



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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REGION VIII

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March 20, 2024

Dr. Jill Gildea, Superintendent  
Park City School District  
2700 Kearns Boulevard  
Park City, Utah 84060

via email only to [redacted content]

Re: Park City School District: OCR Cases 08-23-1193, 08-23-1236, 08-23-1250, 08-23-1359,  
08-23-1433, 08-23-1462, 08-23-1543

Dear Superintendent Gildea,

This letter informs you of the resolution of the seven harassment complaints referenced above that were filed against Park City School District (the District) with the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department). The complainants alleged that the District was on notice of and failed to respond promptly or effectively to student-to-student harassment based on one or more prohibited bases at Ecker Hill Middle School (EHMS), Treasure Mountain Junior High School (TMJH), and Park City High School (PCHS) (the three Schools) in school year (SY) 2021-22 and SY 2022-23. Specifically, in case 08-23-1193, the complainant alleged harassment based on race and national origin (shared Jewish ancestry) at EHMS; in case 08-23-1236, the complainant alleged harassment based on race at EHMS and TMJH; in case 08-23-1250, the complainant alleged harassment based on race, national origin (including shared Jewish ancestry), sex, and disability at the three Schools; in case 08-23-1359, the complainant alleged harassment based on race, national origin (shared Jewish ancestry), sex, and disability at EHMS and TMJH; in case 08-23-1433, the complainants alleged harassment based on race and national origin at EHMS; in case 08-23-1462, the complainant alleged harassment based on race at EHMS; and in case 08-23-1543, the complainant alleged harassment based on sex at TMJH.

OCR is responsible for enforcing: Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulations, 34 Code of Federal Regulations (C.F.R.) Part 100, which prohibit discrimination based on race, color, and national origin in programs or activities receiving federal financial assistance; Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulations, 34 C.F.R. Part 106, which prohibit discrimination based on sex in education programs and activities operated by recipients of federal financial assistance; Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulations, 34 C.F.R. 104, which prohibit discrimination based on disability in programs and activities receiving federal financial assistance; and Title II of the Americans with Disabilities Act of 1990 (Title II)

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and its implementing regulations, 28 C.F.R. Part 35, which prohibit discrimination based on disability by public entities. As a recipient of federal financial assistance and a public entity, the District must comply with Title VI, Title IX, Section 504, Title II, and their regulations.

During OCR's investigation, the District expressed an interest in resolving the allegations in the seven complaints. OCR determined that resolving some of them under Section 302 of OCR's Case Processing Manual (CPM) was appropriate because OCR's investigation had identified compliance concerns that can be addressed through a resolution agreement. However, OCR also identified violations of the Department's Title VI and Title IX regulations based on the District's responses to actual notice of racial and antisemitic harassment under Title VI and sexual harassment under Title IX. The enclosed Resolution Agreement (the Agreement) will resolve these violations and compliance concerns when the District fully implements the Agreement and OCR determines that the District is in compliance with its terms and the underlying statutory and regulatory obligations that were at issue in the seven cases referenced above. These violations and compliance concerns are summarized below and explained throughout this letter.

## **I. SUMMARY OF OCR'S INVESTIGATION, FINDINGS, AND CONCERNS**

OCR received seven harassment complaints against the District in a span of less than five months between January and June 2023 involving three of its seven schools. During school year (SY) 2022-23, the District served 4,350 students in four elementary schools; one middle school for grades six and seven (EHMS), with 705 students; one junior high school for grades eight and nine (TMJH), with 772 students; and one high school for grades 10 to 12 (PCHS), with 1,221 students. The districtwide student population was 74.1% White, 18.8% Latino, 5.3% multi-racial, 1.2% Asian, 0.5% Black, 0.1% American Indian, and 0.04% Pacific Islander.

The seven complaints alleged that ongoing and various types of student-to-student harassment based on race, national origin, disability, and sex created hostile environments for students at EHMS, TMJH, and PCHS. Six of the seven complaints OCR investigated alleged race-based harassment, three of the seven complaints alleged antisemitic harassment against students in violation of Title VI's prohibition of discrimination based on national origin (shared Jewish ancestry), three of the complaints alleged sex-based harassment, and two of the complaints alleged disability-based harassment. As detailed below, OCR found documentary and witness evidence of over 180 reported incidents of students harassing other students at the three Schools during SYs 2021-22 and 2022-23, and the vast majority were based on race (77), national origin (27 involving antisemitism), or sex (at least 80), including slurs, threats, name-calling, jokes, gestures, symbols, and assaults. For example, EHMS alone documented 58 incidents of students engaging in race-based harassment, nine incidents involving antisemitic harassment, and 55 incidents of sex-based harassment, for a total of at least 122 documented incidents of harassment in one school over just two school years. OCR also found four documented reports of disability harassment – three at EHMS and one at TMJH – and a possible hostile environment for at least a few students with disabilities.

OCR's investigation of these complaints consisted of reviewing the District's harassment and student discipline policies and procedures, the three Schools' websites, student-parent handbooks, employee training materials, and records related to specific incidents of harassment

(e.g., communications, witness statements, interview notes, and discipline records). Additionally, OCR had the District run a search of all employees' email accounts for messages that contained any one of 58 keywords (e.g., "Nazi," "swastika," "racism," "LGBTQ," "sexual harassment," etc.) and were sent or received since July 1, 2021; then, OCR reviewed the voluminous emails produced. Next, OCR asked all employees who work at the three Schools, via an emailed survey, about incidents of students engaging in harassment based on protected statuses and the schools' and District's responses to such harassment. OCR received 121 survey responses, including from 52 employees at EHMS, 28 at TMJH, and 41 at PCHS.

Then, OCR interviewed 47 individuals employed by the District during SY 2022-23, including 18 who worked at EHMS, 12 who worked at TMJH, 14 who worked at PCHS, and three who worked in the District's Central Office. Interviewees at each school included, at a minimum, the principal and assistant principals, at least one counselor, employees who were involved in responding to specific incidents of harassment, and employees who provided information about harassment in a response to OCR's survey. OCR also interviewed seven former District employees, 18 parents of current or former District students, seven current District students, and five other local community members.

These interviews, OCR's review of thousands of pages of District records, and employee survey responses confirmed that student-to-student harassment based on race, national origin (shared Jewish ancestry), and sex at TMJH, EHMS, and PCHS, of which the District had actual notice, created a hostile environment for Black students, Asian students, Jewish students, and many students based on sex, including LGBTQI+ students, during SYs 2021-22 and 2022-23. In response to this harassment, the District and three Schools disciplined some of the harassers and took some actions to prevent recurrence of harassment generally, such as providing additional training for administrators, sending mass emails to parents of students at EHMS, producing videos about harassment at TMJH, initiating a "standing together against hate" campaign at PCHS, and conducting presentations or holding discussions about harassment at EHMS, TMJH, and PCHS. The information OCR has reviewed to date confirms that, at least in specific incidents (including as illustrated in 11 examples discussed below), these responses were insufficient to end the harassment or prevent its recurrence, as evidenced by ongoing harassment based on race, national origin, and sex at the three Schools. District employee responses during interviews with OCR underscored the inefficacy of the District's responses. Most employees OCR interviewed said they were unaware of what the District had done in response to student-to-student harassment based on protected statuses, eight employees told OCR that the District had not done enough to address such harassment, and 10 employees told OCR that their school had not done enough.

Additionally, OCR identified concerns regarding the District's compliance with Title VI and Section 504. Specifically, OCR identified concerns regarding the District's responses to harassment and possible hostile environments for Hispanic students and students with disabilities at the three Schools (including as illustrated in the twelfth example discussed below). As discussed near the end of this letter, OCR also found evidence of student-to-student harassment based on race and sex at the District's four elementary schools, which were not the focus of OCR's investigation, raising an additional concern about whether the District promptly and effectively responded to this harassment as required by Title VI and Title IX.

District records produced to date do not reflect responses sufficient to redress and prevent recurrence of hostile environments for students at the three Schools, and the records themselves raised a concern about the District's compliance with the recordkeeping requirements under the Title VI and Section 504 regulations. These regulations require recipients to create and maintain records that OCR needs to evaluate the recipients' compliance with Title VI and Section 504. Although OCR requested such records, the District's production was incomplete.

In addition, OCR identified specific violations of the 2020 Title IX regulations. Specifically, OCR found that the District had actual knowledge of alleged student-to-student sexual harassment in its schools but that the Title IX Coordinator did not provide information to complainants about the availability of supportive measures, their right to file a formal complaint of sexual harassment under Title IX, and how to file a formal complaint, as required by 34 C.F.R. § 106.44(a), and that the Title IX Coordinator did not maintain all of the records of its response to such knowledge, as required by 34 C.F.R. § 106.45(b)(10).

Below OCR discusses the applicable legal standards under Title VI, Title IX, and Section 504; the facts it found regarding the District's anti-harassment policies, harassment of students based on race, national origin, sex, and disability at the three Schools, the resulting hostile environment at the three Schools, additional student harassment at four other elementary schools, and the steps the District took to address harassment at the schools; its analysis of the facts under the applicable legal standards; and its conclusions.

## **II. LEGAL STANDARDS**

Below are the legal standards under Title VI, Title IX, and Section 504 that OCR applied in its investigation of the seven complaints about the District's responses to harassment of students.

### **A. Title VI Standards**

The regulation implementing Title VI, at 34 C.F.R. § 100.3, provides that no person shall, on the basis of race, color, or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program to which Title VI applies. Title VI's protection from race, color, and national origin discrimination extends to students who experience discrimination, including harassment, based on their actual or perceived shared ancestry or ethnic characteristics, or citizenship or residency in a country with a dominant religion or distinct religious identity. The existence of a hostile environment that is created, encouraged, accepted, tolerated, or left uncorrected by a recipient constitutes discrimination on the basis of race, color, or national origin in violation of Title VI.

To establish a violation of Title VI under the hostile environment theory, OCR must find that: (1) a hostile environment based on race or national origin existed; (2) the recipient had actual or constructive notice of a hostile environment based on race or national origin; and (3) the recipient failed to take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring.

