



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1244 SPEER BLVD., SUITE 310
DENVER, CO 80204-3582

REGION VIII

ARIZONA
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UTAH
WYOMING

September 20, 2023

Dr. Shane J. Farnsworth, Superintendent
Alpine School District
575 N 100 E
American Fork, Utah 84003

via email to [redacted content]

Re: **Alpine School District**
OCR Compliance Review 08-20-5001

Dear Superintendent Farnsworth:

This letter notifies you of the resolution of the compliance review conducted by the U.S. Department of Education (“the Department”), Office for Civil Rights (OCR) of the Alpine School District (“the District”). OCR initiated the compliance review to examine whether the District responded to employee-to-student and student-to-student sexual assaults during school years (SY) 2017-18, 2018-19, and 2019-20 (“the Review Period”) in a manner that was consistent with the requirements of Title IX of the Education Amendments of 1972 (“Title IX”), 20 U.S.C. §§ 1681-1688, and its implementing regulations at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any education program or activity operated by a recipient of federal financial assistance from the Department. This examination included evaluating whether the District: (a) provided prompt and equitable grievance procedures and responses to possible sexual harassment under 34 C.F.R. §§ 106.8(b) and 106.31; (b) fulfilled its obligations to have an individual designated to coordinate its efforts to comply with Title IX, and to notify students and employees of the designated individual’s name and contact information, under 34 C.F.R. § 106.8(a); and (c) adequately disseminated notice of its Title IX duty not to discriminate based on sex under 34 C.F.R. § 106.9.

After careful review of the evidence obtained during the investigation, OCR identified eight violations of Title IX and three concerns related to compliance with Title IX. The District entered into a resolution agreement (“the Agreement”) to address the violations and compliance concerns. This letter explains OCR’s methodology for this compliance review, the applicable legal standards, OCR’s investigative findings, legal analysis, and conclusions, and the terms of the Agreement. When fully implemented, the Agreement will resolve this compliance review.

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

I. Summary of Findings and Compliance Concerns

On the basis of documentary evidence and witness testimony, OCR found eight violations of the District's obligations under Title IX and identified three concerns about the District's compliance with Title IX.

OCR found that the District violated Title IX and its implementing regulations as follows:

1. The District failed to coordinate its efforts to comply with and carry out its responsibilities under Title IX, including when responding to sexual harassment and assault, through its designated Title IX Coordinator, and by not adequately training its Title IX Coordinators to perform their responsibilities.
2. The District did not notify employees and students of the District's designated Title IX Coordinator's name and contact information.
3. The District failed to adopt and publish Title IX grievance procedures that provide for the equitable resolution of complaints with adequate, reliable, and impartial investigations.
4. The District failed to take appropriate steps to investigate complaints and reports of employee-to-student sexual assaults, including by referring such matters to law enforcement and other agencies without fulfilling the District's Title IX obligations.
5. The District failed to take appropriate steps to investigate complaints and reports of student-to-student sexual assault, including determining whether the assaults created a hostile environment for the students.
6. The District failed to provide interim measures to students alleged to have been sexually assaulted by employees and students.
7. The District failed to take effective steps in response to substantiated sexual assaults to prevent recurrence of the harassment, eliminate the hostile environment, and remedy its effects.
8. The District failed to consistently notify harassed students or their parents of the outcomes of investigations of reported sexual assaults.

OCR identified three concerns about the District's compliance with Title IX:

1. The District may have failed to respond equitably to off-campus sexual harassment that created a hostile environment for students in school.
2. The District may have failed to create or maintain sufficient records of its responses to complaints and reports of sexual harassment to demonstrate its compliance with Title IX.
3. The District did not provide adequate training for employees responsible for ensuring its compliance with Title IX during the Review Period about how to respond promptly and equitably to complaints of sexual harassment, including how to investigate and resolve such complaints.

II. Methodology

To conduct this compliance review, OCR reviewed over the records of over 100 reported incidents of student-to-student sexual harassment, including at least 88 reported sexual assaults, during the Review Period. OCR notes the discrepancy between the 20 sexual assaults reported

for SY 2017-18 for this compliance review and the one sexual assault that the District reported for SY 2017-18 to OCR's Civil Rights Data Collection (CRDC). For this compliance review, the District initially reported 88 student-to-student sexual assaults at 35 schools, involving a variety of acts, including unwanted touching of thighs, butts, torsos, breasts, and genitals, as well as forcible hugging, kissing, and anal and vaginal penetration. However, the District's discipline data revealed that at the same 35 schools, there were 41 incidents of "sexual harassment," 48 incidents of "obscene behavior," 45 incidents of "public display of affection," five "sexual assaults," 105 "sexual offenses," and 28 "sexual offenses (nonforcible)." These data include the 88 reported sexual assaults and the far higher number of discipline incidents involving some type of sexual misconduct; thus, the number of reported sexual harassment incidents exceeded 100. Though the District reported to OCR that there were no student-to-student sexual assaults at 53 of its schools during the Review Period, its discipline data revealed 13 "sexual offenses" at eight of these 53 schools. OCR determined that 11 of these 13 could constitute sexual harassment. OCR analyzed the District's records for these incidents as well, for a total of over 100 reported incidents of student-to-student sexual harassment and assault.

The District reported to OCR that there were four employee-to-student sexual assaults during the Review Period and a fifth incident during SY 2016-17. These five incidents were at [redacted content] ("ES 1"), [redacted content] ("ES 2"), [redacted content] ("HS 1"), [redacted content] ("HS 2"), and [redacted content] ("HS 3"). OCR requested and examined all of the District's records about these five incidents and interviewed administrators who responded to the incidents at ES 1 and HS 1.

In total, OCR interviewed nine school-based administrators who handled incidents of alleged sexual harassment during the Review Period and the District's three employees who served as Title IX Coordinators during the Review Period. OCR also reviewed the District's relevant policies, procedures, notices of nondiscrimination, and employee training materials.

III. Legal Standards

In conducting this compliance review, OCR applied the regulations implementing Title IX in effect during the Review Period.¹ Citations in this section are to this prior regulation, and the legal standards discussed below were in effect during the school years subject to this compliance review.

