



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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November 1, 2018

Superintendent Tom Boasberg
Denver Public School District
Emily Griffith Campus
1860 Lincoln St., 12th Floor
Denver, CO 80203
Via email only: superintendent@dpsk12.org

Re: Denver Public Schools
OCR Case Number: 08-18-1308

Dear Superintendent Boasberg:

We write to advise you of the resolution of a complaint that was filed with our office against Denver Public Schools (District) and Denver School of Science & Technology (DSST) Conservatory Green Middle School and High School (School), collectively “the Recipients.” The Complainant alleged that the DSST Board and School, respectively, failed to:

1. adequately respond to a complaint of Title IX discrimination alleging sexual harassment of a XXX female XXX team players, including the Complainant’s daughter (Student), by their coach; and
2. comply with Title IX’s procedural requirements for issuance of a policy against sex discrimination (34 C.F.R. § 106.9), adoption and publication of grievance procedures providing for the prompt and equitable resolution of complaints of sex discrimination (34 C.F.R. § 106.8(b)), and/or designation of at least one employee to coordinate compliance with Title IX (34 C.F.R. § 106.8(a)).

We investigated the complaint pursuant to Title IX of the Education Amendments of 1972 and its implementing regulation at 34 Code of Federal Regulations (C.F.R.) Part 106 (Title IX), which prohibit discrimination on the basis of sex in education programs and activities that receive Federal financial assistance from the U.S. Department of Education (Department). As recipients of Federal financial assistance from the Department, the District and School are subject to this law and regulation.

We found sufficient evidence to conclude that the DSST Board and School discriminated as alleged as described herein. The reasons for our findings are set forth below. Upon being advised of these findings, the Recipients voluntarily agreed to enter into a resolution agreement to resolve the violations. A signed copy of the agreement is enclosed with this letter.

I. Legal Standards

The Title IX regulations, at 34 C.F.R. § 106.31, provide generally that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in education programs or activities operated by recipients of Federal financial assistance. Sexual harassment of students can result in the denial or limitation, on the basis of sex, of students' ability to participate in or receive benefits from a school's program.

If a student or the parent of an elementary or secondary student provides information or complains about sexual harassment of the student, the school should initially discuss what actions the student or parent is seeking in response to the harassment. The school should explain the avenues for informal and formal action, including a description of the grievance procedure that is available for sexual harassment complaints and an explanation of how the procedure works. Regardless of whether the student who was harassed, or his or her parent, decides to file a formal complaint or otherwise request action on the student's behalf, the school must promptly investigate to determine what occurred and then take appropriate steps to resolve the situation. The specific steps in an investigation will vary depending upon the nature of the allegations, the source of the complaint, the age of the student or students involved, the size and administrative structure of the school, and other factors. However, in all cases the inquiry must be prompt, thorough, and impartial.

In every investigation conducted under the school's grievance procedures, the burden is on the school – not on the parties – to gather sufficient evidence to reach a fair, impartial determination as to whether sexual misconduct has occurred and, if so, whether a hostile environment has been created that must be redressed. A person free of actual or reasonably perceived conflicts of interest and biases for or against any party must lead the investigation on behalf of the school. Schools should ensure that institutional interests do not interfere with the impartiality of the investigation. An equitable investigation of a Title IX complaint requires a trained investigator to analyze and document the available evidence to support reliable decisions, objectively evaluate the credibility of parties and witnesses, synthesize all available evidence – including both inculpatory and exculpatory evidence -- and take into account the unique and complex circumstances of each case. Restricting the ability of either party to discuss the investigation (e.g., through "gag orders") is likely to deprive the parties of the ability to obtain and present evidence or otherwise to defend their interests and therefore is likely inequitable. In some instances, a complainant may allege harassing conduct that constitutes both sex discrimination and possible criminal conduct. Police investigations or reports may be useful in terms of fact gathering. However, because legal standards for criminal investigations are different, police investigations or reports may not be determinative of whether harassment occurred under Title IX and do not relieve the school of its duty to respond promptly and effectively. The investigation should result in a written report summarizing the relevant exculpatory and inculpatory evidence. The investigator(s), or separate decision-maker(s), with or without a hearing, must make findings of fact and conclusions as to whether the facts support a finding of responsibility for violation of the school's sex discrimination policy.

Separately, the Title IX regulations establish procedural requirements that are important for the prevention or correction of sex discrimination, including sexual harassment. These requirements

include issuance of a policy against sex discrimination, adoption and publication of grievance procedures providing for prompt and equitable resolution of complaints of sex discrimination, and designation of at least one employee to coordinate compliance with Title IX.

Specifically, 34 C.F.R. § 106.9 requires a recipient to implement specific and continuing steps to notify stakeholders that it does not discriminate on the basis of sex in its educational programs and activities. The notification must also state that inquiries concerning Title IX may be referred to the Title IX coordinator designated under 34 C.F.R. § 106.8(a) as well as to OCR.

