



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

REGION IX  
CALIFORNIA

50 UNITED NATIONS PLAZA  
MAIL BOX 1200; ROOM 1545  
SAN FRANCISCO, CA 94102

November 27, 2017

VIA ELECTRONIC MAIL

Barb Dill-Varga  
Superintendent  
Carmel Unified School District  
P.O. Box 222700  
Carmel CA 93922

(In reply, please refer to case no. 09-16-1019.)

Dear Superintendent Dill-Varga:

This letter is to inform you that the U.S. Department of Education (the Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against Carmel Unified School District (the District). The Complainant alleged that the Student was subject to a hostile environment on the basis of sex at her high school in spring and summer of 2015.<sup>1</sup> OCR informed the District that it was also opening an investigation regarding the District's Title IX notices, policies and procedures, and Title IX coordinator.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), as amended, 20 U.S.C. § 1681 et seq., and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in programs and activities receiving financial assistance from the U.S. Department of Education (the Department). The District is a recipient of financial assistance from the Department. Therefore, OCR had jurisdiction to investigate this matter under Title IX.

Specifically, OCR investigated the following issues:

- 1) Whether the Student was subjected to unwanted harassing comments of a sexual nature by an administrator, a teacher and peers, which created a hostile environment on the basis of sex;

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<sup>1</sup> OCR informed the District of the Complainant's identity and Student's identity in our letter notifying you of the complaint. We are withholding their names in this letter to protect their privacy.

- 2) Whether the District: a) disseminated notice of nondiscrimination on the basis of sex as required by 34 C.F.R. § 106.9; b) appointed a Title IX coordinator as required by 34 C.F.R. § 106.8(a); and c) adopted policies and procedures that provide for prompt and equitable response(s) to sexual harassment, including sexual violence complaints and reports as required by 34 C.F.R. § 106.8(b).

**Allegation 1: Whether the Student was subjected to unwanted harassing comments of a sexual nature by an administrator, a teacher and peers, which created a hostile environment on the basis of sex.**

**Legal Standards**

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

School districts provide program benefits, services, and opportunities to students through the responsibilities given to employees. If an employee who is acting, or reasonably appears to be acting, in the context of carrying out these responsibilities either (1) conditions an educational decision or benefit on a student's submission to unwelcome sexual conduct, or (2) engages in sexual harassment that is sufficiently serious to deny or limit a student's ability to participate in or benefit from the program, the school district is responsible for the discriminatory conduct whether or not it has notice.

Under the Title IX and the regulations, once a school district has notice of possible sexual harassment between students, it is responsible for determining what occurred and responding appropriately. 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 --- severe, persistent, or pervasive --- 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 (3) the school 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.

OCR evaluates the appropriateness of the responsive action by assessing whether it was prompt, adequate, and effective. What constitutes a reasonable response to harassment will differ depending upon the circumstances. However, in all cases the District must promptly conduct an impartial inquiry designed to reliably determine what occurred. The response must be tailored to stop the harassment, eliminate the hostile environment, and remedy the effects of the harassment on the student who was harassed. The District must also take steps to prevent the harassment from recurring, including disciplining the harasser where appropriate.

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 college'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.

Findings of Fact:

The Student is currently XX years old and completed her senior year at the High School during the 2016-2017 school year. The relevant sexual harassment incidents involving the Student occurred during the second semester of the 2014-2015 school year, when the Student was XX years old and completing her sophomore year.

On January XX, 2015, the Student had a disagreement on the High School campus with her ex-boyfriend. XXX XXXXXXXXXXXX XXXXXXXX XXXX XXXXXXXX XXXX XXXX XXX XXXXXXXX XXXXX XXXXXXXX XXXX XXXXXXX XXX XXX XXXXXXXXXXX XXXX XXX XXXXXXXXXXX XXX XXX XXX. The ex-boyfriend later accosted the male student while in the car, and punched his car window. The administration witnessed this altercation and called the County Sheriff's Department (Sheriff's Department).

The Deputy from the Sheriff's Department conducted an investigation of the incident and interviewed all three students. The Deputy questioned the Student while the Principal was present. The Student told OCR that, while the Principal was present, the Deputy asked her if she had engaged in sexual activity with the male students, who were older than her, XXX XXX XXXXXXXX XXXX.

The Student told OCR that when she came back to school after the January XX, 2015 incident, a lot of students were talking about it because the location of the fight was in an area where students could overhear what was being said. The Principal confirmed that other students were talking about the incident.

On or around March XX, 2015, the Sheriff's Department conducted a drug raid at the High School. On or around the same date, the male student was arrested for drug activity on campus. The Student was identified as a person who might have information regarding the drug activity.