OCR interprets Title VI to mean that the following type of harassment creates a hostile environment: unwelcome race-based or national origin-based conduct that, based on the totality of circumstances, is subjectively and objectively offensive and is so severe or pervasive, that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity. Harassing acts need not be targeted at the complainant to create a hostile environment; the acts may be directed at anyone. Also, the harassment need not be based on the complainant's or victim's race or national origin so long as it is motivated by race or national origin (e.g., it might be based on the race or national origin of a friend or associate of the victim). The harassment must in most cases consist of more than casual or isolated incidents to establish a Title VI violation. Whether harassing conduct creates a hostile environment must be determined from the totality of the circumstances. OCR will examine the context, nature, scope, frequency, duration, and location of the race-based or national origin-based harassment, as well as the identity, number, age, and relationships of the persons involved. If OCR determines that the harassment was sufficiently severe that it would have adversely affected a reasonable person, of the same age and race or national origin as the victim, under similar circumstances, from participating in or enjoying some aspect of the recipient's education program or activity, OCR will find that a hostile environment existed.

A recipient may be found to have violated Title VI if it failed to correct a hostile environment based on harassment of which it has actual or constructive notice. A recipient is charged with constructive notice of a hostile environment if, upon reasonably diligent inquiry in the exercise of reasonable care, it should have known of the discrimination. In other words, if the recipient could have found out about the harassment had it made a proper inquiry, and if the recipient should have made such an inquiry, knowledge of the harassment will be imputed to the recipient.

Once a recipient has notice of a hostile environment, the recipient has a legal duty to take reasonable steps to eliminate it. OCR evaluates the appropriateness of the responsive action by assessing whether it was reasonable, timely, and effective. The appropriate response to a hostile environment based on race or national origin must be tailored to redress fully the specific problems experienced as a result of the harassment.

## **B. Title IX Standards**

Title IX and its implementing regulation, at 34 C.F.R. § 106.31(a), prohibit recipients of federal financial assistance from subjecting students to discrimination based on sex under any of the recipients' education programs or activities. Sexual harassment is a form of sex discrimination under Title IX. The regulation, at 34 C.F.R. § 106.30, defines "sexual harassment," in relevant part, as "conduct on the basis of sex" that includes "unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity." This definition of sexual harassment may include harassment based on sex or sex stereotyping if a reasonable person would determine that the harassment is so severe, pervasive, and objectively offensive that it denies a person equal educational access. *See* 85 Fed. Reg. 30179.

The Title IX regulation, at 34 C.F.R. § 106.44(a), requires a recipient to respond promptly to actual knowledge of sexual harassment in the recipient's education program or activity against a

person in the United States in a manner that is not deliberately indifferent. In the elementary and secondary school context, the regulation defines “actual knowledge” as notice of sexual harassment or allegations of sexual harassment to the Title IX coordinator or any employee of an elementary or secondary school. *Id.* § 106.30(a).

Once a recipient has actual knowledge of sexual harassment in its education program or activity against a person in the United States, the recipient must offer “supportive measures” to the “complainant.” *Id.* § 106.44(a). The regulation defines “complainant” as “an individual who is alleged to be the victim of conduct that could constitute sexual harassment.” *Id.* § 106.30(a). The regulation defines “supportive measures” as “non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed.” *Id.* Supportive measures are designed to restore or preserve equal access to the recipient’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient’s educational environment or to deter sexual harassment. *Id.* Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. *Id.*

When the Title IX coordinator or an employee of an elementary or secondary school has actual knowledge of sexual harassment in a recipient’s education program or activity, the Title IX coordinator must promptly contact the complainant to discuss the availability of supportive measures, consider the complainant’s wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint. *Id.* § 106.44(a). When a complainant or Title IX coordinator files a formal complaint alleging conduct that could constitute sexual harassment as defined in 34 C.F.R. § 106.30, the recipient must investigate the allegation and follow a grievance process that complies with 34 C.F.R. § 106.45. Recipients may offer and facilitate an informal resolution process only for formal complaints of sexual harassment. 34 C.F.R. § 106.45(b)(9).

When a recipient has actual knowledge of sexual harassment under 34 C.F.R. § 106.44(a), the recipient must maintain for seven years records of any action, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. *Id.* § 106.45(b)(10)(ii). In each instance, the recipient must document the basis for its conclusion that its response was not deliberately indifferent and document that it has taken measures designed to restore or preserve equal access to the recipient’s education program or activity. *Id.* If a recipient does not provide a complainant with supportive measures, then the recipient must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. *Id.* The documentation of certain bases or measures does not limit the recipient in the future from providing additional explanations or detailing additional measures taken. *Id.* A recipient also must maintain for seven years records of each sexual harassment investigation, including any determination of responsibility, any audio or audiovisual recording or transcript

required by 34 C.F.R. § 106.45(b)(6)(i), any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant. *Id.* § 106.45(b)(10)(i)(A).

### **C. Section 504 and Title II Standards**

School districts are responsible under Section 504, Title II, and their regulations for providing students with a nondiscriminatory educational environment. *See* 34 C.F.R. § 104.4(a)-(b) (Section 504); and 28 C.F.R. § 35.130(a)-(b) (Title II). Harassment of a student based on disability by other students can create a hostile environment and result in the denial or limitation of the student's ability to participate in or receive education benefits, services, or opportunities. In determining whether a hostile environment based on disability has been created, OCR examines all the circumstances, including the type of harassment, the frequency and severity of the conduct, the nature of the student's disability, the age and relationship of the parties, the setting and context in which the harassment occurred, whether other incidents have occurred in the school district, and other relevant factors.

Under Section 504, Title II, and their regulations, once a school district has notice of possible disability-based harassment between students, the district must conduct a prompt, thorough, and impartial inquiry designed to reliably determine what occurred. The school district is not responsible for the actions of a harassing student, but rather for its own discrimination in failing to respond adequately. A school district may violate Section 504, Title II, and their regulations if: (1) the harassing conduct creates a hostile environment (i.e., is sufficiently serious to deny or limit the student's ability to participate in or benefit from the educational program); (2) the school district knew or reasonably should have known about the harassment; and (3) the school district failed to take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring.

## **III. FACTS**

This section details OCR's factual findings regarding the District's and the three Schools' policies, procedures, and practices related to student-to-student harassment; student-to-student harassment based on race, national origin, sex, and disability at the three Schools; the District's and the three Schools' efforts to address student-to-student harassment based on race, national origin, sex, and disability; the District's responses to specific incidents of harassment; and student-to-student harassment based on race and sex at the District's four elementary schools.

### **A. District Policies, Procedures, and Recordkeeping**

During SY 2022-23, District policies prohibited students from engaging in harassment based on race, color, national origin, sex, and disability; required employees and students to report such harassment; and required the District to promptly investigate such harassment and take steps to stop violations, prevent recurrence, and remedy effects of violations, as appropriate. *See* District Policies 1000 and 10001. District Policy 10100 – the District's "Safe Schools Policy" – governed discipline of students who engaged in harassment. District Policy 10086 governed complaints of discrimination based on race, color, national origin, sex, and disability. TMJH's website and PCHS' "Student Handbook" also prohibited such harassment and encouraged students to report

it. EHMS's SY 2022-23 "Student Handbook" did not address bullying or harassment.

District Policy 3100, titled, "Sexual Harassment Under the Jurisdiction of Title IX," was adopted by the District's Board of Education on March 15, 2022, and remains in effect for SY 2023-24. Pursuant to that policy, when any District employee witnesses sexual harassment or hears about it or allegations of it, the employee must report it to a school administrator or the designated Title IX Coordinator. District Policy 3100 further requires school administrators with actual knowledge of an allegation of sexual harassment to refer the matter to the Title IX Coordinator. Then, District Policy 3100 requires the Title IX Coordinator to discuss the availability of supportive measures with the complainant, consider the complainant's wishes with respect to such measures, explain to the complainant the process for filing a formal complaint of sexual harassment under Title IX, and if the complainant does not wish to file a formal complaint, determine if what the District knows about the alleged harassment requires the Title IX Coordinator to file a formal complaint over the wishes of the complainant to meet the District's Title IX obligations.

Districtwide, students could report harassment orally or in writing to employees. Students could also report harassment via SafeUT, a statewide crisis chat and confidential tip line. EHMS students also could report harassment by using a "Blue Sheet," available on the school's website and as a hardcopy in its front office and counseling office. At TMJH, students could use an anonymous form on the school's website. PCHS did not have any forms for students to report harassment.

According to the District, its Chief Student Services Officer was the Title IX Coordinator for all students at all schools (the Title IX Coordinator). However, the Title IX Coordinator told OCR that District schools did not refer any Title IX matters to her during SY 2021-22 or SY 2022-23. The District's Multi-tiered System of Supports (MTSS) Coordinator was the District-level Section 504 Coordinator. The principal and/or an assistant principal were the Section 504 Coordinator for each school.

The District required its employees to complete an annual online training that addressed harassment but focused on harassment by employees. Additionally, the District told OCR that, at the beginning of SY 2022-23, a law firm conducted a Title IX training for school administrators.

The District's primary student information system (SIS) and its software used to track student behavior for MTSS/response to intervention (RTI) did not retain all the information OCR needed to investigate the seven complaints addressed in this letter. Principal 1 told OCR that the District's elementary schools tended to use the software to log student conduct, whereas TMJH and PCHS tended to use the SIS to log student conduct, and that EHMS sometimes recorded student conduct only in the SIS, only in the software, in both systems, or in neither system. District records also revealed that schools inconsistently completed a District form titled, "Report of a Serious School Incident," which should have been submitted for each "serious school incident" to the Chief Student Services Officer (who also served as the Title IX Coordinator). At the three Schools, recordkeeping also varied by school administrator. For example, at EHMS, AP 1 generally took interview notes on "Blue Sheets," whereas AP 2 generally took interview notes in an email, which he then emailed to himself. According to



Principal 1, completed “Blue Sheets” were processed by EHMS but not always scanned. At PCHS, Principal 3 told OCR that he kept witness statements in a stack inside a desk drawer and then shredded them at the end of each school year. AP 4, on the other hand, told OCR that she only kept written statements for substantiated incidents and puts those statements in students’ files. Principal 3 shared with OCR that SafeUT notes were not printed and added to student files and that parent contact was not recorded. OCR asked Principal 3 why there were no records of student-to-student harassment incidents at PCHS in fall 2022 when there were many such incidents of harassment based on race and national origin in fall 2021, spring 2022, and spring 2023. Principal 3 acknowledged that there could have been incidents of such harassment that were not reflected in District records or reported to OCR for fall 2022.

