



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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July 27, 2018

Mr. Keith Cowan  
Superintendent  
Bernalillo Public Schools  
560 South Camino Del Pueblo  
Bernalillo, New Mexico 87004

*Via email only to [kcowan@bps.k12.nm.us](mailto:kcowan@bps.k12.nm.us)*

Re: **Bernalillo Public Schools**  
OCR Case Number: 08-18-1196

Dear Superintendent Cowan:

We have completed our investigation stemming from the complaint against Bernalillo Public Schools (District) alleging discrimination on the basis of sex. OCR investigated whether the District: (1) had a notice of nondiscrimination that met the requirements of the regulation implementing Title IX; (2) designated at least one adequately trained employee to coordinate its responsibilities to comply with and carry out its responsibilities under Title IX, and notified students and employees of the name, office address, and telephone number of the designated employee; (3) had grievance procedures that provided for the prompt and equitable resolution of complaints alleging any action prohibited by Title IX; and (4) failed to provide a prompt and equitable response to a report that the Complainant's daughter (Student) was sexually assaulted by a classmate, thus permitting her to be subjected to a hostile environment at XXXX School (School).

OCR formally notified the District of the complaint by a letter dated February 23, 2018. We issued a data request with the notification letter, and received the District's response on March 13, 2018. We received additional data from the District on March 20, 2018. We interviewed the Complainant prior to initiating the investigation. We also spoke with District administration and staff on May 15, 2018.

OCR applies a preponderance of the evidence standard to determine whether the evidence gathered during an investigation is sufficient to support a particular conclusion. Specifically, OCR examines the evidence in support of and against a particular conclusion to determine whether the greater weight of the evidence supports or is insufficient to support the conclusion.

Our investigation found sufficient evidence to establish that the District's notice of nondiscrimination, designation of an adequately trained employee to coordinate its responsibilities to comply with and carry out responsibilities under Title IX, and grievance procedures do not meet the requirements set forth in the regulations implementing Title IX. Before OCR had sufficient evidence to make a determination regarding the fourth allegation, that the District failed to provide a prompt and equitable response to the report that the Student was sexually assaulted, the District asked to resolve the allegation with a voluntary agreement.

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

The District has voluntarily entered into a resolution agreement (Agreement) to fully resolve this complaint. A signed copy of the Agreement is attached.

### **Legal Standards**

The regulations implementing Title IX, at 34 C.F.R. § 106.31, prohibit discrimination based on sex by recipients of Federal financial assistance. Under Title IX and its implementing regulations, the District is responsible for providing students with a nondiscriminatory educational environment. Sexual harassment of a student can result in the denial or limitation, on the basis of sex, of a student's ability to participate in or receive education benefits, services, or opportunities.

#### **I. Notice of Nondiscrimination**

The regulation implementing Title IX, at 34 C.F.R. § 106.9, requires a school district to implement specific and continuing steps to notify all applicants for admission and employment, students and parents, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the school district that they do not discriminate on the basis of sex in their education programs or activities, and that they are required by Title IX not to discriminate in such a manner. The notice must also state that questions regarding Title IX may be referred to a school district's Title IX Coordinator or to OCR.

#### **II. Title IX Coordinator**

The Title IX regulation, at 34 C.F.R. § 106.8(a), requires a school district to designate at least one employee to coordinate its responsibilities to comply with and carry out its responsibilities under Title IX. This regulation also requires a school district to notify all students and employees of the name or title, office address, and telephone number of the designated employee(s). A school district must make sure that all designated employees have adequate training as to what conduct constitutes sexual harassment and are able to explain how the grievance procedure operates.

#### **III. Grievance Procedures**

The Title IX regulation, at 34 C.F.R. § 106.8(b), requires a school district to adopt and publish grievance procedures that provide for the prompt and equitable resolution of complaints alleging any action that would be prohibited by Title IX, including sexual harassment and sexual assault.

Title IX does not require school districts to provide separate grievance procedures for sexual harassment complaints, including sexual assault complaints. A school district may use student disciplinary or other separate procedures for these complaints; however, any procedures used to adjudicate complaints of sexual harassment or sexual assault, including disciplinary proceedings, must afford the complainant a prompt and equitable resolution.