Additionally, 34 C.F.R. § 106.8(b) requires a school to adopt and publish grievance procedures that provide for a prompt and equitable resolution of complaints of sex discrimination, including sexual misconduct. OCR has identified a number of elements in evaluating whether a school's grievance procedures are prompt and equitable, including whether the school (i) provides notice of the school's grievance procedures, including how to file a complaint, to students, parents of elementary and secondary school students, and employees; (ii) applies the grievance procedures to complaints filed by students or on their behalf alleging sexual misconduct carried out by employees, other students, or third parties; (iii) ensures an adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; (iv) designates and follows a reasonably prompt time frame for major stages of the complaint process; (v) notifies the parties of the outcome of the complaint; and (vi) provides assurance that the school will take steps to prevent recurrence of sexual misconduct and to remedy its discriminatory effects, as appropriate.

Finally, 34 C.F.R. § 106.8(a) requires a recipient to (1) designate at least one person to coordinate its efforts to comply with and carry out its responsibilities under Title IX, and (2) notify all its students and employees of that person's name, office address and telephone number.

II. OCR's Investigation

A. Scope of OCR's Review

Pursuant to Section 108(g)(ii) of our *Case Processing Manual*, because the Complainant filed the same allegation against the School through DSST's internal grievance procedure and the process with respect to the grievance has concluded, our investigation focused on whether DSST investigated the grievance properly; that is, whether there was a comparable resolution process under comparable legal standards to those OCR would have applied.

B. OCR's Evidentiary Standard

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.

C. OCR's Investigation

Our investigation involved requesting and reviewing extensive information from the Complainant, other parent(s), and the School, as well as interviewing the Complainant and a DSST staff member.

III. Factual Findings¹ & Analysis

A. Title IX Procedural Requirements

As it forms the backdrop against which the Complainant's grievance was adjudicated, we first address DSST/the School's compliance with Title IX's procedural requirements of a policy against sex discrimination, grievance procedures for complaints of sex discrimination, and designation of a Title IX coordinator. The Complainant alleged that the School had, and continued to have, none of these. The School denied this allegation and responded that all of the information required by Title IX's procedural requirements was contained in its Student and Family Handbook.² The School stated that this handbook "is identified to families at the commencement of each academic year." The Complainant alleged that she could not locate a handbook online and was not provided it until October 2017. OCR requested documentation of earlier distribution of the handbook, but the School did not provide it.

i. Policy Against Sex Discrimination

The handbook's antidiscrimination policy states, in full and on page 26:

It is the policy of DSST to recruit, hire, train, educate, promote, and administer all personnel and instructional actions without regard to race, religion, sex, sexual-preference, age, national origin, disability, marital status or public assistance. DSST will not tolerate any discrimination, and any such conduct is prohibited. DSST also prohibits any form of discipline or retaliation for reporting incidents.

ii. Grievance Procedures for Complaints of Sex Discrimination

The handbook's grievance policy provides, in full and on pages 26 and 27:

6. Informal Parent/Guardian Grievance Process

DSST's informal grievance process provides an opportunity to express and resolve grievances. The informal process provides neutral facilitation and mediation, with the goal of informal resolution, restitution and relationship repair with the context of DSST's core values.

¹ Unless otherwise noted, OCR's investigation established the facts cited herein by a preponderance of the evidence.

² The School also noted that its Staff Handbook provides, among other things, different policies prohibiting harassment and discrimination.

To encourage prompt resolution of grievances, community members are asked to address disputes directly with the other individual(s) involved and to allow reasonable time to reach a solution. If conflict resolution is not achieved, the grievance should be brought to the Director or the Dean for further mediation. Community members and school staff are expected to act in good faith to best resolve any conflict.

7. Formal Parent/Guardian Grievance Process

This policy is in place to address any grievance that is not resolved via the informal process or is significant enough, in the mind of the grievant, to require a formal investigative and resolution process that is documented in writing.

To initiate process [sic], submit a signed and dated letter of grievance to the School Director, detailing:

- the allegations of dispute, breach of policy, or discrimination
- the contract, policy, or procedure that has been violated
- a summary of attempts to resolve the conflict through the informal process.

The School Director will acknowledge receipt of the written grievance within 5 work days and will provide a copy of the written grievance to the DSST Public Schools Home Office, to the individual(s) named in the grievance and to their direct supervisors.

Within 30 work days, DSST Public Schools will appoint a resolution team that include[s] members of the school staff and the DSST Public Schools Home Office team. Any person who is directly named in the grievance or who is deemed to have a clear conflict of interest may not be a member of the resolution team. The team will conduct an internal investigation by conducting interviews with all relevant parties, reviewing pertinent documents and reviewing policies.

Within 45 work days of the formal grievance submission, the resolution team will issue a written resolution that may include plans for facilitated conflict resolution meetings, recommendations for change in policy or procedure, or suggested next steps.

