a total of six elementary schools, four middle school, and three high schools. Offenses listed under this code include sexual gestures, masturbation not involving physical contact with another individual, sexually inappropriate drawings and comments, inappropriate touching of other students over and under clothed areas, inappropriate touching of staff over clothed areas, forced oral sex, and attempted rape.

The District coded 167 entries on the July 2016 Spreadsheet from the 2014-15 school year as “sexual misconduct/harassment.” The majority of offenses listed under this code appear to involve sexually inappropriate comments and gestures directed towards other students and teachers, as well as unwanted sexual touching over clothed areas. Other incidents classified under this code include self-exposure of a student’s sexual organs, unwanted sexual touching under clothed areas, and pornographic images and videos accessed on a student’s personal device. According to the spreadsheet, the incidents in this category occurred at a total of 27 elementary schools, nine middle schools, eight high schools, and one alternative school.

Twenty-one of the entries on the July 2016 Spreadsheet from the 2014-15 school year were coded as “indecent exposure,” and took place at a total of seven elementary schools, three middle schools, and one high school. The majority of the incidents involved students who exposed either their undergarments or an unclothed area of their body to another student or group of students. Six of the 21 entries involved public urination, and two entries involved male students who pulled down the pants and underwear of another student.

On the July 2016 Spreadsheet, 405 of the 620 entries listed for the 2014-15 school year were coded as “bullying/hazing/cyberbullying/harassment.” The majority of the entries do not appear to implicate any form of sexual harassment.

#### *Sexual Harassment Incidents by Students During 2015-16 School Year*

Based on the OIP files OCR reviewed during its May 2016 onsite visit to the District, OCR concluded that several incidents of sexual harassment that were coded in District and school site documentation maintained by the OIP as “rape/forced sexual acts” were ultimately coded as the lesser infraction of “sexual misconduct/harassment” on the July 2016 spreadsheet. OCR also identified three incidents from the 2015-16 school year that were coded as “rape/sexual acts” in District and school site documentation maintained by the OIP, but were not included on the July 2016 Spreadsheet.

The District categorized 278 of the entries on the July 2016 Spreadsheet for the 2015-16 school year as “other illegal or very serious misconduct.” The majority of the entries do not appear to involve sexual harassment or sexual violence. Instead, they describe incidents involving general threats of violence, threats of damage to school property, physical violence, including gang-based violence perpetrated by students against other students and teachers, damage to school property, students leaving school grounds without permission, and the presence of weapons and illicit substances on school property.

Based on the OIP files OCR reviewed, OCR concluded that several incidents of sexual harassment that were coded in District and school site documentation maintained by the OIP as “other illegal or very serious misconduct,” were ultimately categorized as the lesser infraction of “sexual misconduct/harassment” on the July 2016 Spreadsheet, such as an incident where a male seventh grade student pulled another male student’s pants, shorts, and underwear down to the ground during recess, exposing the victim’s genitals. One-hundred-sixty-three of the entries on the July 2016 Spreadsheet for the 2015-16 school year were coded as “sexual misconduct/harassment,” and described incidents that occurred at a total of 21 elementary schools, eight middle schools, 10 high schools, and one alternative school.

There were 13 entries on the July 2016 Spreadsheet from the 2015-16 school year coded as “indecent exposure.” Three of the 13 incidents related to public urination or defecation, and five involved male students who exposed either their undergarments or an unclothed area of their body to another student or group of students. Two entries implicated the same incident in which two male kindergarten students were engaged in sexually inappropriate touching of unclothed areas.

The District categorized 348 of the entries on the July 2016 Spreadsheet from the 2015-16 school year as “bullying/hazing/cyberbullying/harassment.” The majority of the incidents described in the entries do not appear to involve sexual harassment or sexual violence.

