



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION IX
CALIFORNIA

April 21, 2016

Jonathan L. Greenberg, Ed. D
Superintendent
Perris Union High School District
155 East 4th Street
Perris, California 92570

(In reply, please refer to case no. 09-15-1263.)

Dear Superintendent Greenberg:

On March 25, 2015, the U.S. Department of Education, Office for Civil Rights (OCR), received a complaint against Perris Union High School District (District). The Complainant alleged discrimination on the basis of sex.¹ Specifically, OCR investigated:

1. Whether the District failed to respond promptly and equitably to notice of the sexual harassment against the Student by another student in XXXXXXXX 2014; and
2. Whether the District failed to take action to prevent recurrence of sexual harassment or correct the discriminatory effects, thereby causing the Student to be subjected to a hostile environment.

OCR investigated the complaint under the authority of Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulation. Title IX prohibits discrimination on the basis of sex by recipients of Federal financial assistance. The District receives funds from the Department and is subject to Title IX and the regulation.

Sexual harassment of a student can result in the denial or limitation, on the basis of sex, of the student's ability to participate in or receive education benefits, services, or opportunities. Under Title IX and its implementing regulations, once a school district has notice of possible sexual harassment between students, it is responsible for determining what occurred and responding promptly and equitably. The 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 Title IX and the regulations if: (1) the harassing conduct is sufficiently serious to deny or limit the student's ability to participate in or benefit from the educational program; (2) the district knew or reasonably should have known about the harassment; and

¹ OCR previously notified the District of the names of the Complainant and Student and is withholding their names in this letter to protect their privacy.

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

(3) the district fails to take appropriate responsive action. These steps are the district's responsibility whether or not the student who was harassed makes a complaint or otherwise asks the district to take action.

To investigate this complaint, OCR conducted interviews and reviewed documents and other information provided by the Complainant and the District. As part of its investigation into the first issue of whether the District responded promptly and equitably to the Student's complaint, OCR also reviewed the District's written procedures and policies to assess compliance with the requirements of Title IX. After careful review of the information gathered in the investigation, OCR found that the District was out of compliance with respect to the first issue and in compliance with respect to the second issue. The legal standards, facts gathered, and the reasons for our determinations are summarized below.

Issue 1: Whether the District failed to respond promptly and equitably to notice of the sexual harassment against the Student by another student in XXXXXXXX 2014.

1a: Whether the District is in compliance with Title IX with respect to its notice of nondiscrimination, the requirements related to the Title IX coordinator, and its written procedures to provide for a prompt and equitable resolution of complaints.

Notice of Non-Discrimination

The regulation implementing Title IX, at 34 C.F.R. § 106.9, requires the recipient to take specific and continuing steps to notify applicants for admission and employment, students and parents, employees, sources of referral of applicants, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of sex in its education programs and activities, including with respect to employment, and that it is required by Title IX not to discriminate in such a manner. The notice must include that inquiries concerning Title IX may be referred to the Title IX Coordinator or OCR and the contact information for the Title IX Coordinator, including the office and email address, title and telephone number.² The regulation implementing Title IX, at 34 C.F.R. 106.9(b), requires recipients to include the notice of nondiscrimination in each announcement, bulletin, catalog, or application form that it makes available to the persons described above, or which is otherwise used in the recruitment of students or employees.

Title IX Coordinator (34 C.F.R. §§ 106.8(a) and 106.9(a))

The regulations, at 34 C.F.R § 106.8(a), require that recipients designate at least one employee to coordinate compliance with the regulations, including coordination of investigations of complaints alleging noncompliance. This provision further requires that the recipients notify all of its students and employees of the name (or title), office address, and telephone number of the employee(s) so designated. In addition, recipients should notify all students and employees of the email address of the

² For more information regarding Title IX Coordinators and their responsibilities, please see the Dear Colleague Letter issued by the Office for Civil Rights entitled, "Title IX Coordinators" (April 24, 2015).

Title IX Coordinator(s).³ The recipients must ensure that employees designated to serve as Title IX coordinators have adequate training or experience in handling sexual harassment complaints and in the operation of the recipient's grievance procedures. All persons involved in implementing a recipient's grievance procedures, including investigators, must have training or experience in handling complaints of sexual harassment, as well as training in the recipient's grievance procedures and applicable confidentiality requirements.

Complaint Procedures (34 C.F.R. §§ 106.8(b))

When responding to alleged sexual harassment, a recipient must take immediate and appropriate action to investigate or otherwise determine what occurred. To carry out these requirements, the recipient is required to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints of sex discrimination (34 C.F.R. § 106.8[b]). Title IX does not require a recipient to provide a separate grievance procedure for sexual harassment complaints. A recipient may use student disciplinary or other separate procedures for these complaints; however, any procedures used to adjudicate complaints of sexual harassment, including sexual violence, including disciplinary proceedings, must afford a prompt and equitable resolution.