The Title IX regulations contain a number of procedural requirements, including a requirement that recipients designate at least one employee to coordinate each recipient's efforts to comply with Title IX. Such efforts include investigating any complaint communicated to the recipient alleging its noncompliance with Title IX or any actions that Title IX would prohibit. *See* 34 C.F.R. § 106.8(a). The Title IX regulations also require each recipient to notify all of its students and employees of the name, office address, and telephone number of the employee or employees

¹ Amendments to the Title IX regulation went into effect on August 14, 2020, and can be viewed [here](#). For more information about Title IX, including the current Title IX regulation and related resources, visit OCR's website at https://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html and <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/index.html>.

so designated. *See* 34 C.F.R. § 106.8(a). In addition, the Title IX regulations require recipients to publish a notice of nondiscrimination covering Title IX, and to adopt and publish procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any actions prohibited by Title IX and its implementing regulation. *See* 34 C.F.R. § 106.9(a); *see also* 34 C.F.R. § 106.8(b).

Sexual harassment is a form of sex discrimination prohibited by Title IX. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, such as sexual assault or other acts of sexual violence. Sexual harassment can create a hostile educational environment based on sex when the harassment is sufficiently serious to deny or limit an individual's ability to participate in or benefit from the recipient's education program or activity.

In determining whether sexual harassment exists and has created a hostile environment based on sex for students, OCR looks at the totality of the circumstances, and considers a variety of factors, including: (1) whether the conduct was unwelcome to the student(s); (2) the degree to which the conduct affected one or more students' education; (3) the type, frequency, and duration of the conduct; (4) the identity of and relationship between the alleged harasser(s) and the subject(s) of the harassment; (5) the number of individuals involved; (6) the age and sex of the alleged harasser(s) and the subject(s) of the harassment; (7) the size of the school, location of the incidents, and the context in which they occurred; (8) other incidents at the school; and (9) whether there were also incidents of gender-based but non-sexual harassment. OCR examines the conduct from an objective perspective and a subjective perspective.

When a recipient's employee sexually harasses a student outside of their job responsibilities, OCR evaluates if the harassment created a hostile environment for the student, using the factors discussed above. When a recipient's employee engages in sexual harassment in the context of carrying out their day-to-day job responsibilities related to providing aids, benefits, or services to students, and that harassment denies or limits a student's ability to participate in or benefit from the school's program or activities on the basis of sex, the recipient is deemed responsible for the harassment and remedying its effects. This type of sexual harassment includes "quid pro quo" harassment, which occurs if a teacher or other employee conditions an educational decision or benefit on the student's submission to unwelcome sexual conduct. Regardless of whether the student resists and suffers the threatened harm or submits and avoids the threatened harm, the employee's harassment is attributed to the recipient and OCR deems the recipient to have treated the student differently on the basis of sex. OCR considers the following factors in determining whether an employee has engaged in harassment in the context of the employee's provision of aids, benefits, or services to students: (1) the type and degree of responsibility given to the employee, including both formal and informal authority, to provide aid, benefits, or services to students, to direct and control student conduct, or to discipline students generally; (2) the degree of influence the employee has over the particular student involved, including the circumstances in which the harassment took place; (3) where and when the harassment occurred; (4) the age and educational level of the student involved; and (5) as applicable, whether, in light of the student's age and educational level and the way the school is run, it would be reasonable to believe that the employee was in a position of responsibility over the student, even if the employee was not.

Under the Title IX regulations in effect during the Review Period, when a recipient has actual or constructive notice of sexual harassment, it must take appropriate steps to investigate or otherwise determine what occurred. It may also be appropriate for a recipient to take interim measures prior to or during the investigation of a complaint. Interim measures are individualized services offered, as appropriate, to either or both the reporting and responding parties involved in an alleged incident of sexual harassment. Interim measures may include counseling, extensions of time for assignments or other course-related adjustments, modifications of work or class schedules or locations, restrictions on contact between the parties, leaves of absence, increased security and monitoring of certain areas of campus, and other measures.

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

IV. Findings of Fact and Analysis

The District's central office is located in American Fork, Utah. In the final school year of the Review Period, the District served over 81,000 students, had over 4,800 employees, and operated 60 elementary schools, 15 middle/junior high schools, 11 high schools, and seven special purpose schools.

In Section IV.A below, OCR explains the basis for its eight violations findings regarding the District. In Section IV.B, OCR explains the basis for its three compliance concerns.

A. Violations Findings

As detailed below, OCR found that the District violated Title IX by failing to: (1) coordinate its Title IX compliance through its designated Title IX coordinator; (2) notify employees and students of its Title IX Coordinator's name and contact information; (3) adopt and publish grievance procedures that comply with the Title IX regulations in effect during the Review Period; (4) take appropriate steps to investigate reports of employee-to-student sexual assaults; (5) investigate some student-to-student sexual assaults, including whether they created a hostile environment for the harassed students; (6) provide interim measures to students alleged to have been sexually assaulted by employees and students; (7) take steps to prevent recurrence of substantiated sexual assaults and remedy the resulting hostile environment; and (8) consistently notify harassed students and parents of investigation outcomes.

1. Failure to Coordinate Title IX Compliance

The Title IX regulations require the District to designate at least one employee as a Title IX Coordinator to coordinate its efforts to comply with and carry out its responsibilities under Title IX, including any investigation of any complaint communicated to the District alleging its noncompliance with Title IX or alleging any actions prohibited by Title IX. *See* 34 C.F.R. § 106.8(a). OCR found that the District failed to meet this obligation.

The District had designated Title IX Coordinators during the Review Period. Coordinator A was the District's Title IX Coordinator from July 1, 2017 to June 30, 2018; Coordinator B was the District's Title IX Coordinator from July 1, 2018 to June 30, 2019; and Coordinator C was the District's Title IX Coordinator from July 1, 2019 to June 20, 2020. However, OCR found that they did not coordinate the District's efforts to comply with its responsibilities under Title IX, including with respect to responding to allegations of employee-to-student and student-to-student sexual harassment. According to the District's records provided to OCR, the District involved the Title IX Coordinator in its response to only one of the 92 reported sexual assaults during the Review Period. School administrators generally responded to complaints and reports of sexual harassment, including sexual assault, and did not treat them as Title IX matters or notify the Title IX Coordinators. For student-to-student incidents, school administrators handled these matters at the school level, or, if they deemed necessary, contacted their supervisor or director in the District's central office. Likewise, the District did not involve its Title IX Coordinators in responding to complaints and reports of employee-to-student sexual assaults.