## **B. Harassment based on Race and National Origin**

Based on OCR’s review of the District records from SYs 2021-22 and 2022-23, the three Schools had about 77 documented incidents of students engaging in racially offensive conduct, including approximately 58 incidents at EHMS, 12 at TMJH, and seven at PCHS. Due to the District’s inconsistent maintenance of relevant records, there may have been more incidents. The documented conduct included students writing and saying the n-word, asking students of color for “n-word passes,” calling Black students “monkey,” acting like a monkey toward students of color, calling a multi-racial student (Student 56) a “cotton-picker,” making racially and ethnically offensive jokes (including about bringing back slavery), talking about the size of Black males’ penises, calling Asian students “chink” and “dog eater,” saying “ching chong” to Asian students, telling Asian students to eat dogs and cats, pulling their eyes back and speaking with a fake accent to mock Asian people, calling students of color “whitewashed,” calling Hispanic students “beaners” and “illegal,” and yelling “I hate Mexicans” at Hispanic students. The harassing conduct was reported to have happened in classrooms, hallways, cafeterias, and elsewhere in the three Schools.

The District’s documents also reflect that there were at least 27 incidents of antisemitism reported at the three Schools in SYs 2021-22 and 2022-23, including at least nine at EHMS, nine at TMJH, and nine at PCHS. This documented conduct included students drawing swastikas, doing Nazi salutes, playing Nazi music, asking people if they support Nazis and the KKK, searching “Kill all Jews” on a school computer, and dressing as Hasidic Jews for Halloween. Additionally, students said or wrote: “I hate the Jews;” “The Nazis were right;” “I wish I was Hitler so I could cut people in half;” “Heil Hitler;” “It is not racist if I say I want to kill all the Jews;” “What’s the difference between a Jew and Harry Potter? Harry Potter escaped the gas chamber;” “Fuck these Jewish kids;” and “Hitler sent me here to kill you.”

In response to OCR’s emailed survey to staff at the three Schools about student harassment, 60.3% of employee respondents reported that they were aware of students engaging in racially or ethnically offensive conduct (e.g., slurs, insults, or offensive jokes, symbols, or gestures) at school or during a school-sponsored activity during SY 2021-22 or SY 2022-23, and 43% of employee respondents indicated that they were aware of students engaging in antisemitic conduct (e.g., drawing swastikas, Nazi salutes, offensive jokes, etc.) at school or during a school-sponsored activity during those same school years. In interviews, employees shared with OCR that students at the three Schools regularly made racially offensive jokes and used racial slurs,

especially the n-word and “beaner.” One employee at EHMS told OCR that white students said to an Asian student, “Sing song, ding gong,” and asked the Asian student if she eats cats, and the employee did not know if the school took action beyond lunch detentions and phone calls home for the white students. Another employee at EHMS told OCR that Hispanic students have reported that other students have said they are “illegal,” “should be deported,” and should “go back to Mexico,” and that the school has not addressed the issue. OCR learned of other harassment of Hispanic students at PCHS. For example, Teacher 10 told OCR that, during class in March 2023, white students criticized two PCHS Hispanic students (Students 147 and 148) [redacted content]. PCHS teachers also told OCR that during the week of May 22, 2023, when students were cleaning up after class, one student said to a Hispanic student something to the effect of, “You do a really good job cleaning, but I guess that’s because that’s what you’re going to do in the future.” Furthermore, during interviews with OCR, employees shared that students have drawn swastikas, made antisemitic jokes, talked positively about Nazis and Hitler, said and written “Heil Hitler,” done Nazi salutes, and made fun of a Jewish student with autism, including by making disparaging remarks about Jewish people.

Students and parents also told OCR about student-to-student race-based and antisemitic harassment at the three Schools. The parents of Student 68, a student at EHMS in SY 2022-23, alleged to OCR that the hallways at EHMS are “filled with racist terms” and that Student 68 witnessed students asking a Black student for an “n-word pass” and making jokes about Asian people. Student 62, who attended [redacted content] in SY 2022-23, told OCR that students have used the n-word, two Black students (Students 66 and 67) have been asked for “n-word passes” and called monkeys, and students have asked Hispanic students, “How does it feel to be illegal?” Student 63 told OCR that students said the n-word every day at PCHS in SY 2022-23. Student 32 told OCR that, as a student at [redacted content] and at [redacted content], [redacted content] heard students say the n-word and “beaner.” [Redacted content] also reported to [redacted content] that a student “has said the n-word, f-slur, and says he is going to kill [redacted content]/put [redacted content] in a gas chamber” and “called [redacted content] a fat Jewish [redacted content], fat Jew, go kill [redacted content] self Jew in the hall/classroom.” Student 32’s parent also reported the racist and antisemitic harassment to [redacted content] and [redacted content]. Student 58 told OCR that students said “Heil Hitler” at EHMS during SY 2021-22. Student 115, a [redacted content] student who attended EHMS during SY 2019-20, TMJH during SYs 2020-21 and 2021-22, and PCHS during SY 2022-23, told OCR that [redacted content] has heard students make jokes about Jewish people wanting money; at EHMS, students called [redacted content] “stupid Jew” and drew swastikas “everywhere,” including on desks, rulers, and calculators; at TMJH, [redacted content] saw a few swastikas drawn by students; and at PCHS, [redacted content] heard a student say “kike,” an ethnic slur for a Jewish person. Student 115 told OCR that [redacted content] discussed antisemitic harassment in [redacted content] class.

Student discipline records show that during SY [redacted content], at least four [redacted content] Black students – including Student 4 (see Example 2 below), Student 96, Student 89, and Student 13 – were subjected to race-based harassment by other [redacted content] students. According to an incident log, Student 95 asked Student 96 if [redacted content] liked fried chicken and watermelon, and Student 96’s parent (Parent 22) emailed Principal 1 that students were “continuously” subjecting Student 96 to “racist jokes” and calling [redacted content] “monkey.” District records show that Student 89 was upset by overhearing Student 14 joking

about a friend using the n-word in September 2022, and when Student 101 told Student 89 that [redacted content] was the color of [redacted content] black [redacted content] in January 2023. Records from January 25, 2023, reflect that Student 102 said to Student 13, “If you don’t vote for [redacted content], I’ll bring back slavery,” and that two weeks later, Student 13 reported that Student 108 mouthed the n-word at [redacted content] during class.

OCR review of Board of Education records further reflect District notice of alleged harassment based on race (Black, Asian, and Hispanic students) and national origin (including students of shared Jewish ancestry). According to minutes from the February 15, 2022 Board of Education meeting, Teacher 8 “said others have come to him and he has documented over 60 cases in the district,” and “that a number of incidents were brought to the district and not dealt with or swept under the rug.” On February 17, 2022, the Board of Education Chair wrote to a local community member, “[W]e along with all of society have issues with anti-Semitism and bigotry against our LatinX and LGBTQ+ communities.” On March 21, 2022, Teacher 8 emailed a spreadsheet of 66 “hate incidents” in the District to Principal 3 and the then assistant principal at TMJH. The spreadsheet included various racist conduct, including use of the n-word, calling an Asian student “rice farmer,” and calling racial minorities “dirty;” and antisemitic conduct, including students doing Nazi salutes, drawing swastikas, and engaging in “anti-Semitic verbal abuse.”

### **C. Harassment based on Sex**

According to the District’s documents, there were at least 80 reported incidents of student-to-student sexual harassment during SYs 2021-22 and 2022-23, including approximately 55 at EHMS, 17 at TMJH, and eight at PCHS. Due to the District’s inconsistent recordkeeping, there may have been more incidents. The documented conduct included touching or rubbing students’ thighs, hair, butts, breasts, and private parts; attempting to kiss students without consent; talking about and threatening to sexually assault students, including raping them; requesting and sending sexual photographs; talking about students’ butts, breasts, and private parts; calling female students “hoe,” “whore,” and “slut;” calling students “fag” and “faggot;” saying “gay” and “lesbian” in a derogatory manner; sexual comments, jokes, noises, and gestures; and comments and jokes denigrating gay and transgender people.

District employee responses to OCR’s emailed survey and interview questions confirmed this notice. For example, 31.4% of employee respondents indicated that they were aware of students engaging in sexual harassment, including harassment based on LGBTQI+ status, at school or during a school-sponsored activity during SY 2021-22 or SY 2022-23. In interviews, employees shared with OCR that students have touched other students in a sexual manner without consent; students called other students “faggot,” “tranny,” “slut,” “whore,” and “hoe;” students used “gay” pejoratively; and students who identify as LGBTQI+ have been targeted by peers, including through name-calling, jokes, and slurs (e.g., “fag” and “faggot”), and did not feel comfortable at school. Employees also told OCR about a student who identifies as LGBTQI+ and left the District during [redacted content] because of persistent peer harassment. On September 6, 2022 and September 28, 2022, Counselor 3 notified Principal 2, via email, that students were hearing homophobic and transphobic slurs and asking TMJH to take action.

Students and parents likewise told OCR about sex-based harassment at the three Schools. For

example, the parents of Student 68, a student at [redacted content], alleged to OCR that students have repeatedly called Student 68 “fag” or “faggot,” they reported the harassment to [redacted content]’s administrators, and because of the harassment, Student 68 cries at home, feels unsafe at school, and does not want to attend school. This example was not isolated. Student 32 told OCR that she heard students say “fag” and “faggot” at EHMS and TMJH, Student 62 told OCR that [redacted content] students have said they hate gay people, and Student 63 told OCR that she heard students say “fag” or “faggot” every day at PCHS. Student 58 told OCR that EHMS students talked about raping each other in SY 2021-22.