OCR examines a number of factors in evaluating whether a recipient's grievance procedures are prompt and equitable, including whether the procedures provide for the following: notice of the procedure to students, parents of elementary and secondary school students, and employees, including where to file complaints; application of the procedure to file complaints alleging harassment by employees, other students, or third parties; adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; designated and reasonably prompt timeframes for major stages of the complaint process; notice to the parties of the outcome of the complaint; and an assurance that steps will be taken to prevent recurrence of any harassment and to correct its discriminatory effects.

Facts

- Board Policy (BP) 5145.6 (Parental Notifications) is the District's comprehensive policy requiring parental notifications. Administrative Regulation (AR) 5145.3 (Nondiscrimination/Harassment Procedure) requires the District to publicize the nondiscrimination policy and related complaint procedures to students, parents and guardians, employees, volunteers, and the general public, and post them on the District's website and other locations that are easily accessible to students.
- The District provides all students, parents, and guardians with annual notifications, which include discrimination and harassment. At the time of registration each year, the District provides written notification to parents and guardians that the annual notifications can be accessed on the District's website, and provides a link to the site.

³ *Id.*

- The rules preventing student discrimination, including sexual harassment, are discussed in the District's Pupil Services' Annual Notification of Parent or Guardian 2015-16 on its website (<http://www.puhsd.org/pages/parents>) (Annual Notification). The Annual Notification contains a nondiscrimination statement prohibiting discrimination and harassment, which covers all protected areas, including sex, and includes the definition of sexual harassment contained in the California Education Code. It also includes the telephone number, but not the office and email address, for the District's Human Resources Department with respect to filing complaints of discrimination and harassment in one section and, under a separate section, for sexual harassment. It also has information about the District's Uniform Complaint Procedure (UCP), including how to file complaints of discrimination, including harassment, based on sex, which also provides the telephone number, but not the office and email address, for the District's Human Resources Department. The Annual Notification does not state that questions concerning Title IX may be referred to OCR.
- Links to the District's Nondiscrimination/Harassment Procedure, Sexual Harassment Procedure and UCP are included on the District's website, but the procedures are not accessible to parents and students because the site where the procedures are located is password protected. The School's Student Handbook 2015-2016, which is distributed to each student at the beginning of the school year, includes a section on bullying, stating that it can be based on race, ethnicity, nationality, religion, gender, perceived or actual sexual orientation, perceived or actual gender identity and physical, or mental ability. The Handbook includes information about its sexual harassment policy, stating that sexual harassment means unwelcome sexual advances, requests for sexual favors, and other verbal, visual or physical conduct of a sexual nature, made by someone from or in an educational setting. It also includes a statement that each student has the right to learn in an atmosphere that promotes equal educational opportunity and is free from discriminatory practices. The Handbook does not mention or reference specific federal civil rights laws or regulations or where parents and students can locate the District's Nondiscrimination/Harassment Procedure, Sexual Harassment Procedure or UCP.
- The District told OCR that the Assistant Superintendent of Human Resources is the District's designated Title IX Coordinator and handles the intake and investigation of adult-to-student sexual harassment complaints. In addition, the District reported that the Executive Director of Human Resources is involved in the intake and investigation of adult-to-student sexual harassment complaints.⁴ The District informed OCR that the Director of Pupil Services handles complaints, if a complaint involves student-to-student harassment. As discussed herein, however, the applicable policies state that the District's Assistant Superintendent of Human Resources is responsible for investigating and resolving sex discrimination, including sexual harassment, complaints.
- The District reported to OCR that these individuals have undergone state-mandated sexual harassment prevention training and receive this training annually.

⁴ The District has a separate set of policies and procedures for employees reporting sexual harassment by other employees or third parties, which was not an issue in this case. It is OCR's understanding that the District does not use employee policies and procedures to address any complaints or reports alleging employee-to-student discrimination or harassment. As such, OCR has not reviewed any employee discrimination complaint policies or procedures.

- The District provided documentation showing that the District office, school administration, school staff members, and new employees, both supervisory and non-supervisory, receive annual training on sexual harassment, which includes how to respond to complaints of sexual harassment. Each new supervisory employee is required to complete the training within six months of the start of their employment but usually receive it within six weeks of their employment. The training is arranged by the Assistant Superintendent of Human Resources in coordination with the District's risk management insurance carrier, Keenan & Associates. The training is provided online and covers various aspects of sexual harassment including definitions, handling complaints and investigation, and circumstances involving student-student, adult-student and adult-adult sexual harassment. The online training provider maintains a record as to whether an employee has completed the training.
- In addition, the District receives annual training from the Riverside Office of Education on Bullying and Harassment. The County provided training last winter on the different kinds of bullying and harassment, and the differences between them.