To evaluate whether a school district's grievance procedures are prompt and equitable, OCR reviews all aspects of a school district's policies and practices, including the following elements that are critical to achieve compliance with Title IX:

- a. *Notice to students, parents of elementary and secondary students, and employees of the procedures, including where complaints may be filed;*
- b. *Application of the procedure to complaints alleging discrimination and harassment carried out by employees, other students, or third parties;*
- c. *Provision for adequate, reliable, and impartial investigation of complaints, including the opportunity for both the complainant and respondent to present witnesses and other evidence;*
- d. *Designated and reasonably prompt timeframes for the major stages of the complaint process;<sup>1</sup>*
- e. *Notice to both parties of the outcome of the complaint; and*
- f. *Assurance that the recipient will take steps to prevent recurrence of any sex discrimination or harassment found to have occurred, and to correct its discriminatory effects on the complainant and others, if appropriate.*

#### IV. Response to Report & Hostile Environment

The regulation implementing Title IX, at 34 C.F.R. §106.31(a), provides 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 education program or activity operated by a recipient of Federal financial assistance. Sexual harassment that creates a hostile environment is a form of sex discrimination prohibited by Title IX. Sexual harassment of a student creates a hostile environment if the conduct is sufficiently serious that it denies or limits a student's ability to participate in or benefit from the recipient's program.

When responding to alleged sexual harassment, a recipient must take immediate and appropriate action to investigate or otherwise determine what occurred. If an investigation reveals that discriminatory harassment has occurred, a recipient must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring. It may be appropriate for a school to take interim measures during the investigation of a complaint. For instance, if a student alleges that he or she has been sexually assaulted by another student, the school may decide to place the students immediately in separate classes, pending the results of the school's investigation. If appropriate, the recipient should undertake these steps promptly once it has notice of a sexual harassment allegation.

OCR considers a variety of related factors to determine if a sexually hostile environment has been created and considers the conduct in question from both an objective and a subjective perspective. Factors examined include the degree to which the misconduct affected one or more students' education; the type, frequency, and duration of the conduct; the identity of and relationship between the alleged harasser and the subject or subjects of the harassment; the number of individuals involved; the

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<sup>1</sup> OCR evaluates on a case-by-case basis whether the resolution of sexual violence complaints is prompt and equitable. Whether OCR considers an investigation to be prompt as required by Title IX will vary depending on the complexity of the investigation and the severity and extent of the alleged conduct.

age of the alleged harasser and the subject of the harassment; the size of the school; the location of the incidents and the context in which they occurred; and other incidents at the school. The more severe the conduct, the lesser need to show a repetitive series of incidents.

Under Title IX, a recipient must process all complaints of sexual violence, regardless of where the conduct occurred, to determine whether the conduct occurred in the context of an education program or activity or had continuing effects on campus or in an off-campus education program or activity. Further, once a school is on notice of off-campus sexual violence against a student, it must assess whether there are any continuing effects on campus or in an off-campus education program or activity that are creating or contributing to a hostile environment; and if so, address that hostile environment in the same manner in which it would address a hostile environment created by on-campus misconduct.

### **Investigative Findings**

#### **I. Notice of Nondiscrimination**

The District informed OCR that their notice of nondiscrimination was located within their policies on discrimination that are found in the School's Student Handbook, as well as those found within their Board Policies. Specifically, the District provided OCR with copies of Board Policies JB and G-0750, as well as the School's Student Handbook, for review.<sup>2</sup> OCR also located and reviewed Board Policy A-0300, a policy on sexual harassment.

Together, the Board Policies prohibit students and staff from engaging in discrimination on the basis of sex and state that complaints of discrimination can be filed with the Superintendent. However, the District does not list contact information for the Superintendent or state that inquiries concerning the application of Title IX may be referred to the Title IX Coordinator or to OCR. The School's 2017-2018 Student Handbook also prohibits students from engaging in discrimination on the basis of sex and states that complaints may be filed with XXX using a Title IX Complaint Form. The School's Student Handbook provides a physical address, telephone number, and fax number for XXX.

A notice of nondiscrimination does not appear on the District's webpage and cannot be located through use of the "search" feature on the District's webpage. It is not clear whether the notice of nondiscrimination is published in enrollment materials.

#### **II. Title IX Coordinator**

In its narrative response to OCR, the District identified XXX as the person responsible for Title IX compliance at the School. The District did not identify a District-level Title IX Coordinator, stated that if appropriate, a complaint "can go up the chain of command, which ends with the Superintendent." The policies that the District indicated represented its notice of nondiscrimination and Title IX policies and procedures inconsistently identify the person responsible for resolving complaints of discrimination on the basis of sex.

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<sup>2</sup> Board Policy JB is the District's policy on equal educational opportunities and Policy G-0750 concerns staff ethics.