According to the District's records and Coordinator A, she was involved in only one Title IX sexual harassment investigation during SY 2017-18, which was unrelated to sexual assault. According to Coordinator A, she also did not conduct any Title IX-specific trainings, did not provide any assistance or consultation to students or parents regarding Title IX, was not involved in addressing any employee-to-student sexual harassment situations, and was not involved in reviewing, revising, or drafting Title IX-related policies and procedures.

Similarly, Coordinator B was involved in only one Title IX investigation in her role as Title IX Coordinator during SY 2018-19. The investigation involved verbal harassment of a gay student. Coordinator B said that she handled inquiries from students, parents, and school administrators related to sexual harassment. However, she added that she typically received those inquiries after the matter had already gone through school-based processes and that she likely received those inquiries because the incidents involved student discipline and she oversaw high schools' discipline, not because she was Title IX Coordinator. She told OCR that she did not document her involvement in these inquiries. Coordinator B also told OCR that she did not conduct any Title IX trainings; she only briefly mentioned the District's Policy and Procedure 7100, which notified employees and students how to file a complaint of discrimination, during a "boot camp" for new administrators in 2018. Like Coordinator A, Coordinator B was not involved in reviewing, revising, or drafting Title IX-related policies and procedures.

Coordinator C was involved in four Title IX investigations as the District's Title IX Coordinator during SY 2019-20.² One investigation involved sexual harassment and assault. According to Coordinator C, he also responded to informal inquiries from school administrators about sexual harassment. Unlike Coordinator B, he did not receive any inquiries from students or parents about sexual harassment. He told OCR that he received only one formal complaint of sexual

² The District did not produce records for three of these investigations. Coordinator C told OCR that one investigation involved a student using slurs and talking about sex, and another was about a parent who believed that the student council advisors favored male candidates. Coordinator C could not recall the subject of the third investigation.

harassment filed as a “Harassment/Discrimination Report” on a District form. He told OCR that he was not involved in reviewing, revising, or drafting Title IX-related policies and procedures.

The District’s failure to coordinate its responses to complaints and reports of sexual harassment through its Title IX Coordinators seemed related to a lack of clarity about their roles and responsibilities among the coordinators themselves and other employees. The District did not have a written position description for the Title IX Coordinator or a list of the position’s job responsibilities, and the District lacked directives or guidelines for when school-based staff should contact the Title IX Coordinator regarding complaints or reports of sexual harassment. None of the school administrators OCR interviewed could articulate when the Title IX Coordinator was supposed to be involved in a sexual assault incident.

The Title IX Coordinators also told OCR that they did not have the time needed to coordinate the District’s efforts to comply with and carry out its responsibilities under Title IX because their Title IX Coordinator duties were in addition to their primary and full-time duties as directors in the Student Services Department. For example, Coordinator A told OCR that the District did not provide her with the support necessary to effectively coordinate the District’s compliance with Title IX and that her Title IX Coordinator responsibilities were too large given her other full-time duties. Coordinators B and C reported similar difficulties in finding time to fulfill their Coordinator duties and many other job responsibilities. According to Coordinator B, her other job duties included: overseeing the District’s social workers, mental health partnerships, crisis processes and response team, suicide prevention efforts, drug and alcohol use prevention efforts, and community partnerships in certain regions of the District; conducting disciplinary hearings; and serving as a liaison for nine high schools and the Department of Child and Family Services (DCFS). According to Coordinator C, his other job duties in SY 2019-20 included: serving as the District’s liaison for Communities of Care, prevention coordinator, and translation services coordinator; conducting disciplinary hearings; overseeing safety interventions (*e.g.*, restraints) and secretaries for elementary schools; attending meetings of school clusters; and serving as a central office liaison for approximately 60 elementary schools.

2. Inadequate Notice of the Title IX Coordinator to Students and Employees

The Title IX regulation, at 34 C.F.R. § 106.8(a), requires the District to notify all its students and employees of the name, office address, and telephone number of the Title IX Coordinator. OCR found that the District failed to meet this obligation throughout the Review Period. District policies and procedures directed individuals to contact the “Director of Student Services” regarding discrimination based on sex and provided the District’s main phone number. Annual back-to-school newsletters included the name and phone number for the District’s Title IX Coordinators but not an office address, as required by Title IX. Some employees shared with OCR that the name and contact information of the Title IX Coordinator were occasionally shared at annual back-to-school trainings for new school administrators. The name and contact information for the District’s Title IX Coordinators were not otherwise disseminated to all students and employees.

3. Lack of Compliant Title IX Grievance Procedures

The Title IX regulation, at 34 C.F.R. § 106.8(b), requires the District to adopt and publish grievance procedures that provide for the prompt and equitable resolution of student and employee complaints alleging action prohibited by Title IX, including sexual assault. As explained below, OCR found that the District's Title IX grievance procedures did not require adequate, reliable, and impartial investigations of complaints of sexual assault.

During the Review Period, the District had four policies titled "Sexual Harassment" – 4069, 4479, 4762, and 5185. Policies 4069, 4479, and 4762 addressed employees who experienced sexual harassment, while Policy 5185 was for students who experienced sexual harassment. Additionally, the District had Policy and Procedure 7100 ("Policy 7100"), which detailed complaint filing procedures for students who believed they had been discriminated against. The District also provided to OCR its "2019-2020 Human Resources Manual," which included a timeline of legal decisions on sexual harassment, relevant definitions, miscellaneous facts regarding sexual harassment, and broad District guidelines for dealing with sexual harassment.