The District has several Board Policies and Administrative Procedures that include grievance procedures as described below:

Nondiscrimination/Harassment Board Policy & Administrative Procedure (N/H Procedure)

- The District's N/H Procedure prohibits discrimination, including harassment, of any student based on the student's actual or perceived sex, sexual orientation, gender, gender identity, or gender expression or association with a person or group with one or more of these actual or perceived characteristics. The N/H Procedure also prohibits any form of retaliation against any individual who files or otherwise participates in the filing or investigation of a complaint or report regarding an incident of discrimination. The N/H Procedure does not specify that the policy applies to complaints alleging discrimination or harassment carried out by employees, other students, and third parties and off campus activities that have an impact on campus.
- The procedure states that upon receiving a complaint of discrimination, harassment, intimidation or bullying, the Coordinator shall immediately investigate the complaint in accordance with the UCP.
- It lists the contact information for the designated Coordinator for Nondiscrimination to handle complaints regarding discrimination, harassment, intimidation or bullying, identified as the Director of Pupil Services; and states that students and school employees should report incidents (direct experience or witness of such incidents) of discrimination, harassment, intimidation, retaliation or bullying to the Coordinator or Principal. As described below, the UCP designates a different coordinator to resolve any complaint alleging unlawful discrimination, including sex, which can cause confusion for complainants, staff, and administrators as to who is responsible for the investigation and resolution of these complaints.

Sexual Harassment Board Policy & Administrative Procedure (SH Procedure)

- The SH Procedure prohibits sexual harassment of students at school or at school-sponsored or school-related activities and prohibits retaliatory behavior or action against any person who files a complaint or testifies about, or otherwise supports a complainant in alleging sexual harassment. It provides that any student who feels that he/she is being or has been sexually harassed on school grounds or at school-sponsored or school-related activity by another student or an adult shall immediately contact his/her teacher, the principal, or any other available school employee. The SH Procedure does not specify that the Procedure applies to complaints alleging discrimination or harassment carried out by employees and third parties, and off campus activities that have an impact on campus.
- The SH Procedure includes that an employee who receives such a complaint shall, within two school days, forward the report to the compliance officer to initiate investigation of the complaint. It requires school employees to report to the principal or a district compliance officer observed instances of sexual harassment involving a student within one school day, even where the victim has not filed a complaint. Among its examples of sexual harassment, it does not include harassment through electronic communication, such as social media, or include any information about what actions, if any, for which the District is responsible if harassing behavior by electronic communication occurs off-campus or outside of school-related or sponsored activities.
- The SH Procedure provides that a student who believes they have been subjected to sexual harassment (defined to include sexual assault, sexual battery or sexual coercion) or who has witnessed it should file a complaint with a school employee, and within one day of receipt, the school employee is to forward it to the Principal or the District's compliance officer identified in the UCP.
- The SH Procedure states that when a report of sexual harassment is submitted, the principal or compliance officer shall inform the student or parent/guardian of the right to file a formal written complaint under the UCP. If a complaint is initially submitted to the principal, he/she shall, within two school days, forward the report to the compliance officer to investigate and resolve the complaint in accordance with the UCP. The language in the SH Procedure regarding the reporting process is confusing because it is not clear whether the District will resolve oral complaints under the UCP, or what it does when it receives an oral complaint and a "formal written complaint" is not filed. It also is not clear whether the complainant needs to file a separate written complaint to start the UCP process, if the complainant already submitted a written complaint to the school.
- The SH Procedure includes a provision that all complaints and allegations of sexual harassment shall be kept confidential except as necessary to carry out the investigation or take other subsequent necessary action. When a complainant requests confidentiality, the compliance officer shall inform him/her that the request may limit the District's ability to investigate the harassment or take other necessary action. When honoring a request for confidentiality, the District will take all reasonable steps to investigate and respond to the complaint consistent with the request. When a complainant or victim of sexual harassment requests that the District not

pursue an investigation, the District will determine whether it can honor such a request while still providing a safe and nondiscriminatory environment for all students.

- The SH Procedure provides that the Coordinator/Principal will determine whether interim measures are necessary pending the results of the investigation. It lists examples of interim measures such as placing students in separate classes or transferring a student to a class taught by a different teacher.
- The SH Procedure states that the Superintendent or designee shall ensure that all district students receive age-appropriate information on sexual harassment, and that such instruction shall include information about the rights of students and parent/guardians to file a civil or criminal complaint. It does not state that the District will notify the complainant of the right to proceed with a criminal investigation and a Title IX complaint simultaneously.
- With respect to conflicts of interest, the SH Procedure states that in any case of sexual harassment involving the principal, compliance officer, or any other person to whom the incident would ordinarily be reported or filed, the report may instead be submitted to the Superintendent or designee. The SH Procedure does not include that conflicts of interest, real or perceived, are prohibited by those handling the intake process, or the process for resolution of concerns regarding bias or conflict of interests identified by the respondent and complainant. None of the procedures or policies state that evidence of past sexual relationships of the targeted student is not allowed.