OCR accessed the District's Board Policies and found additional inconsistencies. Policy J-4381: Interscholastic Sports (Title IX) states, "The school district shall designate a Title IX coordinator by name, title, school address and telephone number on the district web site in handbooks and in publications." Policy J-4381 continues, identifying a former Director of Human Resources for the District (Former Director) as the Title IX Coordinator for the District. A physical address, phone number, and email address for the Former Director are provided. OCR does not know what, if any, Title IX training the Former Director received. Policy JB: Equal Educational Opportunities states that any person who feels unlawfully discriminated against or to have been the victim of unlawful discrimination . . . or who knows of such discrimination against another person should file a complaint with the Superintendent. Consistent with Policy JB, Policy J-3600 identifies the Superintendent as the "compliance officer for discrimination."

The District's Superintendent stated that XXX is the District's Title IX Coordinator, but that all staff "fall under the umbrella to ensure equity." OCR interviewed XXX on May 15, 2018. XXX told OCR that his job responsibilities involved XXX XXX. OCR asked whether he was also the School's Title IX Coordinator, and XXX responded, "I believe I am." XXX proceeded to explain that there was some confusion and doubt about his status as the School's or District's Title IX Coordinator.

XXX told OCR that he had not done anything as Title IX Coordinator outside of the School during the 2017-2018 school year. When OCR asked XXX to speak to his responsibilities with respect to Title IX, he responded that he could "speak back to when, in previous years, when the previous superintendent had asked [him] to do that." XXX told OCR that he did not receive training, but rather that he was self-taught in terms of reporting and issues pertaining to Title IX. The also reported that he did not know whether anybody else in the District had responsibilities with respect to Title IX, whether the District had a policy on sexual misconduct, or whether the Title IX policy was the same for the School and the District.

During the course of OCR's interview with XXX, XXX conveyed a sincere desire to fully comply with the requirements of Title IX. However, he did not demonstrate a thorough understanding of the District's policies that relate to Title IX, including those that are designed to govern the filing of complaints.

### III. Grievance Procedures

The District reported that its grievance and complaint procedures are included with the Title IX policy in the School's Student Handbook, as well as throughout Board Policies J-3600, J-3611, J-3631, J-3632, G-0750, G-0761, and G-0850.<sup>3</sup> The District also referred OCR to its Student Complaint Form, which is published on the School's website under Parent Resources – Important Forms. OCR reviewed the referenced materials, as well as the District's Title IX Grievance Form and Policy ACA-R, to determine whether the six critical elements of prompt and equitable grievance procedures were present.

- a. *Notice to students and employees of the procedures, including where complaints may be filed*

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<sup>3</sup> Policy J-3600 concerns student concerns, complaints, and grievances; Policy J-3611 is the regulation implementing J-3600; Policy J-3631 contains a complaint form that accompanies Policies J-3600 and J-3611; Policy J-3632 contains an exhibit on J-3600 that is to be displayed in school buildings and in student handbooks; Policy G-0750 concerns staff ethics; and Policies G-0761 and 0850 regard standards of professional conduct and staff conduct with students.

The procedures outlined in the District's Board Policies, the School's Student Handbook, the Student Complaint Form, and the Title IX Grievance Form are inconsistent. Specifically, Policy J-3600 directs students to file complaints on their own behalf, in writing, with the Superintendent, while the Student Handbook states that students who believe they have been subjected to sex-discrimination under an educational program or activity sponsored by Bernalillo Public Schools may download a copy of the Student Complaint Form and return it to XXX. The Student Complaint Form, itself, states that completed forms should be filed with a school administrator or the administrator's supervisor, or with a professional staff member who will forward it to the school administrator or the administrator's supervisor.<sup>4</sup> Separately, the Title IX Complaint Form indicates that completed forms should be mailed or delivered to Bernalillo School District, to the attention of XXX.<sup>5</sup>

Policy J-3632, the District's "Exhibit" of Policy J-3600, states that the policy shall be displayed in school buildings and in student handbooks. The Superintendent, XXX, and at least one XXX either did not know whether the District's Title IX policy was posted at the School or did not believe it was posted. Policy J-3632 also states that forms for submitting complaints are to be available to students and staff in the school offices.

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

Although Policy J-3600, which pertains to student conduct, does not explicitly state who the policy applies to, it does state that if a school administrator is included in the allegation, the complaint shall be transmitted to the next higher administrative supervisor at the time it is filed. From this statement, OCR understands a complaint may be filed against a school administrator.