OCR found that Policies 4069, 4479, 4762, 5185, and 7100 lacked provisions for ensuring the prompt and equitable resolution of student and employee complaints alleging sexual harassment. For example, Policy 5185 required an investigation only for a written complaint to the principal. Policy 5185 provided that the investigation of a written complaint required interviewing only the accused to determine the facts, and if the facts convinced the administrator that sexual harassment had occurred, then the administrator should direct the accused to stop the behavior immediately and discipline the misconduct according to the severity of the offense. Policy 7100, which "provide[d] procedures the District will follow in investigating and resolving complaints," failed to explain how complaints of sex discrimination, including sexual assault, would be investigated or to require that the investigations be impartial, reliable, and adequate. This Policy and Policy 5185 were inadequate because neither required interviewing the target of sexual harassment or witnesses to the harassment to determine if it occurred and if so, whether it created a hostile environment for the targeted student and potentially other students. Investigations that interview only those accused of sexual harassment are not adequate, reliable, or impartial.

In addition, the District's policies and procedures made no mention of the District Title IX Coordinator. Instead, for example, Policy 5185 directed students who had been sexually harassed to file a complaint with "a school counselor or the school administrator;" and Policy 7100 directed students who believed they had been subjected to discrimination or harassment to file a complaint with "the building principal," a "Designated District Official," or OCR.

OCR also determined that the policies significantly overlapped but did not explain how they were to be implemented consistently. For example, Policies 5185 and 7100 both governed reporting for students who have been sexually harassed but did not reference each other. Coordinator B told OCR that having five different, overlapping policies was confusing. She could not recall which policy or combination of policies applied to sexual harassment of students. Coordinator C told OCR that he does not know why the District had five different, yet nearly identical, policies, and that for sexual harassment of students, staff likely applied both Policies 5185 and 7100. None of the 11 school administrators whom OCR interviewed knew

how to apply Policies 5185 and 7100 to alleged sexual harassment and assault even though these administrators were tasked with responding to such allegations. For example, when OCR asked one assistant principal how he would respond to a report of employee-to-student sexual harassment, he replied, “I don’t feel we have good direction on what specific steps we should take.” Some school administrators did not even know that Policies 5185 and 7100 existed. Several school administrators told OCR that their schools did not have a “specific policy or procedure” for responding to reports of sexual harassment.

4. Failure to Investigate Reports of Employee-to-Student Sexual Assaults

Based on OCR’s review of the records of the five reported employee-to-student sexual assaults and interviews with administrators, OCR determined that the District failed to take appropriate steps to investigate these reported sexual assaults as Title IX matters. In one instance (Example 1 below), after a third party referred a District teacher’s reported sexual assault of a minor student to law enforcement, the District failed to conduct its own investigation to meet its Title IX obligations. The District similarly failed to conduct Title IX investigations of student-to-student sexual assaults after referring them to law enforcement, as discussed in Section IV.A.5 below. The Title IX regulations in effect during the Review Period required the District to respond promptly and equitably to actual or constructive notice of sexual harassment, including sexual assault, notwithstanding any investigation that had been conducted by law enforcement or the DCFS. The District’s Title IX obligations were distinct from any investigations those entities may have undertaken. The District’s abdication of its responsibility to law enforcement or the DCFS meant that it could not determine whether discrimination occurred in its schools, and, if so, what steps the District should have taken to remedy the discrimination.

In none of the employee-to-student cases did OCR find evidence that the District investigated whether the reported or substantiated sexual assaults created a hostile environment for District students.

In three of the five cases that the District reported to OCR as sexual assaults by employees, the District allowed the teachers to resign or retire without investigating whether the reported misconduct created a hostile environment for the students or if the teachers had sexually assaulted other students. The District also failed to address the effects the sexual assault (Example 1) and grooming behavior (Example 2) had on the students involved. Although the District reported Teacher 1 to the Utah Professional Practices Advisory Commission (UPPAC), it failed to take any such action concerning Teacher 5, notwithstanding the principal’s observation, “As we investigated we heard the same story again and again . . . [I]t was eerie how similar the stories were, *though most ended early with the students transferring or quitting* [emphasis added].” Failing to complete a Title IX investigation when a teacher resigns risks jeopardizing the safety of other students, in violation of Title IX, in addition to concealing serious concerns from future employers.

Below we discuss four of the five employee-to-student incidents to illustrate these concerning failures.

Example 1

According to District records, in 2018, Teacher 1 performed a “sexual act” on Student 1 in Teacher 1’s classroom at HS 2, immediately after school. [Redacted content], Student 1 told a third party, who reported the incident to law enforcement. Law enforcement questioned and arrested Teacher 1, who later pleaded guilty to unlawful sexual conduct with a [redacted content]-year-old. The District learned of the matter and reported it to the UPPAC but allowed Teacher 1 to resign without conducting a Title IX investigation to determine whether this conduct created a hostile environment for Student 1 or whether other District students were subjected to an ongoing hostile environment.

Example 2

According to District records, in [redacted content] 2019, a District counselor received a letter from Student 2, who had graduated from HS 1 in [redacted content]. The letter alleged that Teacher 2 had groomed her, caressed her exposed lower back, kissed her multiple times, and done the same to two other students. In response, the District interviewed nine former and current students. In a memorandum, the principal described how Teacher 2: (a) singled out female students and found out if they came from a single parent or distressed home; (b) crossed emotional and physical lines with the female students; (c) promised the female students [redacted content]; and (d) found ways to be alone with the female students and to kiss them, including spending inordinate time teaching them how to kiss. The principal wrote, “As we investigated we heard the same story again and again. ... [I]t was eerie how similar the stories were, even though most ended early with the students transferring or quitting.” Teacher 2 denied the allegations and blamed the girls for misunderstanding his teaching methods. On [redacted content], 2019, Teacher 2 agreed to get a doctor’s note that would allow him to take the rest of SY [redacted content] off and to retire at the end of the school year. OCR found no evidence that the District provided current students interim measures between [redacted content] 2019 and Teacher 2’s retirement, or that the District determined whether Teacher 2’s conduct created a hostile environment for current or former students.