If a grievant is not satisfied with the manner in which the resolution team handles the grievance, the matter should be brought to the attention of DSST Public Schools' Board of Directors by contacting the Board Chair or Vice Chair, who will formally respond to the grievant.

It is important to the integrity of our school that grievances be handled in an informed, direct, fair and equitable manner. The administration, DSST Public Schools, and the Board of Directors share responsibility for ensuring the integrity of the vision and its implementation through the system of due process as described in this policy. The final forum for conflict resolution, after a grievant has followed the steps outlined above, will be the Board of Directors who will deliver a written communication to the grievant.

If an individual or group initiates a complaint at a public meeting of the Board of Directors or to the individuals on the Board, the Board is not required to respond to the substance of the complaint, but will instead thank the individual or group for their time and direct them to the grievance process outlined above.

iii. Title IX Coordinator

As to Title IX Coordinator(s), the School responded that for each DSST campus, the Title IX coordinator is that campus's Dean and/or School Director. The School identified the Middle School and High School's coordinator as the Dean of Students at each. The School contended that "[t]his information can be found in the grievance procedures contained in the Student and Family Handbook." It added that "[t]he central point of contact at the DSST Network for Title IX concerns is [name redacted], DSST's Chief of Staff, and her role is identified on the DSST website through the following link: <https://www.dsstpublicschools.org/financial-transparency>." This link is titled "Financial Transparency," with subheadings of "State Waivers & Replacement Plans" (containing such information for DSST, the District, the Colorado Department of Education, and statewide); "Financial Transparency Documents" (containing DSST's tax returns and other documents); and at the bottom of the page: "Network Title IX Coordinator: [name redacted], Chief of Staff [/] Contact: [name redacted]@scienceandtech.edu." The School added that the individuals responsible for investigating complaints differ depending on the nature of the complaint: Each school's Dean of Students is responsible for complaints against students; the DSST's home office Human Capital team is responsible for complaints against school staff.

iv. Analysis

With respect to a policy against sex discrimination, we find that, no earlier than October 2017, the School had such a policy in its antidiscrimination policy on page 26 of its handbook. However, our investigation did not establish evidence that any policy existed prior to that date, and, in any event, the policy does not refer inquiries to a Title IX Coordinator or to OCR.

With respect to grievance procedures for complaints of sex discrimination, we first note that the School's informal grievance process does not comply with Title IX in that, at a minimum, it does not expressly apply to discrimination; does not provide for investigation of complaints, including failing to provide timeframes³ or notice of outcome; and does not assure that steps will be taken to prevent recurrence of any discrimination and to correct its effects. As to the School's formal grievance process:

- notice of the procedure to students, parents of elementary and secondary school students, and employees, including where to file complaints: notice is on pages 26 and 27 of the School's handbook (*i.e.*, not necessarily easily locatable), but our investigation only established evidence that the handbook was distributed by October 2017 and we could not find evidence to support that it was otherwise available to students, parents or employees. Thus, we do not find that sufficient notice of the procedure was provided.
- application of the procedure to complaints alleging discrimination by employees, other students, or third parties: is not expressly provided.

³ The informal grievance procedure calls for grievants "to allow reasonable time to reach a solution," which does not set a designated timeframe.

- adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence: these factors are present in the first stage of the procedure (initial complaint to School Director forwarded to Home Office), and the second stage provides only that a grievant may bring a matter to the DSST Board, which will formally respond in writing to the grievant.
- designated and reasonably prompt timeframes for major stages of the complaint process: such timeframes are sufficiently provided for the first stage, but not for the second stage.
- notice to the parties of the outcome of the complaint: both stages culminate in written notice, but the second stage only requires notice to the grievant.
- an assurance that steps will be taken to prevent recurrence of any discrimination and to correct its effects: is not provided.

With respect to a Title IX Coordinator, DSST/the School contended that, as for each DSST campus, the Title IX Coordinator was each school's Dean of Students, and with respect to the School in particular, "[t]his information can be found in the grievance procedures contained in the Student and Family Handbook." Yet the handbook neither specifically identifies any Title IX Coordinator (or their contact information), nor specifically references Title IX complaints or grievances alleging discrimination on the basis of sex. DSST/the School added that "[t]he central point of contact at the DSST Network for Title IX concerns is" DSST's Chief of Staff, identified at the bottom of a "Financial Transparency" page on the DSST's general website (*i.e.*, not the School's and otherwise not necessarily in an easily locatable location). This individual and this information is not in the handbook and it is not clear when this website originated.

Accordingly, based on a preponderance of the evidence, we find sufficient evidence to support a finding that the School failed to comply with Title IX's procedural requirements for issuance of a policy against sex discrimination (34 C.F.R. § 106.9), adoption and publication of grievance procedures providing for the prompt and equitable resolution of complaints of sex discrimination (34 C.F.R. § 106.8(b)), and/or designation of at least one employee to coordinate compliance with Title IX (34 C.F.R. § 106.8(a)).