#### *Employee-on-Student Sexual Harassment Incidents (Fall 2011 – Spring 2015)*

Because the District failed to include on the December 2014 Spreadsheet information regarding any employee-on-student incidents of racial or sexual harassment, OCR requested, in an April 2015 supplemental data request (April 2015 Data Request), information regarding incidents of employee-on-student discrimination, harassment, bullying, or violence based on race or sex that were reported to the District, or observed by a District employee, during the 2011-12, 2012-13, and 2013-14 school years. The District provided OCR a written response on July 17, 2015, which contained narrative descriptions of alleged employee-on-student incidents of racial and sexual harassment. The descriptions did not contain all of the information OCR requested about the incidents. Ten of the incidents described in the response to the April 2015 Data Request involved alleged sexual harassment or sexual assault of students by District employees. District employees OCR interviewed were able to provide additional information regarding some of the incidents described in the District’s response, and OCR also obtained information about some of the incidents from HR files it requested from the District. OCR identified an additional incident of alleged employee-on-student sexual harassment that occurred in January 2012 from a news article found online.

*Employee-on-Student Sexual Harassment Incidents (July 2015 – June 2016)*

OCR requested, in a June 2016 supplemental data request (June 2016 Data Request), information regarding incidents of employee-on-student discrimination, harassment, bullying, or violence based on race or sex that were reported to the District, or observed by a District employee, from July 2015 through June 2016. The District provided a written response on August 8, 2016, which contained narrative descriptions of alleged employee-on-student incidents of racial and sexual harassment. The descriptions did not contain all of the information requested by OCR. Two of the incidents described in the response involved alleged sexual harassment of students by District employees. During his May 2016 interview with OCR, the coordinator of employee relations told OCR staff about four additional employee-on-student sexual harassment allegations from the 2015-16 school year that were not reflected in the District’s response to the June 2016 Data Request.

*Third Party-on-Student Sexual Harassment*

OCR obtained information during interviews with District staff about one female high school senior who was sexually harassed by a third party (non-student/non-employee) during the 2015-16 school year at a school-related internship.

*Disciplinary Consequences for Students Who Engage in Racial Harassment*

The Code of Conduct defines racial harassment as “unwanted behavior, speech, written or pictures directed at someone because of their race, color or nationality,” and notes that racial harassment can be “blatant, or subtle, one incident or a pattern.” The 2014-15 and 2015-16 Codes of Conduct identify racial harassment as a Type II infraction, and provide a “corrective strategies” chart for all Type II infractions, which says, “Multiple strategies may be used depending on individual student’s needs. Selections from this list will be made by school officials in a least-restrictive and progressive manner.” The chart includes several corrective strategies: conference with student; parent contact; loss of privilege; re-teach; create a behavior contract; require the student to complete a community service task; written reflection; have the student choose a method of apologizing or making amends to those harmed or offended (Restorative Justice Practice); refer to intervention team; restitution; arrange linkage with counseling agency; create a home-to-school school-to-home communication system; require daily or weekly check-ins with administrator for a set period of time; identify a mentor and establish a schedule of activities related to school performance; office referral; detention; in-school suspension; Saturday School; out-of-school suspension; call District Security or Law Enforcement; and file charges if law is broken. The Codes of Conduct list two Type II discipline codes that may be used for racial harassment (Code #12-2 and Code #23-2), but do not explain the difference between the two or indicate when one should be used rather than the other.

The 2016-17 Code of Conduct also classifies racial harassment as a Type II infraction and states that all Type II infractions require a referral to an administrator or student support team. It provides only one Type II discipline code for racial harassment (Code #23-2.) The Code of Conduct lists the following Level 1 interventions for racial harassment: parent contact (required);

ISS/reflection/recovery room; “check-in check-out”; and peer mediation. It provides the following Level 2 interventions for racial harassment: restorative circle; Functional Behavior Assessment; BIP (referral to student support team); create a home-to-school school-to-home communication system; group counseling/behavior lessons; conference with parent/student/school staff (required); and Individualized Student Safety Plan. It lists the following Level 3 interventions: removal of privileges; suspension; and referral for District Discipline Conference.