Uniform Complaint Procedure (UCP)

- The UCP is used to resolve any complaint alleging unlawful discrimination, including sex, against any person. The UCP states that complaints must be filed no later than six months from the date the discrimination occurred, or six months from the date the complainant first obtained knowledge of the facts of the alleged discrimination. The time for filing may be extended for up to 90 days by the Superintendent or designee for good cause upon written request by the complainant. The UCP does not specify that the policy applies to complaints alleging discrimination or harassment carried out by employees, other students, and third parties, and off campus activities that have an impact on campus. The UCP also does not include a statement that upon receiving any report of sexual harassment, regardless of the filing date, the District will take steps to prevent recurrence of harassment and correct its discriminatory effects on the student, and on others, if appropriate.
- The UCP does not provide that the complainant alleging sexual harassment or violence has the right to proceed with a criminal investigation and a Title IX complaint simultaneously.
- The UCP states that the compliance officer, the Assistant Superintendent of Human Resources, will provide the complainant an opportunity to mediate the complaint within three business days of receipt of the complaint; begin the investigation within 10 business days after receiving the complaint; prepare and send the complainant (not the respondent) a written report of the compliance officer's investigation and decision within 30 calendar days of receipt of the complaint; and will take any corrective action if warranted.

- The compliance officer shall apply a preponderance of the evidence standard in determining the veracity of the factual allegations in a complaint, and collect the available evidence and interview all available witnesses with information pertinent to the complaint. It does not state that the District will inform complainants and respondents at regular intervals of the status of the investigation.
- Within three business days after the compliance officer receives the complaint, he/she may informally discuss with all the parties of the possibility of using mediation. Mediation shall be offered to resolve complaints that involve more than one student and no adult. Mediation is not offered or used to resolve any complaint involving an allegation of sexual assault or where there is a reasonable risk that a party to the mediation would feel compelled to participate. If the parties agree to mediation, the compliance officer makes all arrangements for this process. The timelines for investigating and resolving the complaint can be extended based on delays in the mediation only if the complainant agrees in writing to such an extension of time; there is no process for consultation or notification of the respondent related to such a delay.
- If the complainant is dissatisfied with the compliance officer's decision, he/she may, within five business days, file his/her complaint in writing with the Board. The respondent is not provided with this right.
- The UCP includes that the complaint review shall be completed within 60 calendar days from the date of receipt of the complaint, unless the complainant agrees in writing to an extension of the timeline. At such time, a final written decision shall be sent to the complainant (but not the respondent) within 60 calendar days of the district's receipt of the complaint. The written decision shall include the findings of the fact based on the evidence gathered, the conclusion(s) of law, disposition of the complaint, and rationale for such disposition. The UCP does not make it clear that for a complainant who is the target of discrimination, the written notice of outcome needs to include information about the sanction imposed upon an individual who was found to have engaged in sexual harassment, when the sanction directly relates to that complainant.
- The UCP states that the complainant has a right to appeal the District's decision to CDE by filing a written appeal within 15 calendar days of receiving the District's decision and provides directions for doing so.⁵ The respondent does not have this right.
- The UCP states that the Superintendent or designee shall maintain records of all UCP complaints and the investigations of those complaints and all such records shall be destroyed in accordance with applicable state law and district policy. For all reported sexual harassment cases, Board Policy 5145.7, states something different, namely that the Superintendent or designee shall maintain a record of all reported cases of sexual harassment to enable the district to monitor, address, and prevent repetitive harassing behavior in district schools.

⁵ By California regulation, respondents do not have an opportunity to file an appeal. Because the California Department of Education is not a part to this matter, OCR did not address whether the failure to have an equitable appeal process for a respondent in a Title IX case is a violation of the statute and its implementing regulation.

- In reference to conflicts of interest, the UCP includes that a compliance officer will not be designated to investigate a complaint if he/she is mentioned in the complaint or has a conflict of interest that would prohibit him/her from fairly investigating the complaint. It also states that any complaint filed against or implicating a compliance officer may be filed with the Superintendent or designee. The UCP does not include a process for resolution of concerns regarding bias or conflict of interests identified by the respondent and complainant.

Analysis and Conclusion

OCR found that, as written, the District's N/H Procedure, SH Procedure, UCP and notice of nondiscrimination while compliant in many respects, do not meet all of the requirements under Title IX and its regulations. During registration each year, the District provides parents and guardians with a form notifying them of the website address for the Annual Notification. The Annual Notification contains a nondiscrimination statement prohibiting discrimination and harassment, covering sex and all other protected areas. It includes the telephone number for the District's Human Resources Department and the Assistant Superintendent of Human Resources with respect to filing complaints of discrimination and harassment, and lists the same contact information under a separate section for sexual harassment. However, the Annual Notification is deficient because it does not offer the office and email address for the Assistant Superintendent of Human Resources, and it does not state that questions concerning Title IX may be referred to OCR.

OCR found that the District's procedures were deficient because the application of the procedures to complaints against students, employees, and third parties, and their relation to off campus conduct, is not articulated, thereby limiting a complainant's ability to access the procedures in all instances that are covered by Title IX. OCR also found that there was confusion in the SH Procedure and N/H Procedure as to whether the UCP is used to resolve just written or both oral and written reports and complaints of sexual harassment of students by any employee(s), other student(s), and third party(ies), and off campus activities which have an impact on campus. In addition, the UCP does not provide equitable rights to the respondent during the investigation process. In this regard, the complainant has the right to file a complaint to the Board, if dissatisfied with the compliance officer's decision prior to the District's final written decision, receive notice if the District needs to extend the time to complete the investigation, an opportunity to provide written consent for the extension with respect to a delay caused by mediation or otherwise, and a written notice of outcome, including any applicable appeal procedures. The respondent is not provided with any of these rights. The policies and procedures do not consistently (or accurately) identify the Title IX coordinator who is ultimately responsible for ensuring that the duties are carried out. Currently, the N/H Procedure designates the Director of Pupil Services as the person who is responsible for handling complaints regarding discrimination and harassment, but the UCP lists the Assistant Superintendent of Human Resources as the employee who receives and investigates complaints.