On or around XXXXXX, March XX, 2015, the High School's XXXXX XXXXXXXX teacher (Teacher 1) made a comment to XXX XXX period class. The Student was not in Teacher 1's class when the comment was made. The Student told OCR that two students in the class relayed to her that Teacher 1 made the following statement to the class about her: "XXXXXXXXXX XXXXXXXXXXXX XXXX X XXXX XXXX XXXX XXX XXXX XX XXXXX XX XXXX XXXXXXXX XXX XX XXXXXXX XXXX XXXXX XXXX."

The Student told OCR that during the week of XXXXXX, March XX, 2015, a group of six female students harassed her by yelling slurs at her directly to her face for the subsequent two weeks, during passing periods and lunch. The Student explained that the name calling lasted one to five minutes each time, it occurred more than three times a day, and the name calling consisted of the following four names in a rotated fashion: slut, whore, bitch, and narc.

The Student told OCR that on or around March XX, 2015, she reported Teacher 1's comment about her and the harassment by the group of female students to the XXXXX XXXX Teacher (Teacher 2), and the Student's XXXXXXXX Teacher (Teacher 3). The Student stated that she told Teacher 2 and Teacher 3 that several female students were yelling the aforementioned four names at her. The Student stated that Teacher 2 and Teacher 3 told her to report the incidents to the Principal and Teacher 2 walked her over to the Principal's office.

The Student and the Principal confirmed that they had two meetings on or around March XX and XX, 2015. The Student told OCR that during the first meeting on March XX, she reported to the Principal that a group of about six female students at the school called her the four slurs. The Student told OCR that she told the Principal the names of the six students who were harassing her, that Teacher 3 told her that she discovered graffiti in the girl's bathroom that said, "Student is a narc," and Teacher 3 had the graffiti cleaned up.

The Student stated to OCR that during the second meeting with the Principal on March XXXX, she told him that the group of female students continued to harass her, the group size had grown to ten girls, and they were continuing to call her the same four slurs/names directly to her face by singing or chanting the names instead of yelling them. The Student told OCR that she gave the principal the names of all of the students who were harassing her. The Student stated to OCR that she also told the Principal that she had learned that Teacher 1 made the aforementioned statement to XXX XXX period class, namely: "XXXXXXXX XXXX X XXXX XXXX XX XXXXX XX XXXX XXXXXXXX XXX XX XXXXXXXX XXX XXXXXXXX XXXXXXXX XXXX XXXXX XXXX."

The Principal stated to OCR that during these two meetings with the Student on March XX and XX, 2015, she told him that a group of female students were calling her a "narc." The Principal told OCR that he did not recall the Student telling him that these female students also called her derogatory names based on sex. The Principal also told OCR that the Student gave him the names of the students that were calling her a "narc" during these two meetings. He subsequently called all of these students into his office the same day he learned this and told the students that the School would not tolerate any student calling the Student this name or making any other negative comments about the Student. The Principal further stated that he did not recall the Student reporting that Teacher 1 made the alleged comment about her during his two meetings with her in March 2015.

On or around March XX and XX, 2015, Assistant Principal 1 and the School Counselor interviewed eight different students regarding allegations that students were calling the Student a “narc.” According to documentation submitted by the District, two of the eight students admitted to calling the Student a “narc”, and Assistant Principal 1 told these students to immediately cease this behavior.

On or around March XX, 2015, one week after the Sheriff’s Department conducted a drug raid at the High School, the District started conducting its own investigation about campus drug use. Assistant Principal 1 conducted the District’s investigation about drug use on campus. On March XX and XX, 2015, he interviewed the Student two times in connection with his investigation.

The Complainant alleges that the Assistant Principal 1 inappropriately questioned the Student about her sexual activity and experience during the first interview. Assistant Principal 1 submitted a declaration to OCR stating that during his two interviews with the Student, he limited his questioning to asking her about drug activity on campus and denied questioning the Student about her sexual relationship with any of the students on campus.

The Student told OCR that during the first interview no one else was present except her and Assistant Principal 1 but during the second interview, the School Counselor was also present for the interview. The Student told OCR that Assistant Principal 1 asked her if she knew about drug activities on campus and asked her to write a statement describing her knowledge of campus drug activities. The Student stated to OCR that during the first interview, Assistant Principal 1 asked if she was talking to the male student and if she was in a relationship with him and she responded no. However, the Student stated that she did not recall Assistant Principal 1 asking her about her sexual activity or experience.