The 2016-17 Code of Conduct identifies racial harassment that violates the Safe Schools Act (Code #12-1) as a Type I infraction that must be reported by school administrators to an appropriate law enforcement agency. The “interventions” chart in the 2016-17 Code of Conduct for that infraction contains the following required interventions: parent contact, law enforcement contact, and up to a 10-day out-of-school suspension with a referral for a District Discipline Conference. In addition, the interventions chart contains the following “possible outcomes”: placement in an alternative program, extended suspension, and expulsion.

### *Remedial Measures Offered to Victims of Racial Harassment*

The District does not consistently create or maintain documentation regarding remedial measures offered or provided to students who are subjected to racial harassment at school or school-related events or to students who engage in racial harassment, nor is there a District-wide system for documenting or maintaining such information. Moreover, because District schools generally do not identify victims of racial harassment in the SIS database, OCR was only able to find out information about remedial measures that were offered or provided to address student-on-student racial harassment if the District administrators and staff interviewed by OCR were able to remember the name of the victim. Some of the school counselors and social workers OCR interviewed indicated that they may record in the Parent Contact Log section of the SIS database when they had contact with a student’s parent about remedial measures for a harassment incident, but stated that when they did so, they generally would not put any details in SIS about what was discussed due to confidentiality concerns.

In Harassment Survey 1, OCR asked, “If your school or the District determines that a student has been racially harassed, is the victim of the harassment offered any type of assistance (e.g., counseling)?” Sixty of the 74 principals and assistant principals who responded to the question said yes, two said no, and 12 indicated that they did not know.<sup>27</sup> The administrators who marked yes were also asked to identify what type(s) of assistance were provided to victims of racial harassment, and the majority identified counseling with the school counselor and/or social worker as the type of assistance provided. Some administrators also indicated that referrals for outside services are sometimes given.

In Harassment Survey 2, OCR asked about remedial measures for students who engaged in racial harassment. Specifically, OCR asked, “If your school or the District determines that a student racially harassed another student, is the harasser offered any services or assistance such as

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<sup>27</sup> OCR asked the same question of school counselors and social workers in Harassment Survey 2. Twenty-five of the 43 individuals who answered the question marked yes, one marked no, and 17 indicated that they did not know.

counseling?” Twenty-two of the 42 social workers and counselors who answered the question marked yes, one marked no, and 19 indicated that they did not know. Those who marked yes were asked to specify the types of services/assistance offered, and the majority of those who responded listed counseling or referrals to outside agencies.

*Racial Harassment Incidents by Students During 2011-12, 2012-13, and 2013-14 School Years*

As noted previously, the December 2014 Spreadsheet contained 13 racial misconduct entries for the 2011-12 school year. The racial misconduct entries described incidents that occurred at a total of nine different schools: two elementary schools; five middle schools; and two high schools. The majority of the incidents involved racial name-calling, which was sometimes directed at students and sometimes directed at staff.

The December 2014 Spreadsheet contained 11 racial misconduct entries for the 2012-13 school year. The racial misconduct entries described incidents that occurred at a total of seven different schools: two elementary schools; four middle schools; and one high school. Most of the incidents involved racial name-calling directed at students and staff.

The December 2014 Spreadsheet contained 10 racial misconduct incidents that occurred during the 2013-14 school year. The racial misconduct entries described incidents that occurred at a total of eight different schools: five elementary schools; one middle school; and two high schools. The majority of the incidents involved racial name-calling directed at students and staff.

*Racial Harassment Incidents by Students During 2014-15 School Year*

The June 2015 Spreadsheet and July 2016 Spreadsheet identify the same four racial misconduct incidents that occurred in the District during the 2014-15 school year. It is unclear from the description on the spreadsheets why one of the incidents was coded as racial harassment. On the July 2016 Spreadsheet, 405 of the 620 entries listed for the 2014-15 school year were coded as “bullying/hazing/cyberbullying/harassment.” The majority of these entries do not appear to implicate any form of racial harassment. None of the OIP files OCR reviewed from the 2014-15 school year involved Type I referrals for racial harassment.