The UCP also does not specify that the written notice of outcome will include information for the complainant who is the target of the discrimination about the sanction imposed upon an individual who was found to have engaged in sexual harassment, when the sanction directly relates to that complainant. OCR found that the UCP does not state that regardless of the filing date, upon receiving

any report of sexual harassment, the District will take steps to prevent recurrence of harassment and correct its discriminatory effects on the student, and on others if appropriate. In addition, OCR found that the procedures do not include the complainant's right to proceed with a criminal investigation and a Title IX complaint simultaneously, and that during any temporary delay caused by the initiation of a criminal investigation, the District will take interim measures to protect the complainant in the educational setting, if applicable, and update the complainant and respondent on the status of the investigation. OCR also found that the procedures do not ensure that the involved students and/or their parents or guardians are informed at regular intervals of the status of the investigation, which OCR found to be a problem in this case while the police investigation was pending, as discussed below. OCR also found that the SH Procedure needs to be clarified to make it clear either that the District will resolve oral complaints under the UCP or to specify a prompt and equitable process for resolving such complaints, and to clarify that a complaint who has already submitted a written complaint to the school need not resubmit to the Title IX Coordinator to obtain the UCP process. For these reasons, OCR found that the District was not in compliance with Title IX and its implementing regulations with respect to its grievance policies, procedures and notice of nondiscrimination.

Due to the conflict between the provisions, OCR recommends that the District add a provision to the UCP that notwithstanding BP 1312.3(7), which discusses destruction of records, BP 5145.7 applies to maintenance of records of all reported sexual harassment cases. In addition, OCR recommends that the District add to the UCP and SH Procedure a statement that conflicts of interest, real or perceived, are prohibited by those handling the intake process, process for resolution of concerns regarding bias or conflicts of interest identified by the respondent and complainant by individuals handling intake, processing and investigation of complaints. OCR also recommends that the District provide in the SH Procedure that evidence of past relationships of the targeted student is not allowed. OCR recommends that the District add information in the Handbook or reference to where parents and students can locate the District's N/H Procedure, SH Procedure and UCP. Lastly, OCR recommends that the District provide access to the N/H Procedure, SH Procedure and UCP on its website by providing the username and password needed for the site where the procedures are located, or another way to access them online.

1b: Whether the District failed to respond promptly and equitably to notice of the sexual harassment against the Student by another student in XXXXXXXX 2014.

Legal Standard

When a District is provided with notice of a complaint of sexual harassment, the inquiry must be prompt, reliable, equitable, and impartial. If the investigation reveals that discriminatory harassment has occurred, a recipient must take timely, age-appropriate, and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring. What constitutes a reasonable response to harassment will differ depending upon the circumstances. A series of escalating consequences may be necessary if the initial steps are ineffective in stopping the harassment. The recipient also should take steps to prevent any retaliation against the student who made the complaint or those who provided information, testified, participated, or assisted in any manner with the investigation.

Facts

- The Student is currently XX XXX XXXXXX XXXX at the School. She XXX X XXXXXX in the 2014-2015 school year. The School XXXXXXXX XXXXXXXXXXXXXXXX XXXX XXXXXXXX and has a very large campus layout that includes a series of outdoor corridors in different locations to get to classes in various parts of the campus. The School has two different lunch periods. Students' schedule of classes affects in which lunch period they are placed.
- On XXXXXXXX XX, 2014, the Student verbally reported to one of the School's Assistant Principals (AP1) that she received a series of private electronic messages between XXXXXXXX XX-XX, 2014, from an unidentified sender attempting to extort nude photos of her (incident). X---paragraph redacted---X. When the Student reported it, she made a written statement, as requested by AP1. AP1 reported that she did not observe any outward signs of distress by the Student at that time.
- The Student reported that she received the messages at home, they were not sent through school technology, and they were sent outside of school hours and school-related activities. The Student informed AP1 during school hours that XXX XXXXXX XXXX XXXXXXX XX X XXXXXX XXXXX XXXX.
- The District reported to OCR that it never viewed the photos or messages because the School administrators believed it could not view the photos XX XXX XXXXXXX XXXXX XXXX without violating child pornography laws. The administrators also appear to have believed it would be an invasion of the Student's privacy if they looked at her cell phone to view the messages she received from the person requesting the photos.
- The same day, AP1 reported the incident to the Principal and another assistant principal (AP2), and consulted with the Director of Pupil Services about the Student's report of the messages (incident). The District determined that the Student's parent (Complainant) should file a report with the police.
- The same day, XXXXXXXX XX, the Complainant filed a police report about the messages the Student received on XXXXXXXX XX-XX and the police began an investigation that day, X---paragraph redacted---X.
- The District reported to OCR that, although it is aware that the police investigation did not relieve the District of its obligation to conduct its own independent investigation at the time of the Student's report in XXXXXXXX, it did not take any further action at that time because there was no evidence at that point of a connection of the incident with the School, and the District believed it was sufficient to rely on the outcome of the police investigation.
- Approximately the first week of XXXXXXXX, the police came to the School to report to the administration that they had identified the Respondent who sent the Student the messages. X--paragraph redacted---X.