#### **D. Harassment based on Disability**

District records from SYs 2021-22 and 2022-23 reflect three reported incidents of student-to-student harassment based on disability at EHMS and one at TMJH. The District had actual notice of all the incidents, as evidenced by its records (e.g., discipline records, emails, and incident logs). Given the District’s inconsistent recordkeeping, there may have been more incidents. The documented conduct included calling students with disabilities “retarded,” mimicking a student’s stutter, and referring to a student with a disability “in a disparaging manner.”

In response to OCR’s emailed survey, 24.0% of employee respondents indicated that they were aware of students engaging in teasing, bullying, or harassment based on disability at school or during a school-sponsored activity during SY 2021-22 or SY 2022-23. In interviews, employees told OCR that: students have used “retarded” and “autistic” pejoratively; students with disabilities have been targeted and bullied, including being mimicked and called “stupid,” “retarded,” “crip,” and “cripple;” students with disabilities have felt awkward and embarrassed at school; students made fun of a student with a [redacted content] impairment in P.E.; a student with autism had experienced harassment, including, for example, a student pouring [redacted content] on him and students getting him to send inappropriate text messages to female students; and Student 118 said, during class, “Does this kid have a disability or something,” and said a student with a disability and severe needs was “so annoying.”

The District reported to OCR that PCHS did not have any incidents of student-to-student harassment based on disability during SYs 2021-22 and 2022-23. Yet, a teacher at the school (Teacher 10) told OCR that students have reported other students saying “retard” and “retarded.” Another PCHS teacher (Teacher 6) told OCR that a student who used a cane was called “crip” and “cripple” by other students. A PCHS [redacted content] shared with OCR that a student with autism (Student 254) had been bullied by two students.

Students also told OCR about harassment based on disability at the three Schools. Student 32 told OCR that at [redacted content], [redacted content] has heard students say “retard” and “retarded,” including in reference to students with autism. Student 62 told OCR that [redacted content] students call each other “retarded” and “special needs.” Student 115 told OCR that students say “retarded” a lot at PCHS, and she has heard students mock and make jokes about people with disabilities at EHMS and TMJH.

## **E. District and School Efforts to Address Harassment**

In SYs 2021-22 and 2022-23, the District and the three Schools took several measures to address student-to-student harassment and to prevent harassment from recurring, including some measures that were specific to race, national origin, sex, and disability harassment. This section describes the evidence OCR obtained regarding those measures and addresses the absence of certain measures.

According to the Title IX Coordinator, three of the monthly school administrator meetings during SYs 2021-22 and 2022-23 dealt with harassment. During the meeting on March 9, 2022, the Title IX Coordinator reportedly reviewed a “Serious Incident Flowchart” and a document titled, “Elements of Investigation (P.R.O.O.F.),” which was intended to guide investigation plans in response to “serious incidents.” However, neither of the documents specifically addressed harassment. During the meeting on May 11, 2022, the Title IX Coordinator reportedly went through a presentation titled, “Bullying,” which covered the definition of bullying and protocols for investigating alleged bullying (e.g., interviews, parent notice, investigative reports, and disciplinary action). During the meeting on December 14, 2022, the administrators reportedly discussed bias, bias incidents and hate crimes, discrimination, and implicit bias. Notably, none of the nine school administrators interviewed by OCR mentioned these meetings when asked about training.

On August 25, 2022, the District gave a presentation for parents titled, “Programs for Youth Protection: Parent Seminars.” The Title IX Coordinator told OCR about the training, and a video of the presentation and the slides were on the District’s “Student Services” webpage. The presentation included the definition of bullying, warning signs of bullying, and what parents can do to prevent bullying. None of the 44 school-based employees OCR interviewed mentioned the training when asked about harassment-related training for parents.

For SY 2022-23, the Title IX Coordinator told OCR that she created a presentation template and provided it to counselors districtwide. The presentation included a definition of bullying, descriptions of what students should do if they witness bullying, and information about what happens with reports of bullying. OCR does not know the extent to which counselors used the presentation.

### **1. EHMS**

At the beginning of SYs 2021-22 and 2022-23, EHMS counselors conducted a “Friends on the Watch” presentation. The presentation covered the definition and types of bullying, reporting bullying, the consequences of bullying, and other related topics. Principal 1 also sent very similar mass emails to EHMS parents in January 2022 and December 2022. She sent the December 2022 email after Parent 1 advocated for a message about bullying to be sent. The emails noted that students were using “unkind, highly offensive, or inappropriate words, phrases, and slurs;” informed parents that the school takes “negative behavior seriously, especially if it is targeted bullying;” asked parents to talk to their children about “interactions that are hurtful;” directed parents to the School’s “Student Handbook” and “PBIS Handbook” for additional information; and stated that the School’s “ultimate goal is to maintain a safe learning environment for all

students.” Parent 1 criticized the District for the lack of specificity in the December 2022 email. In February 2023, Principal 1 sent a third, more specific mass email to EHMS parents in which she apologized for the December 2022 email not being “clear enough nor strong enough.” The February 2023 email went on to share with parents that there had been 23 reported incidents of “students using highly offensive language or gestures,” including the n-word, asking a Latino student how it feels to be illegal and Asian students if they eat dog, anti-Semitic comments and “Hitler’s Salute,” and “LGBTQIA+ slurs such as calling a student a ‘tranny.’” The email also informed parents that EHMS’s administrators were going to “reteach ALL students the behavior expectations and possible consequences,” with the goal of “educat[ing] students to stop the use of highly offensive language and gestures.” Principal 1 warned parents that “any further incidents will result in an elevated response and consequence,” encouraged them to report harassment, and asked them to “reinforce appropriate behavior expectations in and out of school and share with their children the negative impacts these types of behaviors have on others.”

On February 8, 2023, Principal 1 delivered a “Re-Teaching Behavior Expectations at EHMS” presentation to EHMS staff, which included examples of harassment, consequences for “highly offensive language and gestures,” the negative impact of harassment on EHMS, and how to help address harassment. On February 13 and 14, Principal 1, AP 1, or AP 2 delivered the presentation in every science class at EHMS. AP 1 later pulled students who were absent from science classes to show them the presentation.

In March 2023, after OCR had opened three complaints against the District for investigation, EHMS began using a “Hero in the Hallway” presentation. The presentation reads, “Hero in the Hallway is a new program that the leadership class at Ecker is creating. This new program hopes to create a more inclusionary school for all students.” The presentation included slides about “problems” EHMS was having (i.e., “unkind words, offensive language, insults and slurs”) and what students could do about the problems (e.g., “speak up against every biased remark”), as well as discussion questions (e.g., “Has there ever been a time where you were teased for who you are? How did that make you feel?”). On March 4, “Hero in the Hallway” was discussed in an EHMS staff meeting. On March 8, the presentation was delivered during EHMS’s Advisory period, which is for 17 minutes at the start of the school day on Mondays to Thursdays, and for 30 minutes on Fridays. EHMS staff told OCR that there were other Advisory lessons about inclusivity and kindness but nothing specifically about harassment based on race, national origin, sex, or disability.

## **2. TMJH**

For TMJH, the District submitted to OCR evidence of two presentations about respect and bullying: a “Freshman Fall Curriculum” presentation that covered topics like respect and empathy and indicated that counselors were scheduled to deliver the presentation in ninth-grade English language arts classes in September 2021; and a presentation for an eighth-grade assembly, held on September 9, 2022, that addressed tolerance, respect, empathy, and reporting bullying. Additionally, AP 5 told OCR that at the end of first and second quarters of SY 2022-23, ninth-grade students attended assemblies that addressed bullying and inappropriate language. The District also provided OCR with two videos about racism and harassment at TMJH: a one minute-and-28-second video of Principal 3 and TMJH’s assistant principals talking about how

racism and hate language will not be tolerated (and four accompanying PowerPoint slides); and a four-minute-and-14 second video titled “Unity,” which included TMJH and PCHS staff and PCHS students discussing harassment, cyberbullying and social media, retaliation, the District’s Safe Schools Policy, how words matter, and how racism, sexism, and homophobia have no place in school.

According to Principal 2 and AP 3, TMJH staff also discussed with students harassment and how to report it in 30-minute Advisory periods during the first two weeks of each school year. AP 3 also told OCR that during a couple Advisory periods each month, time is devoted to social and emotional learning. The District provided to OCR copies of Advisory period presentations titled, “Empathy and Digital Citizenship,” “Building Positive Relationships,” and “Community Lesson.”

### **3. PCHS**

On March 4, 2022, PCHS’ administrators led a staff discussion focused on “standing together against hate.” Each teacher was asked to display a poster that read, “There is no place in Park City High School for hate motivated conduct or hate driven words, based on race, gender, sexual orientation, religion, nationality, or sexual identity.” The poster also had hands with “WE STAND TOGETHER AGAINST HATE” printed across the palms. The poster was printed onto a banner and hung in the cafeteria. Students could pledge to stand together against hate by signing the banner. Each teacher was also asked to have a 15-to-30-minute class discussion about “inclusivity,” “standing up for people,” “recognizing we all have to stand together to create a safe, inclusive place,” and “building a positive, safe culture at school.”

Principal 3 told OCR that counselors went into PCHS classrooms throughout the school year to do social and emotional learning with students. Another PCHS assistant principal (AP 6) told OCR that social and emotional learning was provided in health classes. Counselor 6 told OCR that she did a bullying lesson at the beginning of every school year but that students need more social and emotional learning. AP 4 told OCR that, at the beginning of SY 2022-23, PCHS had grade-level assemblies during which staff talked about bullying and SafeUT. Principal 3 also told OCR that 10<sup>th</sup>-grade students are told how to report bullying during health class but that he was not aware of any such announcement or training for 11<sup>th</sup>- and 12<sup>th</sup>-grade students. He thinks he discussed hate speech during PCHS’s morning announcements once. He told OCR that PCHS had not had any parent meetings about bullying and harassment.