The Student Complaint Form asks students to identify the person they wish to complain against. Specifically, the Student Complaint Form asks the complainant to identify the name of person, school (department), program, or activity against whom the complaint is filed. It does not state or imply that the District's procedures apply to complaints alleging discrimination and harassment carried out by third parties.

Policy G-0750 sets forth the standards that licensed educators are held to; this policy explicitly states that licensed educators may not sexually harass any school employee, school visitor, or anybody else they encounter in the course of their official duties. However, Policy G-0750 does not similarly state that third parties are prohibited from sexually harassing employees or students.

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

The District's Title IX policies and procedures state that students may report incidents of sexual harassment, sexual violence, or sexual misconduct by filling out a Student Complaint Form or a Title IX Grievance Form, both of which are available online. Pursuant to Policy J-3600, students are to file complaints on their own behalf, although a professional staff member may assist them in completing a

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<sup>4</sup> The Student Complaint Form is available at Policy J-3631. It is referenced in Policies J-3600 and J-3611.

<sup>5</sup> X – FOOTNOTE REDACTED – X

complaint form. Although Policy J-3611 explains that a school administrator or supervising administrator will conduct an investigation, the regulation does not articulate how the person conducting the investigation will ensure that it is adequate, reliable, or impartial.

The Student Complaint Form, available at Policy J-3631, asks complainants to identify individuals “who could provide more information regarding this [alleged incident],” along with the individuals’ addresses and telephone numbers. Similarly, the Title IX Grievance Form asks complainants to identify “other persons who may have observed the act(s) or incident(s)” described in the complaint and also “others, if any, whom you know have been treated the same or differently in a similar situation.” The Title IX Grievance Form invites complainants to provide any pertinent information that may assist in the investigation.

The District’s policies do not outline how investigations will be conducted at the school or district level. Neither the policies nor forms state that a respondent has the opportunity to present witnesses or pertinent information or state the standard that will be applied to investigations. XXX School’s XXX and XXX told OCR that they needed to be “100% positive” or “100% sure” that an incident took place before they imposed a disciplinary consequence on a responding student.

Policy J-3600 requires that the disposition of all complaints “be reported to the Superintendent as the compliance officer for discrimination.” Policy J-3611 states, “Where disciplinary action is necessary, District policies and regulations pertaining to permissible penalties and procedures shall be followed as in policy.” OCR carefully reviewed all policies, procedures, and forms referenced by the District and was unable to identify policies and regulations that pertain to hearings or appeals.

The School’s Student Handbook outlines the School’s discipline policies, which govern conduct that disrupts the educational process, constitutes a health or safety hazard, or is in violation of state or municipal law or of school rules and board policies. The School’s disciplinary policy includes a matrix which describes infraction types and prescribes a consequence for the first, second, and third offense of each type.

The School’s discipline policies explain, “Some infractions are so severe that they require a formal hearing with the Bernalillo Public Schools Hearing Officer per regulations of the School Board. The result of the hearing may be long-term suspension that is for any period longer than ten days and may be for the remainder of the school year. The results of the hearing may also be permanent expulsion from the [District].” The discipline policies also contain a disclaimer that administrators have the right to “exercise change(s) of consequences pending individual or group circumstances regarding violation of various discipline infractions.”

d. *Designated and reasonably prompt timeframes for the major stages of the complaint process<sup>6</sup>*

The Board Policies that the District relies on to investigate complaints set forth inconsistent timeframes regarding when a complainant will be contacted after filing a complaint and when the complainant will be notified of the outcome of the investigation.

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<sup>6</sup> OCR evaluates on a case-by-case basis whether the resolution of sexual violence complaints is prompt and equitable. Whether OCR considers an investigation to be prompt as required by Title IX will vary depending on the complexity of the investigation and the severity and extent of the alleged conduct.

Specifically, Policy J-3600 and Policy ACA-R clearly state that accusations must be made within 30 calendar days of the time the student knew or should have known that there were grounds for the complaint. Policy J-3611 states that when a complaint is made to a professional staff member, the staff member will transmit it to the school administrator “not later than the next school day following the day the staff member receives the [complaint].” According to Policy J-3611, the complaint will be investigated by the school administrator or a supervising administrator and the student will be contacted “not later than the school day following the date the school administrator or the supervising administrator receives the information.”

Pursuant to Policy ACA-R, once a written complaint has been filed using the forms provided by the District, “the Superintendent shall require the immediate supervisor or site administrator to investigate and respond in writing to the complaining party within five (5) working days.”