- On XXXXX X, 2015, the District received a call from the Complainant regarding her concerns that the Respondent was allowed back on campus XXXXX XXXXX XXXXXXXX XXXX XXX XXXXXXXX XXXXXXXX. The Assistant Superintendent of Human Resources spoke with the Principal and AP2 that day to find out what the School had been doing regarding the incident.
- On XXXXX X, AP2 reported to the Assistant Superintendent of Human Resources that in XXXXXXXX, within a few days of the Respondent’s return to campus, she met with the Student. They discussed whether she felt threatened; whether she and the Respondent had any classes scheduled together; and whether she had encountered the Respondent on campus. AP2 reported to OCR that the Student “presented as emotionally and mentally safe” at that time. Nonetheless, AP2 offered the Student to see the campus counselor for further support and for the Student to keep the School informed if she had any concerns. AP2 assured the District office that the School would follow XXX XXXXX XXXXX regarding the Respondent. At the meeting, the Student informed AP2 that she did not have any classes or lunch period with the Respondent, had not encountered him on campus, and no other events related to the incident occurred. AP2 noted that the Student did not accept the counseling the School offered to her.
- On XXXXX X, the Assistant Superintendent of Human Resources also called the Director of Pupil Services and learned that the Director of Pupil Services was in touch with the District’s legal counsel about the case. The Assistant Superintendent of Human Resources followed up by calling the Complainant to report that the Director of Pupil Services would be in touch with the Student to set up an interview about the incident.
- After the Respondent’s return to the School, School administration reported that, on or about XXXXX X, they recommended to the Respondent and his family that he switch to a different school but his family was adamant that he stay at the School, so no change was made.
- Approximately a day after the Respondent returned to the campus, the School reported that it made changes, which included changing the two students’ lunch periods and making sure they did not have any classes together. The evidence is inconclusive as to whether this occurred, given the incident described below on XXXXX X, 2015 where the students encountered each other in the lunch line. OCR contacted the Student to clarify this point but she was not responsive, so OCR cannot reach a conclusion as to this fact.
- In early XXXXX, 2015, the Director of Pupil Services began investigating the incident. On XXXXX X, 2015, he conducted an interview with the Student and took written statements. The Director of Pupil Services reported that the Student appeared to be doing well at that time and that she reported no further incidents or encounters with the Respondent. The Director of Pupil Services interviewed XXX XXXXXXXX XXXXXXXXXX XXX XXX XXXXXXXXXX XXXXX XXX XXXXXXXX.
- On XXXXX X, 2015, the Respondent admitted to the District X---paragraph redacted---X. The District told the Respondent and his parents that he was forbidden to contact the Student in person or via electronic communication.
- On XXXXX XX, the Complainant informed the Assistant Superintendent of Human Resources that the XXXXXXXX XXXXX XXXXXXXXXX XXX XXXXXXXXXXXXXXX XXX XXXXXXXXXXXXXXX XXXXXXXX XXX XXXXXXXX XX

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XXXXXXXXXXXX XXXXXXXXXXX XXX XX XXXX XX XXXXX XX XXXXX XXXX XXX XXXXXXX.

- X--paragraph redacted--X.
- On XXXXX XX, the Director met with the Complainant and Student to discuss the results of the District's investigation; the Complainant's concerns about the Student's safety on campus with the Respondent there; and the District's legal parameters regarding disciplining the Respondent.
- The District did not provide the Complainant with written notice of the outcome of the investigation because it stated that the Respondent admitted to the full scope of the incident.
- X--paragraph redacted--X.
- On XXXXX XX, the Assistant Superintendent of Human Resources contacted the Complainant to ask her to provide a copy of the XXXXXXX XXXXX and the Complainant told him she was still trying to obtain a copy.
- On XXXXX X, 2015, Complainant called the Assistant Superintendent of Human Resources stating that the Student had encountered the Respondent during her lunch period. The Student was in the lunch line when she saw the Respondent standing in the same line right next to her. The Complainant reported that the Respondent just looked at the Student and at that point, the Student left her location near the Respondent to sit with her friends elsewhere in the lunch room.
- The District reported that it received the Respondent's XXXXXXXXXXX XXXXX on XXXXX XX and changed the Respondent's lunch to a different period on either XXXXX XX or XX.
- On XXX XX-XX, 2015, the Assistant Superintendent of Human Resources received emails from the Student who was concerned that the Respondent would be allowed to attend X XXXXX XXXXXXX XX XXX XX. The Assistant Superintendent informed the Student by email that the School was making sure that XXX XXXXXXXXXXXX XX XXX XXXXX XXXXX were being followed and that everyone at the School was aware of them. The Complainant sent an email to the Assistant Superintendent thanking him for his following up regarding XXX XXXXX and inquired about the Respondent's attendance at XXXXXXX XXXXX functions for the 2015-16 school year.
- On XXX XX, 2015, the Director of Pupil Services met with the Student to discuss how she was doing, whether anything new had occurred related to the incident, and discussed planning for the 2015-16 school year and the Respondent's attendance at any School activities and events, whether or not he would be allowed to attend and the XXXXXXXXXXXX XX XXX XXXXX XXXXX. The Director of Pupil Services also stated that he reminded the Student to let the District office know about any problems XXXXXXX XXX XXXXXXX XXXX.
- On April XX, 2015, OCR notified the District that it opened this complaint for investigation.