### **F. District Responses to Specific Incidents**

The evidence the District produced shows that it timely investigated some specific incidents of harassment based on race, national origin, sex, and disability at the three Schools and took some measures (most often disciplining harassers) to end and prevent recurrence of the harassment. In other instances, the District did not provide OCR with evidence that it investigated or timely investigated some specific incidents of harassment based on race (e.g., Parent 2’s report that students asked Student 8 if he had a “[redacted content]” (Example 1), Parent 22’s report of ongoing harassment of Student 96 (see p. 10 above), and Parent 4’s March 22, 2023 allegation of racial harassment of Student 38 (Example 3) or broader allegations of harassment based on

national origin (shared Jewish ancestry) from parents (Example 5) and staff (Examples 4 and 5). Furthermore, the District did not provide OCR with evidence that it took effective steps to eliminate hostile environments based on race of which it had notice, such as for Students 8 and 4, whose continued race-based harassment the District documented but for whom even some staff recommended responsive actions the District ignored (Examples 1 and 2); investigated whether a hostile environment existed for student witnesses to harassing conduct based on shared Jewish ancestry (Examples 4, 5, and 6) and sex (Examples 7 and 11); or complied with Title IX's requirements when school district employees have actual notice of sexual harassment (Examples 7, 8, 9, 10, and 11). Below are specific examples of District responses in some incidents of student-to-student harassment.

### 1. Example 1

The District's discipline and other records revealed that Student 8, who is Black, was subjected to race-based harassment on at least 17 occasions by at least 14 different students across SYs 2021-22 [redacted content] and 2022-23 [redacted content]. One of the harassers, Student 15, a white student, subjected Student 8 to race-based harassment on at least four occasions. The harassment consisted of students asking Student 8 for an n-word pass, asking Student 8 if [redacted content] is black, and calling Student 8 the n-word, "negrito," and "monkey."

The District knew of this harassment because Student 8 and [redacted content] mother (Parent 2) reported it to employees, employees themselves reported it to administrators, and Student 8 visited [redacted content] school counseling office seeking redress because [redacted content] felt "ostracized," according to a counselor at [redacted content]. For example, on April 18, 2023, Parent 2 reported to the [redacted content] and other [redacted content] staff that students asked Student 8 if [redacted content] had a "[redacted content]" earlier that month. [Redacted content] told OCR that he could not recall what action, if any, [redacted content] took in response to the alleged harassment. Parent 2 told OCR that no one followed up with her about the allegation. Student 8's parents also sent a letter to the District in which they reported that Student 15 was creating a distracting, toxic, and unsafe environment for Student 8.

District records reflect that school staff were concerned that Student 8 needed redress for the race-based harassment [redacted content] was experiencing. On November 19, 2021, a staff member in [redacted content] emailed the school's administrators, "[T]his week, there's been lots of reports of students using the N word. I think we should have some sort of assembly for hate speech and bullying. Explaining what the consequences are and that it's not okay for them to use racial slurs. At least something along those lines because looking over the reports it's been mostly towards [Student 8]." [Redacted content] did not hold such an assembly.

Teachers at [redacted content] emailed Parent 2 to acknowledge the racial harassment of Student 8 and express their sympathies for Student 8's "frustration" and "anger." A teacher at [redacted content] emailed Parent 2, "I can't imagine the pain." A teacher at [redacted content] wrote to Parent 2, "I am so sorry [redacted content] had to hear that terrible language ... and it made me sick that [Student 8] had to hear that." The [redacted content] told OCR that the racial harassment made Student 8 angry and frustrated and made it difficult for [redacted content] to settle down and focus on academics. An [redacted content] told OCR that Student 8 is very



frustrated by the harassment and misses class time when [redacted content] writes statements and talks with administrators about harassing incidents. Student 8 confirmed the validity of these concerns. [Redacted content] told OCR that the harassment made [redacted content] so angry and anxious that [redacted content] could not learn well in class, made [redacted content] cry and not want to attend school, and negatively impacted [redacted content] friendships.

In response to notice of the harassment, the District investigated most of the alleged harassment and took steps to stop the individual students from harassing Student 8. The District disciplined most of the students who harassed Student 8. The consequences for the harassers included parent contact, apologies to Student 8, lunch detentions, and suspensions. For Student 15, who harassed Student 8 at least four times, the District [redacted content] to address his harassing conduct, moved his locker, limited his access to certain areas of the school building, suspended him out-of-school, and, for a time, assigned staff to escort him between classes. The District also told OCR that it provided Student 8 with counseling services [redacted content]. In September 2022, after a student referred to Student 8 as “that [n-word]” in P.E., [redacted content] told OCR that he went to every [redacted content] P.E. class over the next two days to talk about creating safe, respectful, and inclusive spaces, to warn students about disciplinary consequences for harassment, and to discuss protected classes.

The measures the District took in response to race-based harassment of Student 8 during SYs 2021-22 and the first part of SY 2022-23 proved ineffective because they failed to prevent harassment from recurring and the hostile environment based on race persisted.

## **2. Example 2**

During SY [redacted content], Student 4, who is Black, was a student at [redacted content] and harassed based on race at least four times. First, during class in fall 2022, Student 3 asked Student 4 if it was okay for white people to use the n-word. Second, about two and half months later, Student 7 told Student 4 that he had an n-word pass and then walked away laughing. Soon thereafter, Student 4’s mother emailed Student 4’s teacher [redacted content] to report that Student 4 was dreading an upcoming project because [redacted content] was in a group with Student 7. An assistant principal at [redacted content] told OCR that she had forgotten to notify Student 4’s teachers about keeping Student 7 away from Student 4. Third, Student 4’s mother emailed [redacted content] and teachers in spring 2023 to notify them that a few days earlier, students were discussing racial slurs during class, which made Student 4 uncomfortable. The next month, Student 14 called Student 4 the n-word in class.

District records show that on February 1, 2023, [redacted content] sent Student 4’s mother an email stating in part, “I am frustrated, saddened, and angry that [Student 4] continues to experience racist comments from other students.” In her reply, Student 4’s mother shared with the District that the harassment deflated Student 4’s self-esteem, natural exuberance, and outgoing nature and made [redacted content] feel upset, insecure, uncomfortable, embarrassed, and humiliated. On February 8, 2023, an [redacted content] emailed Student 4’s mother, “... [Student 4] was feeling overwhelmed today and was having a rough time.” Student 4’s mother replied, “[Redacted content] is very profoundly impacted by the racism [redacted content] has experienced and sees the lack of meaningful intervention happening on behalf of the school

system.”

[Redacted content] took several timely steps to respond to the racial harassment of Student 4, including: interviewing student witnesses; giving consequences to harassers (e.g., detentions, reteaching behavioral expectations, and contacting parents); moving the harasser involved in the incident [redacted content] to a different class; meeting with Student 4 and [redacted content] parents and establishing the counseling office as a safe space for Student 4 (although not necessarily as a place to receive counseling services); talking with Student 4’s teachers about the harassment and keeping an eye on Student 4; checking in with Student 4; and giving the presentations described below. However, [redacted content] told OCR that [redacted content] did not create a safety plan for Student 4, did not consider no contact orders for Student 4’s harassers, and did not offer counseling or other support services to Student 4. Parent 2 confirmed that [redacted content] never offered services to Student 4.

### 3. Example 3

According to discipline records, students said that an Asian student (Student 38) eats dogs, and another student told [redacted content], “Go eat cat.” Student 38’s parent (Parent 5) told OCR that students called Student 38 “Chinese eyes,” sang “ching, chong, chang” to [redacted content], and sent photographs of rice paddy workers to [redacted content] via social media. OCR found that Student 38 and [redacted content] parents (Parents 4 and 5) reported the harassment to [redacted content] staff collectively at least four times, and that in February 2023, another student reported racial harassment of Student 38 to [redacted content] staff. The District admitted, in writing, to OCR that Student 38 was “subjected to instances of prohibited behavior based on [redacted content] race/national origin.”

On March 22, 2023, Parent 5 met with [redacted content] to discuss the most recent instances of students racially harassing Student 38, including students continuing to call [redacted content] a “dog eater” and singing “ching, chong, chang” at [redacted content]. According to [redacted content], he did not follow up with Parent 5 or coordinate with other [redacted content] staff about next steps because he was on leave from March 24 to April 21, 2023. Not until May 16, 2023, eight weeks after Parent 5’s allegations to the District and five days after OCR notified the District of the complaint filed by Parents 4 and 5, did [redacted content] initiate an investigation of Parent 4’s March 22 complaint to [redacted content]. The District’s narrative response to OCR described the District’s delayed investigation as a “botched hand-off.”

[Redacted content] told OCR that he did not know whether any teachers were interviewed about harassment of Student 38, what the effects of harassment were on Student 38, or whether [redacted content] offered services to Student 38. OCR asked [redacted content] about the effects of racial harassment on Student 38. AP 1 responded, “[Redacted content] didn’t say anything about that.” [Redacted content] told OCR that services were not offered to Student 38 because Student 38 feared being singled out and called a snitch and did not want to miss class. [Redacted content] told OCR that she invited Student 38 to go to counseling, but Student 38 refused.

According to the District’s narrative response to OCR and [redacted content]’s administrators during interviews with OCR, [redacted content] disciplined Student 38’s harassers by warning

them, reteaching them expectations, contacting their parent, and/or giving them a detention. However, discipline records for seven of the harassers do not reflect consequences for harassing Student 38. As a result of the harassment, Student 38's parents reported that they withdrew [redacted content] from the District.

#### **4. Example 4**

In February 2022, a Jewish teacher at PCHS (Teacher 8) found a swastika and the n-word drawn under a desk in his classroom. An assistant principal at PCHS (AP 4) told OCR that she interviewed students about the graffiti but did not keep notes from the interviews, and that a lot of students were impacted by the incident because of the rumors, gossip, and accusations that followed. The graffiti was discussed in board meetings and covered by news outlets. On February 10, 2022, Teacher 8 emailed all PCHS staff, stating, "This is ... not an isolated incident." Teacher 22 replied, "I hear of hateful words spoken between students all the time. ... I do not want to be part of a system that sits back and waits for anti-semitism and racism to heighten before we decide to act." Teacher 23 replied, "You are right, it's not an isolated incident." Teacher 6 replied, "[T]oday I had a female student tell me that students are using the f slur (and anti-gay speech) ... it seems to be becoming a very large issue at our school."