B. The Complainant's Complaint of Alleged Sex Discrimination/Harassment

i. Background

DSST operates multiple charter schools within the District, including both a middle school and high school at DSST – Conservatory Green ("Middle School" and "High School," respectively; or collectively, the "School"). DSST abides by what it terms a set of "Core Values" that include respect, responsibility, integrity, courage, curiosity, and doing your best.

ii. July and August 2017 Complaints

In spring/summer 2017, the School hired an outside, adult male coach (Coach) as a girls' XXX coach for both its middle and high school programs. The Coach completed a background check at that time. On intermittent dates from May to August 2017, the Coach held a XXX camp for prospective team members. The Complainant's daughter (Student) attended some of the camp dates.

Between July 17 and August 14, the Complainant and another mother of a student-participant, Parent 1, expressed concerns about the Coach to the School via phone and email.⁴ The parties dispute exactly what was expressed, with the Complainant recalling a more direct recitation of potentially inappropriate sexual behavior, and the School contending that both parents expressed their concerns with hesitation. A July 20, 2017 email from the Complainant to the High School Director establishes that, at a minimum, the Complainant expressed concern that the Coach was: “1. Being “handsy” and flirty with the girls. 2. Asking for all their cell numbers[.] 3. Speaking to them like he was a teenage boy and a friend vs as a professional older male coach.” The Complainant also alleged that she asked both the High School Athletic Director and School Director about policies that applied to her concerns, but neither could identify which policies applied. The School contended, contemporaneously to the parents and later to OCR, that staff met with the Coach twice in August in response to these concerns. Other than these contentions, the School did not provide any documentation to support its assertion that these meetings occurred.

On August 14, 2017, the High School Athletic Director emailed the Complainant, copying the High School Director and DSST’s Senior Manager, Employee Relations and Engagement (Manager), explaining he had met with the Coach and two female assistant coaches had been assigned. He requested an in-person meeting with the Complainant and explained, “If you have further questions about policies you can reach out to [Manager] at [email address].”

In emails on August 15, before a meeting occurred, the Complainant asked the Manager for copies of the School’s “rules in place in regards to; -touching kids -private communication (email, texting, social media friending and following, etc) - rides in a car with only one student and one coach/teacher.” The Manager responded by sending the Staff Handbook. The Complainant responded that the handbook was general and vague and asked, “Since no specifics are mentioned in the handbook as it pertains to the students can you tell me what the school position is in regards to -Unwanted touching, over touching, touching at all (there is a mention in the handbook but I believe the context is regards to employees/staff) -private communication (email, texting, social media friending and following, etc) . . . None of these behaviors are common for a grown man/male coach and some although may seem trivial when looked at alone, are alarming when considered as a whole. If you are familiar with ‘grooming’, many of these check off the list.” The Manager responded to propose discussing these issues at the meeting later that day.

A meeting among the Complainant, Parent 1, their respective husbands, the High School Director, and the Manager occurred on August 15, 2017. The Complainant provided prepared notes to the School, which included lists of three, named “parents to speak with” and 12 names of athletes (including the Student and the daughter of Parent 1), many of which were written next to specific allegations (*e.g.*, a specific name next to “Before a practice started, the coach moved a student’s arms from her chest after telling her not to hold her arms in front of her body and to have positive body language” and a specific name next to “He regularly rests hands on the girls’

⁴ Throughout the entire process outlined herein, concerns that arose included some issues over which OCR would have jurisdiction (*e.g.*, alleged sexual harassment such as inappropriate touching and inappropriate comments) and also some over which we would not (*e.g.*, name-calling or harsh talk not implicating OCR’s harassment jurisdiction). For purposes of this letter we focus only on those concerns over which we would have jurisdiction.

shoulders for long periods of time”). The meeting concluded with the Manager and School agreeing to conduct an immediate investigation into the parents’ concerns and place the Coach on leave until the investigation concluded.

The next day, the Manager emailed a summary of the meeting and information about the investigation to the Complainant, Parent 1, and the High School Director. Her email noted, “In the interim, and even once the investigation has concluded, the subject and the specifics of this investigation should remain confidential.” Her summary documented that “DSST will launch a full investigation into each of the allegations outlined by the [Complainant and Parent 1] families, led by [the Manager].” The allegations were described as whether the Coach:

(1) continues to engage in inappropriate physical contact and behaviors with the players, despite being told that zero touching was permissible; (2) has made a handful of inappropriate/unprofessional comments towards the players; (3) has engaged in unprofessional conversations with parents, chiefly [Parent 1]; (4) has had an erection at least twice during an end-of-practice huddle, as reported by [Parent 1].

Examples of each were listed, with six specific student names (other than the Complainant’s and Parent 1’s daughters). The Manager’s summary indicated that additional concerns were private communication and transportation of students, and that both families felt that the High School Director and Athletic Director had not taken their concerns seriously. The summary described “Investigatory Practices,” stating that the Manager would “interview all of the players named in the above allegations,” three parents identified by the families, the Athletic Director, the assistant coaches, and “share recommendations and next steps with both families at a date to be determined.”