Example 3

In 2017, a parent complained to the District about an employee who hugged and kissed on the cheek several ES 2 female students as they exited the school bus on several occasions. The only record the District produced of its investigation of this complaint was a letter from the Director of Transportation to the employee, stating, “Video footage from days prior ... revealed that you have hugged and kissed students on other occasions.” OCR found no evidence that the District conducted any interviews or contacted the parents of other female students to determine if a hostile environment existed for them on the school bus. On the basis of the video footage and the employee’s admission to the conduct, the Director of Transportation informed the employee that he would recommend to Human Resources to suspend the employee without pay for four days, place him on probation, and move him to a new bus route. The District could not confirm whether the recommended disciplinary action was imposed on the employee. In addition, the District produced no evidence that it offered any remedies to the female students whom the employee hugged and kissed.

Example 4

On [redacted content], 2019, the District received a complaint that a teacher at HS 3, Teacher 3, had engaged in a sexual relationship with a student, Student 3. Teacher 3's husband made the complaint and was also a teacher in the District. The District initiated an investigation on [redacted content], 2019, and interviewed Teacher 3, Student 3, Teacher 3's husband, and an assistant coach on the girls' basketball team. The District also made a report to the local police department. The police informed the school that no crime had been committed because the interactions were consensual and involved an [redacted content]. The District allowed Teacher 3 to resign on [redacted content], 2019, and the District's investigation appeared to end after her resignation. On [redacted content], 2019, the District made a report to the UPPAC. OCR found no evidence that the District investigated whether Teacher 3's conduct, even if not criminal, constituted sexual harassment under the District's policies or created a hostile environment for the Student 3.

5. Failure to Take Appropriate Steps to Investigate Reports of Student-to-Student Sexual Assaults

Based on its interviews of District employees and review of records from over 100 incidents of student-to-student sexual harassment, including at least 88 sexual assaults, OCR determined that the District failed to respond equitably to reports of student-to-student sexual assaults during the Review Period. OCR found that the District did not investigate most reports of student-to-student sexual assault as Title IX matters. Only one of the 88 reported student-to-student sexual assaults was handled by the District's Title IX Coordinator. Other than this one instance, OCR found that when the District investigated reported student-to-student sexual assaults, it did so only as a discipline matter. OCR did not find any evidence among the 88 reported sexual assaults that the District investigated or analyzed whether the reported incidents had created a hostile environment for the harassed students as required by Title IX, thus potentially limiting or denying their access to education.

OCR also found that the District did not investigate certain reported student-to-student sexual assaults after reporting them to law enforcement (Example 5), as was true with employee-to-student assaults, or to the DCFS (Example 6). OCR includes salient examples of these investigative failures below.

Example 5

According to District records, in 2017, Student 4 reported to her parent and a school counselor that Student 5 raped her in the school's parking lot. The counselor notified the assistant principal, who notified law enforcement. Law enforcement interviewed Student 4 and arrested Student 5, but the case was never adjudicated. The alleged rape was [redacted content]. Another school employee notified the assistant principal that Student 5 was bragging to others student about having had sex with a female student in the parking lot. When the assistant principal notified the principal of this, the principal told the assistant principal that Student 5 would not be returning to the school. OCR did not find evidence that the District conducted an investigation to determine if Student 5 raped Student 4 in the school's parking lot and if the alleged rape created a hostile

environment for Student 4, or took any steps to remedy its effects on Student 4. Even if Student 5 was not returning to the school and law enforcement did not prosecute the alleged rape, the District had obligations under Title IX to determine if the rape occurred and created a hostile environment for Student 4, so that the District would know what remedies to provide Student 4 and whether Student 5 posed a risk to students in other schools.

Example 6

According to District records, in 2018, Student 6 reported to her parents and the DCFS that she had been raped by Student 7, who attended the same school. The alleged rape occurred after school [redacted content] next to the school. Records from the District indicate that Student 6 reported being afraid of Student 7 and potential retribution for reporting the assault. Police officers interviewed Student 6 at the school and arrested Student 7. A memo written by the school's assistant principal reads, "Case went to court – victim decided not to go through with charges / Determined it was consensual?" The former principal of the school wrote in an email, "The school turned the investigation over to the police and DCFS and was not involved further." OCR did not find any evidence that the District conducted an investigation, offered interim measures to Student 6, followed up with law enforcement, or addressed any hostile environment for Student 6, including addressing her reported fears of Student 7.

Example 7

In January 2020, Student 8's parents notified Teacher 4, via email, that after multiple days of Student 8 crying after school and struggling to sleep, he finally revealed that Student 9 had been grabbing his penis at school. Student 8's parents requested a meeting with school personnel and interventions to prevent further harassment. Teacher 4 forwarded the email to the principal. The principal wrote in Student 9's discipline report, "I talked with parents who were supportive but out of town on vacation. I also talked to [Student 9]. He neither confirmed or [sic] denied touching the other student." The District's records do not indicate that the District took any additional measures in response to the January 2020 report, including offering interim measures to Student 8.

In May 2020, Student 10's parents notified Teacher 4 and the principal, via email, that: (a) Student 9 had repeatedly grabbed Student 10's penis and "roll[ed] it in his fingers," even after Student 10 had told him to stop; (b) Student 10 had seen Student 9 do the same to other students; and (c) when Student 10 told Teacher 4, she simply told him not to sit with Student 9. The parents shared with the teacher and principal that Student 10 had become depressed and started saying things like, "I feel hollow," "I feel like I'm nothing," "I hate my life," and "I should just die." The principal wrote in Student 9's discipline report, "I called [Student 9]'s parents about the reported incidents. I also notified them that DCFS would be reaching out to them about the report." The District's records do not reflect that the District continued investigating Student 9's conduct to determine whether he assaulted any other students. Nor do the records reflect the offer or provision of supports such as counseling services to Student 10.

Example 8

The District's discipline records reflect that in 2017, Student 11 inappropriately touched and made sexually explicit comments to female students, and that a school administrator interviewed Student 11, suspended him out of school for two days, met with his mother, and referred him to law enforcement. There is no indication in the records that the District determined whether the students were subjected to a hostile environment or provided any remedies for the students. Though the District made a record of its communications with Student 11, his mother, and law enforcement, the District produced no record to indicate that the District communicated the outcome of the investigation with the female students or their parents.