The District's response to the graffiti and attention to it included having Principal 3 send a mass email to PCHS parents on February 10, 2022, stating in part:

Over the course of the last few weeks, we have had multiple incidences of hate speech appearing on our campus. The hate speech has appeared in the form of swastikas and racial slurs at multiple locations. As a community, we have zero tolerance for language or imagery that expresses hate towards a person or group based on religion, race, disability, sex or sexual orientation. We encourage all stakeholders to report any hate speech observed at school to an administrator or a trusted adult on our campus. Anonymous tips can be reported through the SafeUT app. We will investigate and follow the Safe School Policy in dealing with any violations. The administrative team in conjunction with our counselors and teachers will be working to provide learning opportunities for our students to identify and stop hate speech.

District records and interviews OCR conducted do not reflect that the District asked Teachers 8, 22, 23, or 6 about the antisemitic and racist language they reported hearing or took steps to determine if a hostile environment based on race or national origin existed for affected students.

#### **5. Example 5**

Student 2 is Jewish and attended [redacted content] during SY 2022-23. Records show that during class on October 25, 2022, Student 1 repeatedly said "KKK" to Student 2 and laughed at [redacted content], despite Student 2 telling Student 1 to stop. [Redacted content] gave Student 1 a lunch detention, had him write an apology letter to his tablemates, including Student 2, and asked [redacted content] to talk with Student 1 about "appropriate words." In an email to the Superintendent and [redacted content] staff on October 25, 2022, Student 2's parent (Parent 1)

expressed her sadness, anger, and fear; requested a meeting with [redacted content]'s administrators; and wrote, "[Student 2] has experienced several antisemitic hate crimes at [District] schools with nothing done about it but chatting with the student and informing the parents and it needs to stop." The next day, [redacted content] replied to Parent 1's email, stating, "I am just now reading this correspondence. I will be available for a meeting this morning at 9:30 am. If you would prefer to bring your [redacted content] in to school at that time myself and [redacted content] will be available to speak with you both." The meeting took place. Parent 1 told OCR that neither [redacted content] nor [redacted content] inquired about the other "antisemitic hate crimes." [Redacted content] told OCR that she could not recall if anyone asked Parent 1 about, or otherwise investigated, her reference to alleged "antisemitic hate crimes." The District produced no evidence to OCR of the District having investigated Parent 1's report that Student 2 had been subjected to other "antisemitic hate crimes."

## 6. Example 6

The District acknowledged in its narrative response to OCR that "instances of prohibited behavior have been committed by students while" Student 32, who is Jewish, attended [redacted content] in SY 2021-22 and [redacted content] in SY 2022-23. Records show that the antisemitic incidents at [redacted content] started early in SY 2022-23. On August 22, 2022, [redacted content] sent [redacted content] and [redacted content] an email stating, "I met with [Student 32] today and [redacted content] disclosed that [redacted content]'s overheard some concerning comments from a classmate. I can fill you in on the comments, they're related to a transgender student, sexism, and Hitler." The District did not provide OCR with any records or information showing that [redacted content] took further action regarding the email.

District records reflect that Student 35 repeatedly made harassing statements regarding Jewish students despite the District disciplining and counseling him. On November 1, 2022, Student 32 overheard Student 35 making the following antisemitic statements during class and was upset by them. Student 35 asked another student, "Is being Jewish a race or religion?" When the student said it is a religion, Student 35 replied, "So, it is not racist if I say I want to kill all the Jews." The District responded by having [redacted content] talk to Student 35 about hate speech, review behavioral expectations with him, and give him [redacted content].

Even though [redacted content] made clear to Student 35, in [redacted content] 2022, that he should not use anti-Jewish language, according to discipline records, Student 35 directed racial and ethnic slurs to other [redacted content] students, including Student 32 and another Jewish student (Student 36), on social media and in school hallways from approximately January [redacted content], 2023 to February [redacted content], 2023. For example, these records show Student 35 said to Jewish students during passing periods, "I'm killing Jews tonight." Student 32 wrote about Student 35, in a statement to [redacted content] staff, "He is very anti-Semitic .... He has said the n-word, f-slur, and says he is going to kill me/put me in a gas chamber. ... He called me a fat Jewish [redacted content], fat Jew, go kill yourself Jew in the hall/classroom." Another student wrote in a statement for the school, "[Student 35] calls [Student 32] slurs and says incredibly offensive things to [redacted content] in regards to [redacted content] being Jewish such as putting [redacted content] in the gas chamber like Hitler."

On March 9, 2023, [redacted content] suspended Student 35 for [redacted content] based on his repeated misconduct, including, but not limited to, his antisemitic harassment and threats. In a memo to the Title IX Coordinator dated March 7, 2023, [redacted content] wrote that Student 35 had engaged in “a pattern of ethnic slurs over a prolonged period of time.” In a letter to Student 35’s parents dated March 9, 2023, the Title IX Coordinator noted, “He also used the n-word approximately [redacted content] times, told another student to ‘KYS,’ [sic] kill yourself, and ‘I’m killing Jews tonight.’ In addition, he made threatening communications toward classmates who reported his behavior.” OCR did not receive any other records of Student 35 harassing Student 32 or others after the suspension. The District prohibited Student 35 from [redacted content].

In March 2023, Student 22, who had previously harassed Student 8, posted a series of antisemitic messages in a social media group chat, some of which were directed toward Student 32. For example, his messages read, “fuck the jews,” “I hate jews,” and “someone back” (under a photo of Hitler). [Redacted content] responded to the messages by suspending Student 22 for [redacted content], but District records do not reflect that it assessed if the messages created or perpetuated a hostile environment for any students.

In an interview, [redacted content] told OCR that antisemitic peer harassment negatively impacted Student 32’s school day and [redacted content] ability to feel safe and caused a “substantial disruption” to [redacted content] education; that Student 32 “had been going through this for a long time;” and that he once found Student 32 crying on the floor of TMJH’s Counseling Center. In May 2023, [redacted content] told OCR that the harassment was “very challenging” for Student 32 and had a “very negative impact” on [redacted content], which “may still be lingering.”

As detailed above, the District’s documents confirmed that the District knew of several reported antisemitic incidents involving Student 32 at [redacted content] and disciplined both of the student harassers (Students 35 and 22); however, the discipline proved ineffective to end the harassment for Student 32 because Student 35 continued to harass Student 32 and others until the District suspended him for [redacted content]. Though the District offered and provided Student 32 counseling services, including as part of [redacted content], the District did not produce evidence that it assessed whether the antisemitic harassment by Students 35 and 22 created a hostile environment for other students.

## **7. Example 7**

On October 7, 2021, the parent (Parent 11) of Student 169 emailed [redacted content] and [redacted content] about Student 151 sexually harassing female students in hallways, buses, and classrooms at [redacted content]. Specifically, Parent 11 alleged that Student 151 threatened to pull off Student 169’s shirt, talked about pornography, moaned sexually, asked Student 169 about sexual positions, used the word “pussy,” and told Student 169 that he was going to [redacted content] something up her vagina. Parent 11 also reported that Student 169 told Student 151 to stop harassing her and that Student 169’s behavior made Student 151 uncomfortable and fearful. Parent 11’s email ended, “It’s unwanted and makes her uncomfortable. It’s textbook sexual harassment .... I am bringing this to your attention because it

needs to stop before it gets worse and it's clear that what we have done so far has not helped in any way." In her reply, [redacted content] promised to move Student 169 away from Student 151. [Redacted content] replied to Parent 11, "Thank you for talking with me today. I will follow up with [Students 169 and her sister] tomorrow and start this investigation."

Additionally, the parent (Parent 12) of Student 170 emailed [redacted content] and [redacted content] to share that a group of boys had circled Student 169, and then one of the boys pulled her shirt down to see her bra. Parent 12 also reported that a male student had threatened to "stick [redacted content] things up [Student 169's] private parts" and used the word "pussy." Parent 12 indicated that Student 170 had witnessed some of the sexual harassment on the school bus. Parent 12 wrote, "Thanks for making this a top priority ...." [Redacted content] responded to Parent 12, indicating that the school would address the issue immediately.

[Redacted content] met with Parent 11 and promised to follow up with Student 169 and to investigate. [Redacted content] obtained written statements from six students. Student 151's consequences were [redacted content]. According to Student 151's other discipline records, he had a history of sexually harassing students, including [redacted content]. Although the District investigated the alleged sexual harassment of Student 169 and disciplined Student 151, the District did not provide OCR with evidence that it offered Student 169 or Parent 11 supportive measures, explained how to file a Title IX complaint, or addressed any hostile environment for Student 169, or the other female students Student 151 had harassed.

## **8. Example 8**

According to a [redacted content] assistant principal [redacted content], Student 224 is nonbinary and uses they/them pronouns. [Redacted content] told OCR that Student 224 is transgender. On December 8, 2022, Student 224's parent (Parent 18) reported to [redacted content] and other [redacted content] staff, via email, that Student 224 was depressed, nervous, and apprehensive about going to school because of harassment based on gender and appearance. Parent 18 asked in the email, "We want [Student 224] to feel safe when they're at school. How can we work together to make sure [Student 224] continues to thrive in this school environment?" [Redacted content] replied, "I have spoken with [Student 224] and am addressing it. I will call you to close out things on the administrative side of things either today or tomorrow as it's concluded." [Redacted content] found that, during one of Student 224's classes, Student 128 was using slurs directed at the LGBTQI+ community. [Redacted content] gave Student 128 [redacted content] and [redacted content]. Then, on or about January 13, 2023, Student 72 said to a friend about Student 224, "I hate that fag." [Redacted content] gave Student 72 [redacted content]. The District did not provide OCR with evidence that it notified Student 224 or Parent 18 about how to file a Title IX complaint or offered them supportive measures.