On August 16, 2017 the Manager informed the Coach via phone and email that he would be on paid administrative leave pending an investigation. The email stated that “some parents have brought forth concerns regarding your behavior and professionalism with the players on your team.”

In emails on August 17, 2017, the Complainant emailed the Manager, of relevant note, reiterating her concern that the School/DSST did not have any policies regarding touching, private communication, and transportation of students. The Manager responded that “DSST is fundamentally an organization driven by Core Values over policies. As such, we do not lean toward writing policies that dictate behaviors, but instead expect that our staff live out our values consistently and with fidelity.” Separately, on the same day, the Complainant emailed the Manager asking her to interview “all the girls that attended both camps,” noting that “[t]he arm around the girls happened to multiple students but I could not recall whom and I would assume based on the behaviors observed by myself and [Parent 1] during such a short time frame that there were most likely others that she and I did not witness.” The Manager said she would take it into consideration.

Ultimately, the Manager’s investigation involved interviewing the Student, Parent 1’s daughter, and one parent (other than the Complainant, Parent 1, and their husbands), all via conversation,

and, via email, three assistant coaches. The Manager took notes on the conversational interviews. The notes contain sentence fragments and do not contain a full recitation of all questions asked or of full answers, making it impossible to surmise with certainty what was said. However, they do state that, of relevant note:

- The Student reported “XXX coach is a little strange – he’s a little too touchy-feely – makes the girls feel uncomfortable / he was trying to show how you’re supposed to bend down – so he grabbed her waste [sic] and was standing right behind her. We all know how to get into position, so he didn’t have to grab her. / I can handle myself – don’t feel unsafe – just feel weird when I’m around him.”
- Parent 1’s daughter’s interview included the following:

How’s XXX going?

Team is there for each other, give each advice to become better players.

Core Value with adults?

Coaches have a lot of integrity – esp if they’re late. Have a lot of urgency to get practice started

Thoughts or reflections around respect core value? How should teachers interact with students?

don’t mind unless its excessive

Have you experienced anything that may make you feel like you’ve experienced excessive touvhingg [sic]

don’t think so yet

Is there anything about Coach that makes you uncomfortable?

Sometimes his jokes cross this line – he asked if a player had ADD

Anything else about coach that makes you feel like worried about his living out our core values?

No

- The other parent reported, “Felt sort of uncomfortable – wouldn’t want to leave daughter alone with practice. Not sure if it’s more that he’s a male coach...something odd...just felt something strange. / I didn’t see anything specifically...I don’t know if it’s his demeanor or the things he would say, it just felt off. / Giving her dating guidelines...seemed outside the scope of coaching / Didn’t see anything in terms of touchiness. Just know things from [Parent 1]. Definitely wouldn’t want her alone with him. That said, we wouldn’t leave her alone with the pastor . . . I would like to see [the Coach] just focus on XXX – he definitely knows what he’s doing – no question about that.”

Of the three female assistant coaches interviewed via email, two reported no concerns. A third reported via email that she “only observed [the Coach’s] coaching one day during their camp

sessions.” She stated that “[h]e does stand behind the girls and grab their arms to demonstrate the areas they are responsible for on the court. This is questionable to me because there are other ways to demonstrate this point without making physical contact. . . . His physical contact did not seem out of the scope of a coaching scenario, but unnecessary. . . . I do not believe his philosophy of coaching and teaching aligns with the core values we practice here at DSST. That was one big red flag that stood out to me. He is a wealth of XXX knowledge, just not a good fit for DSST.”

The Manager’s investigation also included interviewing the Coach and receiving a written statement from him, in which he denied in full all allegations and any inappropriate behavior. The Coach opted to resign during the interview.

DSST/the School asserted to OCR that the Manager also interviewed the Athletic Director and attempted to interview the three parents named by the Complainant and Parent 1, but two failed to call her back despite several messages, and the one that did speak to her did not consent to interviewing her child. DSST/the School did not provide documentation of these efforts.

The Manager orally communicated her findings in a meeting on August 30, 2017 with the Complainant, Parent 1 and her husband, and the High School Director. DSST/the School provided OCR a summary document and indicated that the Manager orally communicated this summary in the meeting. This one-page summary consists of a “Summary of Investigative Process” and “Summary of Findings,” and states, of relevant note, that: the Coach’s “physical contact with players was neither harmful nor mal-intentioned”; several of the Coach’s actions violated the School’s Core Values, in general, finding that he could have used “greater professionalism”; and, “We have determined that the perception of any inappropriate/unprofessional comments towards players is subject to interpretation and context. As such, we cannot definitely conclude whether the comments shared out of context were appropriate within a coaching context.” DSST/the School asserted to OCR that it would have taken “appropriate action” had the Coach remained an employee. A similar summary was also provided via letter to the Coach, indicating he would be paid “his coaching severance in full.”