On March XX, 2015, during XXX period, the Student went to the girl’s bathroom near her XXXXXXXX XXXXX and discovered some graffiti that referenced her name on a toilet in XXX XXXXX bathroom stall. The Student told OCR that the graffiti on the toilet seat was sexual in nature XXX XXXXXXXX XX X XXXXXX XXXX XXXX and on the surrounding walls of the stall there was graffiti that stated “slut” and “whore.” The Student told OCR that after she saw this graffiti, she reported it to her XXXXXXXX Teacher (Teacher 4). The Student told OCR that Teacher 4 told her that she would have someone clean it up and called the incident into the office. The Student stated to OCR that she did not report this graffiti incident to any other staff member or administrator at the High School.

Teacher 4 confirmed to OCR that the Student reported this graffiti incident to her on March XX, 2015, the same day the Student discovered the graffiti. Teacher 4 stated to OCR that the Student was in her XXX period class, she asked to go to the bathroom, and when she returned she was upset and said that she discovered graffiti in the bathroom that said bad things about her. Teacher 4 stated to OCR that she did not see the graffiti herself. Teacher 4 told OCR that she reported this graffiti incident to the

Principal's Secretary and the School Counselor. Teacher 4 stated to OCR that she confirmed that the graffiti had been removed from the girls' bathroom at the end of the day.

The Principal told OCR that he did not learn of this graffiti incident in the girls' bathroom until later. When OCR asked him to elaborate, the Principal was unable to provide an approximate date or time frame when he learned of the graffiti. The Principal told OCR that he did not recall what the High School did in response to the incident.

The Student told OCR that from March XX, 2015 until the end of the school year in June 2015, the group of female students stopped the direct name calling and instead began calling her the same four derogatory names indirectly by making comments about her in areas where she could overhear the comments, such as in class or in the hallways. The Student also told OCR that another female student in her XXXX class, who sat XX XXXXX XX XXX, called the Student the same four derogatory names in class while talking to other students and the Student could overhear these comments. The Student told OCR that she would overhear indirect comments calling her one of the four names about two – three times a day during this time period and the comments lasted anywhere from one – five minutes.

The Principal stated to OCR that from the end of March 2015 – until the end of the school year in June 2015, he asked the School Counselor to check in with the Student several times to see if the harassment by other students was still ongoing. The Principal told OCR that the School Counselor reported that there were no other incidents of harassment reported by the Student and that she was doing fine. The Principal further told OCR that Assistant Principal 2 asked the three Campus Monitors to keep an eye on the Student during lunch time and during the passing periods.

On May XX, 2015, the Complainant sent an email to the Principal and District's Superintendent stating that the Student was ill and vomiting at school because of harassment and bullying by other students. The email included that the Student had been harassed and bullied by other students based on her participation in the drug investigation on campus and that Teacher 1 had made a comment about the Student in class, which contributed to the harassment.

The Complainant did not file a Uniform Complaint form with the District but the District decided to treat the Complainant's May XX, 2015 written email complaint as a Uniform Complaint due to the nature of the allegations in the complaint. Soon after May XX, 2015, the District began its Uniform Complaint process response to the Complainant's May XX, 2015 written email complaint. The investigation was conducted by the District's Chief Technology Officer/Uniform Complaint Officer and the District's legal counsel assisted with preparing the response to the complaint. The Uniform Complaint Officer investigated the following allegations by the Complainant: 1) a male member of the High School administration interviewed the Student on campus without the presence of a female, 2) students at the High School were harassing the Student and referring to her as a "narc", 3) Teacher 1 made a comment to her class regarding the Student, 4)

students harassed the Student through social media by calling her a “f---ing snitch”, and 5) XXX XXXXXXXX XXXX XXXX abandoned her XX XXXX due to negative comments from other students and peers.

On May XX, 2015, the Assistant Principal 2 and the School Counselor had a meeting with the Student and Complainant. During this meeting, the Student told them that two of her friends told her that Teacher 1 told her whole class several weeks back that: “XXX XXXXXXXX XXXX X XXXX XXXX XX XXXX XXX XXX XX XXXXXXXX XXXX XXXXXXX XXXXX XXXX.” The Assistant Principal assured them that the comment would be investigated and addressed. The Student told administration during this meeting that she has heard other students calling her a “narc” but not directly to her, that friends have heard others talking about her, and that a couple of students have given her dirty looks. The District and the Principal told OCR that this meeting was the first time administration received notice of the alleged comment that Teacher 1 made about the Student.

On May XX, 2015, Assistant Principal 2 had a meeting with Teacher 1 and asked her whether she made the alleged comment about the Student. Teacher 1 stated that she never made the alleged comment and stated that she doesn’t know who the Student is or if the Student was a male or female.

On May XX, 2015, the School Counselor documented that she had been checking in with the Student about every two weeks for the past few months and noted that the Student did not report any bullying.