## **9. Example 9**

On November 8, 2022, four students, who are not identified in records provided to OCR, reported that Student 253 had touched their private parts while making sexual noises. [Redacted content] responded by making Student 253 [redacted content]. However, records provided to OCR do not include evidence that the Title IX Coordinator offered supportive measures or

explained the formal complaint process to the four students.

### **10. Example 10**

District records indicated that, in the [redacted content] cafeteria on February 3, 2022: a boy told Student 167 that he wanted to see her in his bed that night; a boy (Student 43) asked Student 168 if she liked, and knew how to play with, “balls,” and then offered to show her how to do it; boys attempted to rub the front of their pants and penises against girls’ backsides; a boy (Student 163) peeled the breading off of a corndog, went to the girls’ table, and wiggled the hotdog while he had what the parent who reported the incident to the school termed “a creepy smile on his face;” a boy (Student 164) went to the girls’ table and sucked on string cheese, gyrated, and shoved the cheese down his throat; and a girl (Student 162) said to tablemates, “Roses are red, you’re looking fine. I’ll be the six, you’ll be the nine.”

Student 172’s parent (Parent 15) and Student 173’s parent (Parent 14) complained to [redacted content], via email, about the male students’ conduct. Parent 14 wrote, “I would like to discuss this with your [sic] more once you have had a chance to consider this formal complaint and advise me as to how you intend to handle the situation.” Parent 15 wrote, “We would like to know how this incident will be addressed.” [Redacted content] took written statements from some of the students involved and told OCR that she reviewed video footage and asked the head custodian to stay close to the boys’ table during lunch. The consequences were [redacted content] for Student 162, [redacted content] for Student 43, and [redacted content] for Students 163 and 164. OCR asked [redacted content] how [redacted content] followed up with Parents 14 and 15, if at all. [Redacted content] did not know and told OCR to ask [redacted content] about any follow up. [Redacted content] said she could not recall whether [redacted content] followed up with Parents 14 and 15 about their complaints.

The District did not provide OCR with evidence that the Title IX Coordinator notified Student 167, Student 168, Parent 14, and Parent 15 about how to file a formal complaint under Title IX or that the District addressed any hostile environment for Students 167 and 168, including offering them supportive measures.

### **11. Example 11**

Student 58 identifies as nonbinary and uses they/them pronouns. They were in [redacted content] at [redacted content] during SY 2021-22 and [redacted content] at [redacted content] during SY 2022-23. In its narrative response to OCR, the District acknowledged that Student 58 was “subjected to offensive sexually explicit comments about body parts and gender identity.”

Student 58 told OCR that, during the last two weeks of SY 2021-22, Student 37 shouted during P.E., with Student 58 and the teacher present, “God only made two genders!” Student 58 began sobbing and ran away. The incident was not included among the records the District provided to OCR. The records that the District did provide to OCR indicate that Student 37 has a history of using the n-word and accessing and sharing pornographic content at school.

District records show that on May 9, 2023, Student 58 reported the following to [redacted content] staff. In a school hallway, Student 59 asked Student 58 how they knew they are non-binary. Student 58 asked Student 59 how he knew he was a boy. Student 59 said he knew that he was male because he had a penis and [redacted content]. Student 59 and his friends laughed while walking away from Student 58. Afterward, Student 58 was anxious, sobbing, and jittery. Then, in the cafeteria, Student 59 directed denigrating remarks about transgender people toward Student 58 and their friends, nearly all of whom identify as part of the LGBTQI+ community, and made sexual remarks about them. Student 58 wrote to OCR that the harassment interrupted their sleep schedule and caused them to miss a lot of school days. [Redacted sentence].

[Redacted content] notified Student 58's parent of the outcome of its investigation of the May 9 report. According to the District, [redacted content] facilitated a restorative session between Students 58 and 59. The District also reported to OCR that, since the incident on May 9: Student 58 continued to have access to [redacted content]; [redacted content] had been in contact with Student 58's parents; and [redacted content] spoke with Student 58's [redacted content] to inquire about how he could support Student 58 at school.

During his investigation, [redacted content] learned that Student 59 engaged in a separate incident of sex-based harassment of Student 60 on May 8, 2023. According to a statement from Student 60, during lunch on May 8, Student 59 said to Student 60, "I don't believe you're trans because you're from [redacted content]," and "So, you're a boy with a pussy?" Student 61 wrote in a statement that Student 59 refused to stop asking Student 60 questions, such as, "How do you know you're a boy," "How do you know you're transgender," and "What does it mean to be a guy?" [Redacted content] gave Student 59 [redacted content] and notified his parent.

The District did not provide OCR with evidence that the Title IX Coordinator offered Student 60 supportive measures or notified Student 58, Student 60, or their parents about how to file a formal complaint under Title IX or that the District addressed any hostile environment for other affected students who witnessed or heard harassment targeting Student 58, including offering them supportive measures.

## **12. Example 12**

District records of an incident at [redacted content] in SY 2021-22, when Student 46 mimicked the stutter of Student 243, reflect that Student 46 claimed he too has a stutter and was not mimicking Student 243. According to discipline records, [redacted content] warned Student 46 and told him to stop. [Redacted content] told OCR that she does not know if Student 46 has a stutter and could not recall if she attempted to find out. The District did not provide OCR with evidence that [redacted content] staff interviewed or offered support to Student 243.

### **G. Student-to-Student Harassment based on Race and Sex at the District's Four Elementary Schools**

OCR also found evidence of student-to-student harassment based on race and sex at the District's four elementary schools, which were not the focus of OCR's investigation. The elementary schools are Jeremy Ranch Elementary School (JRES), Parley's Park Elementary School (PPES),



McPolin Elementary School (MES), and Trailside Elementary School (TES). For example, Parent 20 told OCR that students harassed her Black children, Students 257 and 258, based on race at [redacted content] and that the family left the District at the end of SY [redacted content] due to the harassment. Parent 20 shared the following examples: a student said to Students 257 and 258 on the school bus, “You’re Black. Black is the worst person you can be;” two or three students called Student 258 the n-word; in April 2021, Student 258 found a note in his jacket pocket that read, “[Student 258] is a [n-word];” students told Student 257 that his brown skin was “dirty;” and students talked about how Students 257 and 258 [redacted content] was “gross and disgusting.”

Documentary and witness evidence obtained in OCR’s investigation revealed other reported harassment at these four elementary schools. For example, emails among JRES staff indicated that on or about November 14, 2022, a student drew a swastika on his desk at JRES. In an interview, Teacher 4 told OCR that a student called another student the n-word at MES. At PPES, according to emails, on November 30, 2021, immediately after a class meeting about bullying, a student called female students “lesbians;” and on or about December 13, 2022, a student called a male student [redacted content] “faggot.” Other emails indicated that on or about March 3, 2023, a TES student was upset because another student repeatedly said “gay” and “queer.” Finally, Former Employee 3 told OCR that Jewish students at TES regularly had to go to counseling because of harassment.

#### **IV. ANALYSIS**

OCR finds – based on thousands of pages of District records, 84 interviews, and an OCR employee survey – that the District had repeated actual notice of race-based, antisemitic national origin-based, and sex-based harassment at the three Schools during SYs 2021-22 and 2022-2023. As reflected in District records alone, notice included the appearance of at least 77 incidents of race-based harassment against Black, Asian, and Latino students; 27 incidents of antisemitic harassment; and 80 incidents of sexual harassment at the three Schools. OCR further found that the District had notice of at least four reported incidents of disability harassment at EHMS and TMJH. Although the District told OCR that PCHS has no incidents of disability harassment in SYs 2021-22 and 2022-23, PCHS teachers and students reported to OCR that students reported other students using terms like “retarded,” “crip,” and “cripple” pejoratively during those years, and a PCHS [redacted content] reported that two students bullied a student with autism during that time. Also, as OCR discussed above, incomplete and inconsistent District recordkeeping raise the likelihood that additional incidents occurred at the three Schools during the school years OCR investigated.

OCR also confirmed that the accumulation of confirmed incidents of race-based harassment, antisemitic harassment, and sexual harassment at the three Schools during SYs 2021-22 and 2022-23 was so severe and pervasive – viewed from an objective as well as a subjective perspective – that the accumulation created a hostile environment based on race, national origin, and sex for specific students that limited their access to education. For example, following repeated anti-Asian slurs from peers with insufficient District response, Student 38’s parents reportedly withdrew her from the District altogether. Student 8 reported to OCR that the 17 separate incidents of race-based harassment [redacted content] experienced during the two

school years OCR investigated made Student 8 so anxious that [redacted content] could not learn well in class, made [redacted content] cry and not want to attend school, and negatively impacted [redacted content] friendships. And the repeated threats from one student (e.g., “I’m killing Jews tonight”) created an objectively hostile environment for Jewish students who knew about the threats, as well as the subjectively hostile environment that Student 32, among other students, reported to the District.

In addition, OCR’s review of the evidence confirms that the District failed in specific instances to take timely and effective steps to end the race- and national origin-based hostile environments, prevent their recurrence, and remedy their effects on the harassed students, as required by Title VI. For instance, in Example 6, OCR found that the District’s responses to repeated antisemitic harassment by Student 35 in August and November 2022 and January and February 2023 were ineffective at stopping the harassment and left Student 32 in an unremedied hostile environment. Although the District finally suspended Student 35 in [redacted content] 2023 [redacted content], [redacted content] told OCR that antisemitic peer harassment negatively impacted Student 32’s school day and [redacted content] ability to feel safe and caused a “substantial disruption” to [redacted content] education; that Student 32 “had been going through this for a long time;” and that he once found Student 32 crying on the floor of TMJH’s Counseling Center. In a May 2023 interview, [redacted content] told OCR that the harassment was “very challenging” for Student 32 and had a “very negative impact” on [redacted content], which “may still be lingering.” Following March and April 2023 notices from Student 32’s mother (Parent 3) to [redacted content] that Student 32 had experienced “continued antisemitism/hate speech/bullying” from student peers at [redacted content] so serious that it “affected [redacted content] emotional and social well-being” and caused Parent 3 to consider “withdrawing [redacted content] from the district on multiple occasions because the situation ha[d] affected [redacted content] mental health,” the District offered Student 32 counseling but failed to take further action notwithstanding its notice that the hostile environment persisted for Student 32. In another example (Example 3), the District conceded that a “botched hand off” delayed, by weeks, its initiation of any investigation of an allegation that Student 38 had experienced race-based harassment that required redress.