Similarly, the next day, the Complainant emailed the High School Director, copying Parent 1 and the Manager, expressing her disappointment with the results of the investigation and with the way she perceived the Manager to treat her and Parent 1 in the meeting. She stated, “[The Manager] came across as if she was shaming us because we came forward with our concerns.” The Complainant did not receive a response to this email.

The School sent an undated letter to parents explaining the Coach’s departure. The letter mentioned that an investigation found “no grounds to remove Coach from his position,” but that he chose to resign. The letter noted that School staff could not “share details of said investigation per a confidentiality agreement.”

Beginning in October, a Denver Police Department Detective (Detective) conducted an investigation. The Manager cooperated on behalf of the School/DSST. She also wrote to the Detective, “I’m wondering – when you conclude your investigation, is there any way that you can provide a letter of some sort that articulates your findings – if consistent with DSST’s

findings – name [sic] that the investigation we conducted was sufficient? We need to provide some communication back to the parents who filed grievances with our Board, and would like to use your investigation as the gold standard.” The DPD Detective emailed the Manager on November 17, 2017, “I have completed the case. I spoke to either the parents of the girls or the girls themselves. Nobody reported any inappropriate touching to their daughters nor did the girls report any inappropriate touching to them.” He indicated that the District Attorney’s office would not be filing any charges.

iii. October 2017 Grievance

On October 24, 2017, the Complainant filed a formal grievance with DSST’s Board Chair via an emailed letter,⁵ in which the Complainant wrote that she was “not satisfied with the manner in which the DSST [High School] and DSST home office resolution team handled a serious grievance. I am also shocked that DSST lacks . . . policies to protect our children. I am asking that you seriously consider a change in policy and procedure” The Complainant also stated, in relevant part:⁶

DSST did not follow their own grievance process, did not investigate in a timely manner and did not interview ALL relevant parties. . . . DSST does not have policies in place to train staff and protect our students from predatory teachers and coaches. . . . Policies should also address any violations of the policy and consequences of a violation. . . . Responding to concerns by members, staff, 3rd parties, parents or students, and done with professionalism, and confidentiality. Reporters should never be discouraged from reporting and should never fear retaliation. . . . When investigating potentially inappropriate sexual conduct between a coach and a student athlete, one must understand the position alleged victims are in, the dynamics of sexual abuse, the myths and misperceptions around sexual abuse or inappropriate or uncomfortable situations. Knowing how to investigate these concerns appropriately should be outlined in the policy and involve a 3rd party investigator who is an expert in this area.

The Board Chair responded via an emailed letter the next day, directing the Complainant to its formal grievance process on pages 26-27 of its handbook, reporting that she had “referred” the concerns to DSST’s Chief of Staff in its Home Office pursuant to that process. The Complainant responded via email on October 26, asking for a copy of the 2017-2018 Student and Family Handbook, as she could not locate one online or elsewhere but noted that she referred to a 2016-2017 handbook. She reiterated that she did not believe the handbook policies prohibited some of the concerns she had outlined.

⁵ Parent 1 also filed her own grievance with the Board Chair on October 30, 2017, which was handled similarly in terms of timing and substantive response.

⁶ The Complainant also raised allegations relating to hiring practices and mandatory reporting of suspected child abuse. The School’s position as to these allegations was that “Because none of the information conveyed to DSST constituted a reportable offense, DSST had no legal obligation to report.” OCR does not have jurisdiction over this specific issue in this case.

The Board Chair provided a copy of the 2017-2018 Student and Family Handbook via email on October 30. The Complainant responded that she noticed it was now available on the High School's website, but had been "put together hastily" and did not reference the correct "school . . . admin . . . school schedule and . . . years."

In November, the Chief of Staff solicited the Complainant's input and the Complainant provided her own notes and documents. The Chief of Staff signed a letter dated November 22, 2017 with DSST findings. An HR-type employee, who was not involved in the original investigation, investigated and drafted the letter, though this is not mentioned in the letter itself. OCR interviewed that employee, who stated that she was new to DSST as of that October and had no background in investigations, Title IX, or sex discrimination. She described her investigative process as reviewing the files she was provided by DSST, and participation in a meeting with the Detective and the High School Director, in which they spoke briefly about the Detective's investigation and findings and about DSST's policies and best practices. She stated that she communicated with her supervisor, as well as with the Manager, with whom she had a coaching and professional development relationship. Ultimately, she sent the draft letter to the Manager, who performed the original investigation, and that was the end of the HR-type-employee's involvement.

The November 22, 2017 letter states, in relevant part:⁷

Concern 3: DSST did not follow their own grievance process, did not investigate in a timely manner and did not interview ALL relevant parties.