*Racial Harassment Incidents by Students During 2015-16 School Year*

Twelve entries on the July 2016 Spreadsheet for the 2015-16 school year were coded as “racial harassment,” but several of the entries do not appear, given the descriptions on the spreadsheet, to implicate race. The 12 entries reflect incidents that occurred at four elementary schools, four middle schools, and one alternative school. The District categorized 348 of the entries on the spreadsheet from the 2015-16 school year as “bullying/hazing/cyberbullying/harassment.” A majority of the incidents described in those entries do not appear to implicate race. None of the OIP files OCR reviewed from the 2015-16 school year involved Type I referrals for racial harassment.

*Employee-on-Student Racial Harassment Incidents (Fall 2011 – Spring 2015)*

In July 2015, the District provided OCR written information about two incidents of alleged racial harassment by employees that took place between Fall 2011 and Spring 2015. During his May 2016 interview with OCR, the coordinator of employee relations told OCR staff about one employee-on-student racial harassment allegation from the 2015-16 school year that was not reflected in the documentation the District provided to OCR.

**Resolution**

Based on the results of the investigation completed to date, OCR identified several compliance concerns regarding the District’s written grievance procedures for sexual and racial harassment complaints, the role of the District’s compliance coordinator for Title IX and Title VI issues, the role of the OIP in addressing Type I infractions involving racial or sexual harassment, and inconsistent and incomplete record-keeping for alleged and confirmed sexual and racial harassment incidents. The student records and other documentation reviewed by OCR during its investigation often failed to identify student victims of sexual and racial harassment or to fully describe the steps the District took to investigate alleged harassment of students. In addition, OCR was often unable to tell from the records produced by the District what actions it took, once it had notice of a sexually or racially hostile environment, to redress the harassment and prevent its recurrence.

Prior to the completion of OCR’s investigation into this complaint, the District indicated its interest in entering into a voluntary resolution agreement with OCR and signed an Agreement (copy enclosed) on July 26, 2018, that resolves OCR’s compliance concerns. The Agreement requires the District to: develop and publish an anti-harassment statement; select a qualified individual to serve as the District’s compliance coordinator for Title VI and Title IX issues<sup>28</sup>; revise its grievance procedures for racial and sexual harassment complaints made by or on behalf of students; develop and issue climate surveys to administrators, staff, and students; and develop a plan for obtaining input from parents of District students regarding racial and sexual harassment of students. In addition, the Agreement requires the District to: develop and implement a District-wide system for documenting and tracking racial and sexual harassment complaints/incidents, as well as the District’s response to the complaints; provide specialized training to its designated compliance coordinator regarding racial and sexual harassment; provide age-appropriate student training regarding bullying and harassment; develop OIP guidelines for Type I infractions by students involving racial and sexual harassment; develop a process for helping transition students who are assigned to an alternative program or other school site because they engaged in racial and/or sexual harassment; and develop and implement a monitoring system to assess the effectiveness of its efforts to prevent and address harassment based on race and sex. Please consult the Agreement for further details.

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<sup>28</sup> Prior to and during the course of the compliance review investigation, the District had a designated compliance coordinator for Title VI, Title IX, and other issues. The District communicated to OCR its intention to continue having one individual serve as its designated compliance coordinator for both Title VI and Title IX issues. The Agreement requires the District to ensure that the designated compliance coordinator has adequate training/experience to perform the coordinator duties.

OCR considers this compliance review resolved effective the date of this letter and will monitor the District's implementation of the Agreement. When OCR concludes that the District has fully implemented the terms of the Agreement, OCR will close the compliance review. If the District fails to carry out the Agreement, OCR may resume its investigation.

Recipients of federal funds are prohibited from intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by federal civil rights law. Complaints alleging such retaliation may be filed with OCR. Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released.

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.

OCR appreciates the ongoing cooperation you and the District have shown during this investigation. If you have any questions, please contact XXXXX XXXXX, Attorney, at (816) 268-XXXX (voice) or (877) 521-2172 (telecommunications device for the deaf), or by email at XXXXX.XXXXX@ed.gov.

Sincerely,

/s/ XXXXX XXXXX

XXXXX XXXXX  
Supervisory Attorney

Enclosure