Because the evidence showed that the District had notice of a hostile environment, at least for Black, Jewish, and Asian students at the three Schools, the District had a legal duty to take reasonable, prompt, and effective steps to eliminate the hostile environments. Based on the evidence the District produced in this investigation, OCR finds that the District failed to take effective steps to eliminate a hostile environment based on race and national origin (such as in Examples 1, 2, and 6), including by not investigating all allegations of race-based and antisemitic harassment (such as in Examples 1, 4, and 5) and by not timely investigating race-based harassment (such as in Example 3). OCR also found that the District failed to determine if student witnesses experienced a hostile environment (such as in Examples 4 and 6) – even when, as in Example 4, an assistant principal testified to OCR that many students had been impacted by the drawing of a swastika and the n-word under a desk in a classroom.

Likewise, OCR found that the District failed to investigate whether other specific students, about whom the District received notice of race- and national origin-based harassment, experienced a hostile environment that required District redress (e.g., Student 36, based on national origin

[shared Jewish ancestry]; Students 13 and 89, based on race [Black]; and Student 62, based on race [Asian]). For example, although the District took some – insufficient – measures specifically in response to race-based harassment of Students 8 and 4, evidence suggests that the District failed to address a broader hostile environment for the few other Black students at [redacted content]. District records show that Student 89 was upset by overhearing Student 14 joking about a friend using the n-word on September 15, 2022, and when Student 101 told Student 89 that [redacted content] was the color of his black [redacted content] on January 10, 2023. Records from January 25, 2023, reflect that Student 102 said to Student 13, “If you don’t vote for [redacted content], I’ll bring back slavery,” and that two weeks later, Student 13 reported that Student 108 mouthed the n-word at [redacted content] during class. The District produced no records reflecting any responses to these race-based incidents involving Students 13 and 89, and District staff interviews yielded no evidence of any such responses.

OCR also found evidence of harassment directed at Hispanic students at the three Schools during SYs 2021-22 and 2022-23. For example, documented conduct included students calling Hispanic students “beaners” and “illegal” and yelling “I hate Mexicans” at Hispanic students. An employee at EHMS told OCR that Hispanic students have reported that other students have said they are “illegal,” “should be deported,” and should “go back to Mexico,” PCHS teachers told OCR about a student saying to a Hispanic, “You do a really good job cleaning, but I guess that’s because that’s what you’re going to do in the future.” Student 62 told OCR that [redacted content] students have asked Hispanic students, “How does it feel to be illegal?” Student 32 told OCR that she has heard students say “beaner” at [redacted content]. The evidence OCR found raises a concern about whether the District adequately responded to harassment of Hispanic students. For example, OCR did not find evidence that the District, after having notice of race-based harassment of Hispanic students, assessed whether a hostile environment existed for those students. Notably, an employee at EHMS told OCR that the school has not addressed this issue.

In addition, OCR finds that the District violated specific Title IX regulatory requirements with respect to sexual harassment. Multiple sources of evidence established that employees at the three Schools had actual notice of alleged conduct that would meet the definition of sexual harassment in the Title IX regulation, at 34 C.F.R. § 106.30(a), and that the District failed to meet its obligations to respond to such notice in a manner that was not deliberately indifferent under 34 C.F.R. § 106.44(a) and to maintain the records of its response, as required by 34 C.F.R. § 106.45(b)(10)(ii). Because employees at the three Schools had actual notice of sexual harassment or allegations thereof, the District had a duty to have its Title IX Coordinator offer supportive measures to the complainants, consider their wishes regarding such measures, and explain that such measures were available without a formal complaint and how to file a formal complaint of sexual harassment. 34 C.F.R. § 106.44(a). The District also had a duty to document its offer and provision of such measures and why its response to the alleged harassment was not deliberately indifferent. 34 C.F.R. § 106.45(b)(10)(ii). However, the District repeatedly violated Title IX because it had actual knowledge of alleged student-to-student sexual harassment at EHMS and TMJH but did not provide information to the complainants about the availability of supportive measures, the right to a formal complaint, and how to file a formal complaint (Examples 7, 8, 9, 10, and 11). These instances included alleged severe, pervasive, and objectively offensive sexual harassment (Examples 7, 8, 10, and 11), and alleged sexual assault (Example 9).

For example, as reflected in Example 8 above, after the principal and other [redacted content] staff received notice from a parent in email that a student whom school staff variously described to OCR as nonbinary or transgender allegedly suffered repeated peer harassment that included a student saying “I hate that fag” and that resulted in the student feeling depressed, anxious, and nervous about attending school, the District did not provide OCR with evidence that it notified Student 224 or Parent 18 about how to file a Title IX complaint or offered them supportive measures, even though the District had an obligation to make a record of offering such measures and providing them or explaining why not providing them was not deliberately indifferent in light of the known circumstances under 34 C.F.R. § 106.45(b)(10)(ii).

As an additional example, after four students reported to [redacted content] staff sexual harassment that included a peer touching their private parts while making sexual noises (Example 9), records provided to OCR do not include evidence that the Title IX Coordinator offered supportive measures or explained the formal complaint process to the four students, as required by 34 C.F.R. § 106.44(a) when a recipient has actual notice of sexual harassment or allegations thereof in one of its education programs or activities. The absence of such records also violated its recordkeeping obligation at 34 C.F.R. § 106.45(b)(10)(ii).

In Example 11 above, the sex-based harassment alleged by Student 58 to [redacted content] staff and by Students 60 and 61 to [redacted content] met the definition of sexual harassment in the Title IX regulation at 34 C.F.R. 106.30(a) and therefore triggered the District’s duties under 34 C.F.R. 106.44(a). Yet, the District did not provide OCR with evidence that the Title IX Coordinator offered Student 60 supportive measures or notified Student 58, Student 60, or their parents about how to file a formal complaint under Title IX or that the District addressed any potential hostile environment for other affected students who witnessed or heard the alleged harassment targeting Student 58, including offering them supportive measures. Although the District told OCR that Student 58 continued to have access to [redacted content] after the May 9 incident, OCR has a concern that the District did not offer Student 58 supportive measures designed to preserve their equal access to school until SY 2022-23 ended because Student 58 reported missing a lot of [redacted content] school days due to the harassment. Lastly, because the alleged sex-based harassment of Student 58 met the definition of sexual harassment, the District’s facilitation of the restorative session to address this harassment in the absence of a formal complaint from Student 58 or their parent violated 34 C.F.R. 106.45(b)(9), which prohibits the District from offering and facilitating an informal resolution process unless a formal complaint of sexual harassment is filed.

Additionally, District records reflect receipt of parents’ emails that could be considered formal complaints of sexual harassment (Examples 7 and 10), in which case the District would have been required to comply with Title IX’s regulatory requirements at 34 C.F.R. § 106.45(b)(5) for processing formal complaints of sexual harassment. OCR has a concern that the District may not have complied with these regulatory requirements when it investigated those complaints.

OCR also 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 student-to-student harassment complied with Title VI and Section 504. The regulation implementing 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 Section 504, at 34 C.F.R. § 104.61. As described above, the District's collection and maintenance of records related to student-to-student harassment varied across schools and within schools. For some instances of harassment based on race or disability, the District did not produce any records. OCR's review of the District's responses to harassment based on race and national origin under Title VI and based on disability under Section 504 was impeded by the District's inconsistent maintenance of records. OCR's investigation to date therefore raised a concern that the District did not consistently maintain records of reports of harassment based on race, color, national origin, and disability, related investigations, and its responsive measures to demonstrate its compliance with Title VI and Section 504.

The District requested to resolve the seven complaints before OCR concluded its investigation. OCR determined that it was appropriate to resolve the compliance concerns it had identified to date under Section 302 of the CPM and to resolve the violations OCR had found to date under Section 303(b) of the CPM through the attached Agreement.

## **V. OVERVIEW OF RESOLUTION AGREEMENT TERMS**

To resolve the violations and compliance concerns under Title VI, Title IX, Section 504, and Title II that OCR identified in this case, the District entered into the attached Agreement, which requires the District to:

- provide individual remedies, as needed, for students subjected to harassment based on race, national origin, sex, or disability during SY 2022-23;
- conduct a districtwide assessment of school climate, with an emphasis on student-to-student harassment;
- review, revise, and disseminate districtwide policies and procedures, including for handling reports of harassment and maintaining records related to harassment;
- create and implement new forms for tracking reports of harassment and responsive actions taken by the District;
- coordinate the District's compliance with Title IX through the Title IX coordinator;
- train all District employees on new policies, procedures, and forms, and the role of the Title IX Coordinator;
- notify all District students and parents about prohibitions on discrimination based on race, national origin, sex, and disability and how to report harassment on these bases;
- develop and implement a plan to educate students and parents about identifying and reporting harassment; and report to OCR about how the District responded to reports and complaints of harassment based on race, national origin, sex, or disability during SYs 2024-25 and 2025-26.

## **VI. CONCLUSION**

The Agreement terms are tied to the allegations and evidence OCR obtained to date and are consistent with applicable regulations. When fully implemented, the Agreement will address the evidence obtained and the allegations investigated. OCR will monitor the implementation of the Agreement until the District is in compliance with the terms of the Agreement and the statutes

and regulations at issue in the cases.

This concludes OCR's investigation of the allegations and should not be interpreted to address the District's compliance with any law or regulatory provision, or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in individual cases. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The complainants may have a right to file a private suit in federal court whether or not OCR finds a violation.

The District may not harass, coerce, intimidate, discriminate, or otherwise retaliate against any individual because the individual has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, OCR 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 District's cooperation and prompt attention to these matters. If you have any questions, you may contact Jason Langberg at [redacted content].

Sincerely,

/s/

J. Aaron Romine  
Regional Director

Attachment: Resolution Agreement (signed)

cc (via email): Joan Andrews, Attorney for the District ([redacted content])