- The School reported that the two students' lunch periods remained separate for the 2015-16 school year, and that the School was ensuring that their class schedules keep them at opposite ends of the campus.
- After the 2015-16 school year began, on XXXXXX XX or XX, the Student was very distressed when she reported to the two APs that she saw the Respondent sitting having lunch during her lunch period. According to the School's report, they helped the Student calm down and learned that there was no contact between the two students. The School reported that, upon receiving the Student's report, within 30 minutes it changed the Respondent to a different lunch period. The School found that the Student's lunch period had been inadvertently changed when XXX XXXXXXX X XXXXX XXXXX XXX XXXXX XX XXX XXXXXXX XXXX. The two students' lunch periods are again separate.
- On XXXXXX XX, 2015, the Director of Pupil Services and the Principal met with the Student and Complainant to discuss their concerns about the Student's stress level related to the incident, and in relation to the Respondent's attendance at School events such as XXX XXXXXXX, XXXXXXXX XXXXX XXX XXXXXXX. The District representatives explained to the Complainant and Student, the District's guide for determining the Respondent's attendance in accordance with XXX XXXXXXXX XXXXX XXXXX. X---paragraph redacted---X.
- AP1 reported that the School consults with the District office for each activity where the two students might be attending. For example, AP1 reported that the Respondent was not allowed to go to X XXX XXXXX XXX X XXXXXXXX XXXX XXXX XXXXXXXX XX XXXXXX XX, 2015 because the Student raised concern with AP1 and the District office about his attendance.
- X---paragraph redacted---X.
- The Complainant alleged that the Student, XXX XX XXXXXXXXXXXX XX X XXX X XXXXXXX, ended the school year with a decreased grade point average of XXXX due to the incident and having the Respondent return to campus after he was charged. However, OCR's review of the Student's transcript shows that there was not a significant change in her grades in the 2014-15 school year following the incident. XXX XXXXXXXX XXX XXXXXXXXXXXX X XXX XXXXX XXXXX XXXXXXXX XXXXXXXXXXXX XXX XXXXXXXX XXXXXXXX XXXXXXX XXXXX. The Principal reported that the Complainant made the School aware that she was concerned about the Student's overall mental health and level of stress related to the incident.

Analysis and Conclusion

Although the District took prompt action upon learning sometime in XXXXXXXX that the Respondent was a student at the School, the District did not pursue its own investigation into the Student's XXX XX, 2014 report of the incident at that earlier time because the District believed it did not have jurisdiction because it did not know the Respondent's identity and/or the Student did not state that the online harassment occurred during school hours or involved sponsored activities or school technological resources. OCR found that while the District had limited information the Student had reported that she believed that a student at the school likely posted the pictures and sent the text messages XXX XXXX XXX XXXXXXXX XXXX XX X XXXXXXX XXXXX XXXX. The same day the Student reported the incident to the School, XXX XXXXXXXX XXXXXXXX XX XXX XXXXXXX XXXX XXXX XXX XXXX XXX XXXXXXX XXXXXXXXXXXX, XXX

XXX XXXXXX XXXXXXXXXXXX XXXX XXXXXXXXXXXX XXXXXXXXXXXX XXXXXX as part of their investigation. Even after it completed its investigation, in violation of its own policies and procedures, the District did not provide a notice of outcome to either the Student or the Respondent or any right to appeal. In addition, the Student had to call District personnel to address issues occurring at the School to ensure that the Student was not subjected to further harassment and to XXXXXXXX XXX XXXXXXXX XXXXXXXXXXXX XXXXXX. As discussed herein these concerns were related to the lack of clarity in the District's policies as to who was responsible for completing the investigation, the Assistant Superintendent of Human Resources, the Director of Pupil Services, or the Principal and whether the Student's written complaint to school site staff and subsequent oral complaints were being resolved under the UCP.