Once made aware of your concerns, DSST immediately initiated a formal investigation:

- DSST received an email from [Parent 1] to [the High] School Director, on the morning of Monday, August 14, 2017, in which it was first disclosed by [Parent 1] that she believed she had seen an erection at the end of practice (time stamp: 11:06pm).
- A meeting with you and [Parent 1's] family was set for the afternoon of Tuesday, August 15, to understand the specific allegations being made, and to explain the investigatory process. There was no XXX practice on this date.
- [The Coach] was placed on leave effective Wednesday, August 16, and remained on leave until the conclusion of the investigation, marked by a meeting with you and [Parent 1's] family on Thursday, August 30. As is our standard practice, the terms of [the Coach]'s leave stated that he was forbidden from campus and making any contact with members of the DSST: CG HS for the duration of his leave.
- Between August 16-August 30, DSST conducted a tiered, internal investigation.

⁷ In addition, for example, DSST denied the Complainant's allegations relating to hiring practices and mandatory reporting of suspected child abuse and indicated that it would consider revising its policies on communication with students, transportation of students, and coaches' acknowledgment of its staff handbook. We do not have specific jurisdiction over these issues.

Thus, we believe our investigation was conducted in a timely manner.

When investigating a concern, DSST uses a tiered interview approach. This approach consists of starting with the students closest to the situation, in this case reaching out to the parents and students that were provided by yourself and [Parent 1] in the initial meeting. In addition, in situations like this one, in which there are allegations of sexual misconduct, DSST is careful to seek parental consent before speaking to minor students. Further, when asking to interview children in such situations we make it clear to parents what the investigation is about so they can give informed consent.

Here, though we spoke with only a few players, our findings were consistent with the findings of [DPD Detective], who did speak with all the families on the XXX team, interviewing either a parent, player, or both. *See attached* (email from [DPD Detective] dated Nov. 17). As part of DSST's investigation, we received information from players, parents, all three assistant coaches, the athletic director, and Coach [] himself. Consistent with our standard tiered approach to investigations, we determined that further interviews were not necessary. This determination was made because it appeared further investigation was not going to reveal additional information, our investigation revealed that no students had been harmed or were in danger, and Coach [] made it clear in our first conversation with him that he was going to resign as coach. Thus, any possible risk he posed to students was eliminated.

As mentioned, our investigation concluded that Coach [] had not touched any players inappropriately and that his conduct did not give rise to a reasonable suspicion of child abuse or neglect. Thus, as discussed at more length above, the mandatory duty to report child abuse was not triggered in this case.

Throughout this process we have had conversations with [DPD Detective] about our investigatory practices. As school officials, in any investigation we will always remain sensitive to the age and maturity level of our students, the nature of the allegations, the importance of parental consent, and the risks presented. Moreover, in appropriate cases, we are able to partner with the Denver Police Department and others to ensure we making [sic] every reasonable effort to keep our students safe and that we are engaged in the best investigatory practices. We will not hesitate to request the assistance of the DPD when necessary and appropriate.

a. Neither the DSST High School staff nor [the Manager] interviewed the student or the parent of the student that was seen alone in a car with Coach [].

In our investigation, we reached out to the mother of the student but our call was not returned. Further, our investigation revealed that Coach [] received express

permission from the parent prior to giving the student the ride This was confirmed by the investigation of [the DPD Detective].

As mentioned above, however, your concerns prompted us to consult with our legal team on this topic, who has suggested an amendment to our policy on transporting students which is under consideration by senior leadership. [. . .]

f. Responding to concerns by members [sic], staff, 3rd parties, parents or students should be clearly defined in the policy and done with professionalism, and confidentiality.

We also agree with this. Concerns about a member of the DSST community, including staff, parents, and students, should be handled with professionalism, integrity, and, when appropriate, confidentiality. These are the key components of our investigations and we take great care to abide by these. I can personally say this case was no different. The steps we took were to ensure that all parties involved were protected and treated with integrity and respect.

Policies in regard to confidentiality and the standards governing how an investigation occurs can be referenced in the staff and parent student handbooks, as mentioned above.

g. Reporters should never be discouraged from reporting and should never fear retaliation.

We agree. That is why you can find clear policies prohibiting retaliation in both the staff handbook section 2.5(C) and the student/parent handbook section V.1, as part of our Non Discrimination Statement. [. . .]

- i. When investigating potentially inappropriate sexual contact between a coach and a student athlete, one must understand the position alleged victims are in, the dynamics of sexual abuse, the myths and misperceptions around sexual abuse and most importantly, be neutral.**
- i. How to investigate these concerns appropriately should be outlined in the policy and involved a 3rd party investigator who is an expert in this area.**

As stated earlier, in cases of sexual misconduct with a minor, DSST is never hesitant to follow proper guidelines for mandatory reporting. When a report is made, we defer to local authorities' guidance in the investigations and will continue to do so.

We also understand that in situations of inappropriate sexual contact, there are many facets to consider. We work hard to ensure victims are heard and feel safe. Though this case did not warrant these measures, we are committed to these principles in those that do. Further, we will not hesitate to use our DPD partner or

other outside resources to evaluate difficult issues of sexual misconduct or predatory behavior. [. . .]