Further, Policy J-3611 establishes procedures whereby: an investigation of a reported incident will be made within ten school days when school is in session or within 15 days during which the school offices are open for business when school is not in session; an investigator will meet with the complainant before the end of the aforementioned time period and discuss the conclusions and actions to be taken as a result of the investigation, while respecting confidentiality of records and student information; and the investigator will prepare a written report of the findings and provide a copy of it to the Superintendent.<sup>7</sup>

*e. Notice to both parties of the outcome of the complaint*

According to Policy J-3611, the investigator will meet with the student who filed the complaint to inform him/her of the outcome of the investigation within the time frame designated by the policy. The District’s Title IX policies and procedures do not mention that or how a respondent will be notified of the outcome.

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

The District’s policies and procedures do not provide assurance that the District will take steps to prevent recurrence of any sex discrimination or harassment found to have occurred and to correct its discriminatory effects on the complainant and others, if appropriate. However, the District administrators and employees who OCR spoke with indicated that they always want all students to feel safe and comfortable at school.

The School’s XXX and XXX told OCR that the School ensures that victims of sexual misconduct are not subjected to a hostile environment by providing supervision and articulating administration’s expectations that students will follow the rules. XXX explained that after an allegation is made, the School may take additional steps such as changing class schedules to ensure a victim and perpetrator don’t have classes together, communicating with teachers to keep an eye on an individual, or making sure there’s reasonable adult supervision nearby.

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<sup>7</sup> An extension of this timeline may be granted by necessity, as determined by the Superintendent.



#### IV. Response to Report & Hostile Environment

X – SECTION REDACTED – X

#### Analysis

OCR applies a preponderance of the evidence standard to determine whether the evidence is sufficient to support a particular conclusion. Specifically, OCR examines the evidence in support of and against a particular conclusion to determine whether the greater weight of the evidence supports the conclusion as alleged.

##### I. Notice of Nondiscrimination

The Title IX regulation, at 34 C.F.R. § 106.9, requires a recipient to publish a notice of nondiscrimination stating that it does not discriminate on the basis of sex in its education programs or activities. The notice must also state that questions regarding Title IX may be referred to a school district's Title IX Coordinator or to OCR. As discussed above, the District publishes such notice in its Board Policies, but not on the District's webpage. The notice of nondiscrimination is present in the School's Student Handbook.

The District's notices of nondiscrimination present in Board Policies and in the School's Student Handbook do not consistently direct questions regarding Title IX to a District Title IX Coordinator or to OCR. Specifically, none of the Board Policies cited by the District notify readers that questions regarding discrimination on the basis of sex may be referred to the Title IX Coordinator or to OCR. Rather, depending on the policy and as outlined above, readers are directed to contact the Superintendent, a school administrator, or any professional staff person for more information or to file a complaint. Further, while the School's Student Handbook includes a Title IX declaration that states that discrimination on the basis of sex is not allowed, it does not state that questions may be directed to the Title IX Coordinator or to OCR; it does, however, appropriately identify XXX, who is also the District's Title IX Coordinator, as the proper individual with whom to file complaints.

For the reasons set forth above, based on a preponderance of the evidence, OCR finds that the District is not in compliance with the Title IX regulation at 34 C.F.R. § 106.9.

##### II. Title IX Coordinator

The Title IX regulation, at 34 C.F.R. § 106.8(a), requires that a recipient designate at least one employee to coordinate its responsibilities to comply with and carry out its responsibilities under that law. As discussed above, the District incorrectly and inconsistently identifies the individual(s) responsible for Title IX compliance.

While some Board Policies indicate that the Superintendent shall be the director of compliance or the "compliance officer for discrimination," one policy identifies a former Director of Human Resources as the Title IX Coordinator. Further, the District did not identify a District-level Title IX Coordinator to OCR until OCR spoke with the Superintendent, who shared that the School's Title IX Coordinator was also the District's Title IX Coordinator. The School's Title IX Coordinator was not aware of his responsibilities as a District Title IX Coordinator and acknowledged that he does not have specific Title IX training.

For the reasons set forth above, based on a preponderance of the evidence, OCR finds that the District is not in compliance with the Title IX regulation at 34 C.F.R. § 106.8(a).

### III. Grievance Procedures

The Title IX regulation, at 34 C.F.R. § 106.8(b), requires recipients to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints alleging any action that would be prohibited by Title IX, including sexual harassment and sexual assault.