In order to have met the prompt and equitable requirement, even though the District had limited information about the incident, the District should have pursued its own investigation at the time the Student reported the incident in XXXXXXXX to determine whether there were any continuing effects on campus or school-related off-campus activity and whether any interim measures were needed to protect the Student. In addition, it should have kept the Student apprised of the status of the District's investigation, including informing the Complainant and Student when the School/District would resume its Title IX investigation upon the conclusion of the police investigation. In addition, once it began the investigation in early XXXXXX, the District should have provided notice to both the Student and Respondent of the applicable policy and also provided a final written notice of outcome with information about corrective actions, permanent measures in place to protect the Student, and any relevant appeal or other rights. For these reasons, OCR found sufficient evidence that the District was not in compliance with Title IX and its implementing regulations because it did not provide a prompt and equitable investigation of the XXXXXXXX incident.

Issue 2: Whether the failure of the District to provide a prompt and equitable response allowed the Student to be subjected to a sexually hostile environment that denies or limits the Student's ability to participate in or benefit from the School's program under 34 C.F.R. §106.8 and §106.31?

Legal Standard

In determining whether a hostile environment based on sex has been created, OCR evaluates whether or not the conduct was sufficiently serious to deny or limit the student's ability to participate in or benefit from the district's program. OCR examines all the relevant circumstances from an objective and subjective perspective, including: the type of harassment (e.g., whether it was verbal or physical); the frequency and severity of the conduct; the age, sex and relationship of the parties; the setting and context in which the harassment occurred; whether other incidents have occurred at the school; and other relevant factors. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the harassment is physical. Indeed, a single or isolated incident of sexual harassment may create a hostile environment if the incident is sufficiently severe.

Facts

The same facts included in subsection 1b above are relevant here.

Analysis & Conclusion

As noted above, the District did not pursue its own investigation into the Student's XXXXXXXX XX, 2014 report of the incident at that earlier time because the District believed its actions were prohibited by not knowing the offender's identity or whether the incident occurred during school hours or related or sponsored activities, or involved school technology. The District did take prompt action, however, upon learning sometime in XXXXXXXX, 2015 that the Respondent was a student at the School.

The Respondent returned to the School XXXX XXXXXXX XXXXXXX XXXXX X XXXXXXXXXXX XXXXX, XXXXX XXXXXXX X XXXXXXXXXXXXX XX XXXX XX XXXXX XX XXXXX XXXX XXX XXXXXXX XX XXX XXXXX and that the two students were not to have any contact with each other. The District immediately began an investigation on XXXXX X, which included interviews of the Student about whether she felt threatened, if she had any classes with the Respondent or if she encountered the Respondent since the incident; and interviewed the Respondent and other student witnesses. At periodic intervals throughout the 2014-15 school year, the District followed up with the Student and complainant regarding how the Student was doing and any concerns regarding planning for the 2015-16 school year.

The District separated the two students' lunch periods after the Respondent's return to the School; ensured that they did not have any classes scheduled together; and the School and District office continued close monitoring and coordination of School activities where the two students might encounter each other. Any reported incidents of encounters between the two students were handled swiftly by the School and District office. The School also immediately and effectively addressed the Student's complaint about XXXXX XXXXXXX XXXXXXXXXXX XXX XXXXXXX XX XXXXX and made proactive plans to address the manner in which XXX XXXXX XXXXX and the Complainant's concerns would be best addressed related to School sponsored activities and events. As such, OCR found that while the District did not comply with the prompt and equitable requirements in some respects, it otherwise acted promptly and effectively to address all concerns and offered appropriate support. OCR did not find any evidence of loss of educational benefit for the Student after the incident, even with the delays in reaching a final determination. For these reasons, OCR found insufficient evidence of non-compliance with Title IX and its implementing regulations with respect to issue 2.

Overall Conclusion

This concludes the investigation of this complaint. To address the issues alleged in the complaint, the District, without admitting to any violation of law, entered into the enclosed Resolution Agreement which is aligned with the complaint allegations and the findings and information obtained by OCR during its investigation. Under the terms of the Resolution Agreement, the District will make specified revisions to its Nondiscrimination/Harassment Procedure, Sexual Harassment Procedure and UCP, provide staff guidance and training, initiate a student survey, provide student education and training, and provide written notice of the outcome for the Complainant and Respondent. OCR is available to provide the District with technical assistance in implementing the provisions of the Resolution Agreement and the other recommendations in this letter.

Based on the commitments made in the enclosed resolution agreement, OCR is closing the investigation of this complaint as of the date of this letter, and notifying the Complainant concurrently. When fully implemented, the resolution agreement is intended to address all of OCR's compliance concerns in this investigation. OCR will monitor the implementation of agreement until the District is in compliance with Title IX and its implementing regulations, which were at issue in this case.

OCR's determination in this matter should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

Please be advised that the Recipient may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the Complainant may file another complaint alleging such treatment.

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

OCR would like to thank the District and its counsel, Gabriel Sandoval, for their cooperation during this investigation. If you have any questions regarding this letter, please contact OCR investigator Rosalie Gendimenico at (415) 486-5517 or rosalie.gendimenico@ed.gov, or OCR attorney Gemini McCasland at (415) 486-5536 or gemini.mccasland@ed.gov.

Sincerely,
/s/
James M. Wood
Team Leader

Cc: Gabriel Sandoval, Partner
Atkinson, Andelson, Loya, Ruud & Romo

Enclosure