6. Failure to Provide Interim Measures

Based on file reviews and interviews of District employees, OCR determined that the District failed to provide interim measures to ensure the safety and well-being of the allegedly harassed students or to document their provision for reports of both employee-to-student sexual assault and student-to-student sexual assault. OCR could find only two instances among the records provided where the District appeared to provide some form of interim measures. In 2019, while the District investigated a reported sexual assault on a school bus, the District did not allow the alleged perpetrator to ride the bus and he was placed in in-school suspension. Also in 2019, while the District investigated a reported sexual assault in a bathroom, the District provided the alleged victim with an escort during transitions. Some school administrators told OCR that interim measures were provided but not documented.

Example 2 above involving Teacher 2 illustrates the District's failure to offer interim measures, during the period between February 2019 and Teacher 2's retirement at the end of the school year, to the current students whom Teacher 2 allegedly groomed and inappropriately touched. Example 6 above is another example of the District's failure to offer interim measures during its investigation of Student 7's alleged rape of Student 6, and during its referrals to law enforcement and the DCFS. Below is a third example where the District produced no evidence of offering interim measures to the alleged student victim of a sexual assault by another student during law enforcement's investigation of the assault, which took over four months.

Example 9

District records indicate that Student 12 notified her school's principal that, on October 3, 2018, Student 13 had touched her breasts and groin area, over her clothes, in a school hallway, even after she told him to stop. Student 12 also reported to the principal that Student 13 said he wanted to have sex with and impregnate her. Records indicate that Student 12 notified the principal "several days" after the incident. On October 10, 2018, the principal notified Student 12's parents, via email, that he had reviewed video footage of the incident, interviewed Student 13, and requested assistance from the police department "to review the information." According to law enforcement records, the principal reported the incident to the police department on October 16, 2018, and then officers interviewed Student 12 on November 27, 2018, interviewed Student 13 on December 14, 2018, and interviewed Student 12 again and her mother on February 20, 2019. A police officer wrote for the disposition of the case, "As the video reflected [Student

13] was accurate in his interview about that [Student 12] was waiting for him and that she seemed okay with him after the incident. As [Student 12] did not was [sic] charges against [Student 13] this case was closed as inactive. Nothing further.” The District’s records do not indicate that the District offered or put interim measures in place for Student 12 (*e.g.*, a no-contact order) at any time during the over four-month period that law enforcement investigated the incident, or took any further action regarding the incident, or notified her or her parents of the outcome of her complaint.

7. Failure to Take Appropriate Action in Response to Substantiated Reports, Including to Prevent Recurrence and Remedy the Hostile Environment

To ensure an equitable resolution of a substantiated complaint of sexual assault, the District needs to take appropriate action to prevent recurrence of the harassment and remedy the hostile environment and its effects. The District’s nearly exclusive reliance on disciplining harassers to address incidents of sexual harassment was generally inadequate to eliminate any hostile environment and prevent its recurrence. OCR’s review of the District’s records and interviews of District employees indicated that the District took some actions to prevent recurrence, such as separating harassers from harassed students (*e.g.*, changing the harasser’s class or bus). However, the District’s records for student-to-student sexual assaults show that for only a handful incidents did the District implement other corrective actions, such as safety plans or no contact orders, to prevent recurrence.

Example 2 above is a salient example of the District failing to take appropriate action to prevent recurrence even after finding years of reported misconduct by Teacher 2 with several students. Example 7 above, involving Student 9’s confirmed repeated misconduct, grabbing of the penises of Students 8 and 10, is another stark instance where the District did not take actions to protect students from further harassment. Records provided to OCR in cases of substantiated sexual assaults also did not indicate that the District took steps to redress the hostile environment and its effects on the harassed student(s) (*e.g.*, by offering counseling and other supports). Examples 10, 11, and 12 below illustrate this failure. Some of the school administrators OCR interviewed said that they told harassed students that counseling or social worker services were available or that the students met with school counselors, but the District produced no records to confirm this.

Example 10

The District’s discipline records reflect that in 2018, Student 14 held down Student 15, kissed her, and followed her home. The District gave Student 14 a one-day out-of-school suspension. The records do not indicate that the District took any further actions to protect Student 15 from further harassment (*e.g.*, ensuring she could travel home safely) or to address any hostile environment that resulted from the assault by offering her counseling or other supports.

Example 11

The District’s discipline records reflect that in 2019, the District found that Student 16 put his hand down Student 17’s pants three times in a school library. Student 16’s discipline records stated, “The young lady was so scared and numb by the advance that she just didn’t know what

to do.” The assistant principal who handled the incident told OCR that Student 17 broke down crying during his interview of her. OCR did not find evidence that the District offered any support services to Student 17. The assistant principal told OCR that Student 17 “seemed to be okay” after discussing the incident and the school did not follow up with her.

Example 12

According to District and law enforcement records, in 2018, Student 18 rubbed Student 19’s thighs, touched her vagina, made her lie down, kissed her, put his hand in her pants, and digitally penetrated her. Student 19 verbally and physically resisted. The incident occurred during school hours, in a car parked in a parking lot adjacent to the school’s [reacted content]. Notes from Student 18’s disciplinary hearing state, “[Student 18] had done something similar at a previous school.” The District issued a long-term suspension to Student 18. The District’s records do not indicate that the District attempted to obtain information about the previous incident; the assistant principal who handled the incident told OCR that he could not recall if he pursued that information. Additionally, OCR did not find evidence that the District conducted a Title IX investigation or offered interim measures or remedies to support Student 19. The assistant principal told OCR that he could not recall whether any supports were provided to her. An administrator stated to OCR that the school’s jurisdiction to handle the incident was “tricky” because ownership of the parking lot is shared by the District and the City of [redacted content].

8. Failure to Notify Both Parties of Outcomes of Sexual Assault Investigations

Based on its file reviews and interviews of District employees, OCR determined that the District failed to consistently notify complainants of the outcomes of its investigations for complaints of employee-to-student and student-to-student sexual assaults. In OCR’s review of records from over 100 incidents of student-to-student sexual harassment, OCR found a notice of the outcome to only a handful of harassed students’ parents. For instance, in Examples 8 and 9 above, the District documented its notice to the respondents, their parents, and law enforcement but had no evidence of notifying the harassed students or their parents of the investigation’s outcome. Below are two more examples of the District’s failure to notify both parties of outcomes of sexual assault investigations.