The letter also maintained that the original investigation had been neutral, despite the Complainant's concern that a DSST employee conducted it; that its Staff Handbook (including its Core Values) sufficiently laid out consequences for violating policy; and that the Coach had been held accountable when he violated policy. DSST/the School reported to OCR that it has now taken all remedial steps it outlined in the letter.

iv. Analysis

Our investigation established several compliance concerns related to the resolution of the Complainant's July/August 2017 complaint that culminated with a response from the DSST Board in November 2017. First, an equitable investigation of a Title IX complaint requires that a trained investigator analyze and document the available evidence to support reliable decisions, objectively evaluate the credibility of parties and witnesses, and synthesize all available evidence. Here, the Manager who handled the July/August complaint failed to gather all available evidence, in that she did not interview all available witnesses, for example, the multiple named students or their parents, or the finite number of students who participated on the team, despite asserting in her August 16, 2017 email that she would do so. It is not clear from her findings that she evaluated the credibility of parties and witnesses, for example, of the Complainant, Parent 1, or the Coach. Later, the HR-type employee who primarily processed the October 2017 grievance to the DSST Board was untrained in investigations, Title IX, or sex discrimination. She performed a paper file review, and there is no evidence that the paper file constituted all available evidence, or that the employee evaluated credibility or otherwise synthesized what evidence was available. Additionally, though she spoke with the Detective as to the Detective's own criminal investigation, he was not an original witness, and there is no evidence that she considered whether legal standards for criminal investigations were different than those used to determine whether harassment occurred under Title IX. Second, the burden is on the school to gather sufficient evidence to reach a fair, impartial determination. For the same reasons, we cannot conclude that the initial investigation by the Manager or the paper file review by the HR-type employee on behalf of the DSST Board gathered or reviewed sufficient evidence. And, with respect to the latter grievance, though the HR-type employee was not involved in the August investigation, she communicated with and sent a draft resolution letter to her mentor the Manager, who conducted the August investigation and was a subject of the October 2017 grievance. We therefore cannot conclude that the HR-type employee was free of actual or reasonably perceived conflicts of interest and biases for or against any party, or that the determination itself was impartial. Third, restricting the ability of either party to discuss the investigation (e.g., through "gag orders") is likely to deprive the parties of the ability to obtain and present evidence or otherwise to defend their interests and therefore is likely inequitable. The Manager's August 16, 2017 email did just that by instructing the Complainant and Parent 1, "In the interim, and even once the investigation has concluded, the subject and the specifics of this investigation should remain confidential." Fourth, the investigation should result in a written report summarizing the relevant exculpatory and inculpatory evidence and making findings of fact and conclusions as to whether the facts support a finding of responsibility for violation of the school's sex discrimination policy. The July/August complaint culminated in a written report

inequitably, in that only the Coach received a written report, while the Complainant and Parent 1 were provided only an oral summary. Though the October 2017 grievance to the DSST Board resulted in a written report (*i.e.*, the November 22, 2017 letter), neither that report nor the earlier August oral or written report adequately summarized the exculpatory and inculpatory evidence, nor identified any evidentiary standard (*e.g.*, preponderance of the evidence) or legal standard (*e.g.*, Title IX or sex discrimination) applied. Though the specific steps necessary in any investigation in response to notice of alleged sexual harassment will vary, DSST's minimal investigation and response make it clear that neither its resolution process nor legal standards were comparable to those OCR would have applied. Accordingly, based on a preponderance of the evidence, we find sufficient evidence to support a finding that DSST/the School failed to adequately respond to the Complainant's October 2017 complaint of Title IX discrimination, in violation of Title IX.

IV. Conclusion

We thank the Recipients for entering into an agreement with OCR to resolve these issues. 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 Recipients demonstrating that the terms of the Agreement have been fulfilled. We will provide the Recipients 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 keep the Complainant apprised of the status of the Agreement's implementation by providing her with copies of our monitoring letters. The monitoring phase will be completed when OCR determines that the Recipients have fulfilled all of the terms of the Agreement. When the Agreement is fully implemented, the issues 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 Recipients, copied to the Complainant, stating that this case is closed. If the Recipients fail to implement the Agreement, we will take appropriate action, as described in the Agreement.

This letter addresses only the issues listed previously and should not be interpreted as a determination of the Recipients' compliance or noncompliance with Title IX or any other federal law in any other respect.

This letter is a letter of finding(s) issued by OCR to address an individual OCR case. Letters of findings contain fact-specific investigative findings and dispositions of individual cases. Letters of findings 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 a 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.

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 the courtesy and cooperation you and your staff extended to us during the investigation of this case. If you have any questions, please contact the attorney assigned to this case, XXX.

Sincerely,

/s/

XXX
Supervisory General Attorney

Enclosure: Resolution Agreement

cc (w/enclosure): XXX, DSST Conservatory Green High School Director, XXX
XXX, DSST Conservatory Green Middle School Director, XXX
XXX, outside counsel for DSST, XXX

cc (w/o enclosure): Katy Anthes, Colorado Commissioner of Education