As discussed above, the District's grievance procedures inconsistently provide notice to students and employees of the procedures, including notice of where complaints may be filed. Some policies indicate that complaints should be filed with the Superintendent, whereas others indicate complaints should be filed with a school administrator or the administrator's supervisor. It is unclear whether students should fill out the Student Complaint Form or the Title IX Grievance Form. As written, the policies indicate that complaints may not be filed orally; however, District employees indicated that in practice they accepted oral complaints. Further, the grievance procedures state that a complaint may only be made when "the topic is not the subject of disciplinary or other proceedings;" none of the District employees OCR spoke with understood what that provision meant.

The District's grievance procedures do not clearly state that they apply to complaints alleging discrimination and harassment carried out by third parties. Additionally, the District's grievance procedures do not establish procedures for adequate, reliable, and impartial investigation of complaints, including the opportunity for both the complainant and respondent to present witnesses and other evidence.

The District's grievance procedures do not identify reasonably prompt timeframes for the major stages of the complaint process because they do not include timeframes or information about the hearing or appellate processes or indicate when respondents will be contacted throughout an investigation. Further, the District's grievance procedures do not explicitly require notice to the parties of the outcome of the complaint process or provide assurance that the District will take steps to prevent recurrence of any sex discrimination or harassment found to have occurred, and to correct its discriminatory effects on the complainant and others, if appropriate, except in its employee policies.

Based on a preponderance of the evidence, OCR finds that the District is not in compliance with the Title IX regulation at 34 C.F.R. § 106.8(b).

### IV. Response to Report & Hostile Environment

Before OCR gathered sufficient evidence to make a determination regarding whether the District's response to the report that the Student was sexually assaulted was prompt and equitable or whether the District permitted the Student to be subjected to a hostile environment, the District indicated its desire to voluntarily resolve the concern. The District's desire to voluntarily resolve the allegation is not an admission of wrongdoing and OCR does not construe it as such.

### Conclusion

After reviewing the documentation, information, and facts uncovered in our investigation, OCR determined that the weight of the evidence shows the District is not in compliance with the procedural requirements of the regulations implementing Title IX at 34 C.F.R. §§ 106.8(a), 106.8(b), and 106.9. OCR did not determine whether the District complied with the regulation implementing Title IX at 34 C.F.R. §106.31(a) because the District indicated its interest in voluntarily resolving the allegation before OCR gathered sufficient evidence to make a determination.

By entering into the Agreement, the District does not admit that it failed to promptly and equitably respond to the report that the Student was sexually assaulted or that it permitted her to be subjected to a hostile environment. We thank the District for its willingness to voluntarily resolve this allegation.

OCR is closing the investigative phase of this case effective the date of this letter. The case is now in the monitoring phase. OCR will monitor implementation of this Agreement through periodic reports from the District demonstrating that the terms of the Agreement have been fulfilled. We will provide the District with written notice of any deficiencies regarding implementation of the terms of the Agreement and will promptly require actions to address such deficiencies. We will provide the Complainant with a copy of OCR's monitoring letters. The monitoring phase will be completed when OCR determines that the District has fulfilled all of the terms of the Agreement. When the Agreement is fully implemented, the allegations will be resolved consistent with the requirements of Title IX and its implementing regulations. When the monitoring phase of this case is complete, OCR will close this case and send a letter to the District, copied to the Complainant, stating that this case is closed. If the District fails to implement the Agreement, we will take appropriate action, as described in the Agreement.

This resolution letter issued by OCR addresses an individual OCR case. Resolution letters contain fact-specific investigative findings and dispositions of individual cases; they are not formal statements of OCR policy and they should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Individuals filing a complaint or participating in our resolution process are protected from retaliation by Federal law. Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint investigation. If this happens, the individual may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personal information, which if released, could constitute an unwarranted invasion of privacy.

Thank you for your attention to this matter, the District's cooperation, and counsel's assistance. If you have any questions, please contact Allison Morris, the attorney assigned to the case, at (XXX) XXX-XXXX or XXX XXX.

Sincerely,

/s/

Angela Martinez-Gonzalez  
Supervisory General Attorney

Attachment: Resolution Agreement

CC *via email*: Barry Barenberg, Walsh, Gallegos, Trevino, Russo & Kyle, P.C., Attorney for the  
District (bbarenberg@wabsa.com)  
Christopher Ruskowski, New Mexico Secretary of Public Education  
(c.ruskowski@state.nm.us)