Example 13

According to District records, in 2018, Student 20 initiated “intimate sexual contact” with a female student with a disability on at least three occasions while on the school bus, including fondling her breasts and attempting to put his hand down her pants. The records reflect that the Transportation Department observed video footage of the incidents and notified the students’ school; and that an assistant principal talked to Student 20 about his behavior, suspended him for two days, and reassigned him to another bus. However, the records do not indicate that the District communicated the outcome of its investigation with the female student or her parent.

Example 14

A District record provided to OCR indicated that in 2018, Student 21 “touch a girl between her legs using 3 fingers.” The administrator who handled the incident wrote, “I talked with [Student 21’s] mom and she will set consequences. He also needs to write an apology note.” Records provided to OCR do not indicate that the District communicated the outcome of this brief investigation to the female student or her parent.

B. Compliance Concerns

Below OCR explains the bases for its compliance concerns about the District’s: (1) response to off-campus sexual assaults; (2) training of individuals responsible for responding to complaints and reports of sexual harassment; and (3) recordkeeping practices about such reports.

1. The District’s Response to Off-Campus Sexual Assaults

The District may have failed to respond equitably to off-campus sexual assaults that created a hostile environment for students in school. One school administrator told OCR that there was “very little” school administrators could do about off-campus sexual harassment, and that such incidents were turned over to law enforcement or the DCFS. Another school administrator said that he did not know what he could do about, or what his obligations would be with respect to, a sexual assault committed outside of school and school hours. The same administrator shared that when he questioned an alleged target of harassment, he asked if the perpetrator engaged in sexual harassment at school, and when the target said no, he was limited in what he could do. Another school administrator told OCR, regarding off-campus incidents, “Once I turn it over to the police, I just back out of it at that point and let them finish their investigation. Sometimes they tell us what happened and sometimes they don’t.” He also shared with OCR that he adopts law enforcement’s investigative findings for sexual assaults. In addition to illustrating violations of Title IX, Examples 6 and 12 above highlight OCR’s concern about the District’s response to off-campus sexual assaults.

2. The District’s Employee Training

OCR has concerns about the District’s inadequate training for its Title IX Coordinators and school-based administrators on how to comply with Title IX because they are tasked with responding to complaints of sexual assault. The Title IX Coordinators and school-based administrators lack training on how to ensure prompt and equitable responses to complaints of sexual harassment of students by other students and employees, including how to investigate and resolve such complaints under the grievance procedures required by Title IX. This raised a compliance concern because the lack of training likely contributed to the District’s inadequate responses to reports of sexual assault detailed above, as well as the District’s inadequate recordkeeping of its responses to sexual assaults.

During the Review Period, the District's Title IX Coordinators did not receive any training about being a Title IX Coordinator before becoming a coordinator.³ Coordinator A described receiving minimal informal training while in the position. Coordinators B and C both described receiving some basic Title IX training while in the position. None of the three received training on how to respond to and investigate sexual harassment complaints or related Title IX requirements.

OCR found that the trainings required for all new school administrators during SYs 2017-18, 2018-19, and 2019-20 failed to adequately explain the District's Title IX obligations regarding responding to sexual harassment. The District reported to OCR that the SY 2017-18 training "reviewed the district's policies related to non-discrimination and equity" and "discussed the role of Compliance Officers (including Title IX Coordinator)." However, according to Coordinator A, the only aspect of the training that was relevant to Title IX was an optional breakout session that addressed Policy 7100. This Policy addresses the District's nondiscrimination mandate generally, not specifically with respect to sex discrimination or Title IX, and explains how to file a complaint but not how to investigate one. For the trainings in SYs 2018-19 and 2019-20, the District reported to OCR that these trainings included an overview of District policy, the contact information of compliance officers (including the Title IX Coordinator), and reasons why school administrators might contact the officers. However, when reviewing the PowerPoints used in the two trainings, OCR found only one general slide about Policy 7100 and one general slide about harassment. The presentations did not include any Title IX-specific or sexual harassment training.

OCR's interviews with school administrators reinforced its concern that the District may have failed to adequately train school administrators responsible for responding to reports of sexual harassment. School administrators told OCR that they had not been trained on how to conduct a hostile environment analysis.

OCR also asked the District if it provided training to other employees about how to respond to sexual harassment and assault during the Review Period. The District responded that as of August 2019, all employees are required to view an online course which includes a 15-minute module that reviews District policies and practices related to sexual harassment and a 60-minute module related to sexual assault. In a response to OCR's request for a link to the course, the District provided OCR with a link to a 6 minute 59 second video titled, "Key Policies." The course covered sexual harassment for a total of 16 seconds.

3. The District's Maintenance of Records

OCR has a compliance concern that the District is not meeting its obligation to maintain the records OCR needs to assess if the District's responses to complaints and reports of sexual assaults of students complied with Title IX. OCR's review of the employee-to-student and student-to-student sexual assaults during the Review Period was impeded by the District's lack of records or incomplete records about the reported assaults.

³ They attended a training on August 2, 2017, which only made mention of the role of compliance officers, including Title IX Coordinators.

The regulation implementing Title VI of the Civil Rights Act of 1964 (“Title VI”), at 34 C.F.R. § 100.6(b), requires recipients to collect, maintain, and provide to OCR such records that will enable OCR to ascertain whether the District is in compliance with the nondiscrimination requirements of Title VI. This requirement is incorporated by reference in the regulation implementing Title IX, at 34 C.F.R. § 106.81.

OCR requested from the District many types of records related to reports and complaints of employee-to-student and student-to-student sexual assaults. For the five employee-to-student sexual assaults, the District provided only the following, respectively: (1) a “Notification of Alleged Educator Misconduct” form to the UPPAC, an “Employee’s Release of Contract” form, and largely illegible notes from an interview of the employee; (2) a one-page, one-paragraph letter to the employee; (3) emails, notes from observations of the employee, and communications between the employee and District personnel; (4) interview notes and a notice to the UPPAC (with an accompanying letter); and (5) memoranda, interview notes, emails, and letters. The files did not contain any complaint forms, investigative reports, notices of investigative outcomes to the parties, records from hearings, or records of interim measures offered to the harassed students during investigations. The one page of records provided to OCR for the employee who hugged and kissed female students did not even include the name of the employee (Example 3). The records produced by the District for the teacher who performed a sexual act on a student in a class did not include any records from law enforcement or courts, even though the teacher was arrested and prosecuted (Example 1).

For the vast majority of the reported student-to-student sexual assaults, the District provided only discipline entries from its student information system (SIS). The entries typically included only the perpetrator’s name, one sentence to one paragraph about the perpetrator’s conduct, and, if the student was suspended, the length of the suspension. When documenting incidents in the SIS, school administrators subjectively chose a code for an incident. The SIS included the following codes for student discipline entries: “bullying,” “harass other,” “harassment,” “harassment bullying,” “harassment sexual,” “obscene behavior,” “physical assault,” “public display of affection,” “sexual assault,” “sexual offense,” “sexual offense, non-forcible,” “criminal behavior,” “distribution of pornography,” and “victim information.” Ten of the 11 school administrators interviewed by OCR stated that they were not given definitions for or training about the discipline codes, and that there was no District oversight of code use to ensure accurate and consistent records.

According to Coordinator A, staff did not know that they had to generate and maintain records of the District’s response to reports and complaints of sexual assaults. School administrators interviewed by OCR described differing practices for record creation and maintenance. For example, they only sometimes take notes during witness interviews and, depending on the administrator, any notes are typically handwritten and kept until the end of the school year, until the harasser or student who was harassed attend another school or graduate, or until two years after the perpetrator graduates. Administrators also gave inconsistent explanations for how relevant video footage is maintained. For example, one administrator said that she keeps footage in her email. Another administrator said that he thinks footage is maintained by school resource officers. A third administrator said that footage is erased unless the investigating administrator exports and saves it.

Some administrators interviewed by OCR claimed that investigative records – such as interview notes, witness statements, and telephone logs – were generated for reported sexual assaults. However, some of those same administrators could not tell OCR where the investigative records were located. One assistant principal told OCR that he sometimes did not maintain records because victims did not want records kept or because if a record is kept, then administrators may have to redact it, and they are not “data entry specialists.” Moreover, the District provided OCR with very few interview notes or witness statements and only one safety plan, despite OCR’s requests for those types of records so that the District could demonstrate its Title IX compliance.

OCR’s concern about the District’s recordkeeping practices stems from not only the incomplete nature of its records regarding sexual assaults but also the inconsistencies across its records and data. For example, as noted above, the District initially reported in this compliance review that there were 88 student-to-student sexual assaults at 35 schools in SYs 2017-18, 2018-19, and 2019-20, but the District’s discipline data for these 35 schools were inconsistent and suggested a higher number of incidents. Even more stark was the apparent inconsistency between the 20 sexual assaults reported for SY 2017-18 for this compliance review and the one sexual assault that the District reported for the 2017-18 CRDC. The District’s system for creating and maintaining records about sexual assaults and other sexual harassment may be inadequate to report such incidents accurately in the CRDC.

Overall, the District’s records of reported sexual assaults produced to OCR were often incomplete or kept in a manner that did not allow OCR to assess the District’s compliance with Title IX. The District’s lax and fragmented record-keeping practices appear related to its failure to produce all the records OCR requested during this Title IX compliance review and its failure to coordinate its schools’ responses to notices of sexual harassment through its Title IX Coordinator, the first violation discussed above in this letter.

V. Conclusion

To resolve the eight violations and three compliance concerns OCR identified in this compliance review, the District entered into the attached Agreement, which requires the District to:

- ensure that the Title IX coordinator coordinates all of the District’s efforts to comply with Title IX moving forward, including but not limited to all of its investigations of sexual harassment involving its students and employees;
- notify its employees, students, and their parents of its Title IX Coordinator(s) and their contact information;
- notify its employees, students, and their parents that the District does not discriminate on the basis of sex and how to file complaints alleging a violation of Title IX;
- revise its policies and grievance procedures to ensure compliance with Title IX;
- provide training regarding the revised policies and grievance procedures regarding sexual harassment for employees and students;
- conduct biennial climate survey(s) of students, parents and guardians, and employees;

- develop and implement a revised record-keeping system to appropriately document and preserve records about sexual harassment as required by the Title IX regulations and to ensure accurate reporting about sexual harassment and assault to the CRDC;
- monitor the reports and complaints of sexual harassment that the District receives during OCR's monitoring of the Agreement and report to OCR about the District's responses; and
- review the case files for a subset of the reported incidents of employee-to-student and student-to-student sexual harassment from SYs 2017-18 through 2019-20 that OCR identifies for the District's review to determine if further action is needed to provide an equitable resolution of each incident.

The District will report to OCR to demonstrate its implementation of the Agreement's requirements, and OCR will monitor this implementation to ensure the District's compliance.

Based on the commitments made in the Agreement, OCR is closing this compliance review as of the date of this letter. When fully implemented, the Agreement is intended to address the areas of violation and compliance concerns identified by OCR. OCR will monitor the District's implementation of the Agreement until the District is in compliance with the terms of the Agreement and the Title IX statute and regulations at issue in this compliance review.

This concludes OCR's compliance review and should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in a compliance review. This letter is not a formal statement of OCR policy, and it should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

Please be advised that the District may not harass, coerce, intimidate, discriminate, or otherwise retaliate against any individual because they have participated in a compliance review or a complaint resolution process. If this happens, the individual may file a complaint with OCR alleging retaliation.

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

OCR thanks you for the District's cooperation during this compliance review. We also appreciate the courtesy and cooperation that your staff extended to OCR during the review. OCR looks forward to working with you and your staff during the monitoring phase. If you have any questions, please contact OCR's lead attorney for this compliance review, Jason Langberg, at [redacted content], or [redacted content].

Sincerely,

/s/

J. Aaron Romine
Regional Director

cc: David Lund, District Title IX Coordinator
Patrick Tanner, Attorney for the District
Sydnee Dickson, State Superintendent of Public Instruction

Attachment