On June X, 2015, the Principal emailed the Complainant and notified him that Assistant Principal 2 interviewed Teacher 1 regarding the alleged comment and Teacher 1 denied making the statement. The Principal informed the Complainant that Assistant Principal 2 was still investigating the matter and was in the process of interviewing the students that the Student identified during the investigation.

On or around June X, 2015, Assistant Principal 2 interviewed students in Teacher 1’s XXX period class to ask them what comment Teacher 1 made in class. The District submitted Assistant Principal 2’s handwritten notes pertaining to his interviews with these students. The notes document that Assistant Principal 2 interviewed six students total and obtained a signed statement from two of these six students that memorializes the comments they made during their interviews. One student did not provide any information about the comment that Teacher 1 made in class and stated that they saw some comments, such as “narc narc” posted about the Student on Twitter. Of the other five students interviewed, the notes indicate that three students stated that Teacher 1 mentioned the Student’s name and made a comment that was very similar to the one that the Student alleged that Teacher 1 made during her XXX period class. The remaining two students did not confirm that Teacher 1 made the statement and only recalled Teacher 1 saying the school was on lockdown and that the school that she worked on before was on lockdown during a drug bust.

The Principal stated to OCR that their investigation regarding Teacher 1's alleged comment about the Student was inconclusive because the student testimony was conflicting. The Principal told OCR that Assistant Principal 2 told him that some students confirmed the Student's allegations and said that Teacher 1 used the Student's name and said that the XXXXXXX XXXX X XXXX XX XXXXX XXXXXXXX XX XXXXXXXX XXXX XXXXX XXXX. The Principal told OCR that there were some other students that said Teacher 1 did not say that and never used the Student's name but just stated that XXXX XXXXXXXXXX XXXX XXXXXXXXXX XXX. The Principal further stated to OCR that Teacher 1 denied making the statement or using the Student's name.

The District submitted a signed declaration from Teacher 1. In this declaration, Teacher 1 denied making the comment that the Student alleged and stated that she never mentioned the Student's name. Teacher 1 stated that she recalls making the following comment to her XXX period XXXXX XXXXXXXX class, "XXXX XXX XXX XXXXXXXX XXX XXXX XXX, XX XX XXXXXXXX XXX XXX XXX XXX XX XXXXXXXX; XXXXX XXXX XXX" or words to that effect.

On or around June X, 2015, the Complainant had a meeting with the Principal, Assistant Principal 2, and the Superintendent to discuss the Complainant's concerns about harassment of the Student. The Complainant told the administrators that he felt that Teacher 1's comment was a catalyst for the harassment that the Student received from other students and that the school failed to address the incident even though the Student reported to them in March 2015. The Principal responded that he did not recall the Student telling him about Teacher 1's comment in March 2015. The Principal stated that during this meeting, he learned for the first time that students were using derogatory names on the basis of sex. He also told OCR that he learned that the Complainant was alleging that Assistant Principal 1 inappropriately questioned the Student about her sexual activity.

On or around June X, 2015, a female student in the Student's XXXX class posted the following comment on Twitter: "you're a f---in snitch." This was the same female student that allegedly called the Student the four derogatory names while talking to other students in XXXX class. The Student stated that her name was not included in this Twitter post but she believes that the comment was made about her. The Complainant reported this incident to the Principal and the Superintendent via email on June X, 2015, attaching a copy of the Twitter post.

In response to the June XXX meeting and subsequent notification of the Twitter posting about the student, on June X and X, 2015, Assistant Principal 2 met with the female student in the Student's XXXX class. He asked the female student about the Student's allegations that she called the Student a "slut" and "bitch" and that she posted the Twitter post about the Student. The female student admitted to Assistant Principal 2 that she called the Student words like "slut" and "bitch" when talking to her friends because she was upset that the Student XXX XXXX XXXXXXXXXX XXXX XXX XXXXXXXXXXXXXXX. The female student also admitted that she posted the Twitter message and it was about the Student. Assistant Principal 2 directed the female

student to immediately stop making these comments and to cease any conversations about the Student on social media. Assistant Principal 2 contacted the female student's parents and noted this incident in the student's discipline file.

On June X, 2015, the Principal had a meeting with Teacher 1, Teacher 1's union representative, and the District's Chief Human Resources Officer. The District submitted handwritten notes taken by the Chief Human Resources Officer documenting what was said during the meeting. X---paragraph redacted---X. The Principal, Assistant Principal 2, and the Chief Human Resources Officer counseled Teacher 1 about not having personalized conversations with students and having professional separation and boundaries with her students.

On or around June X, 2015, the Principal, Assistant Principal 2, and the District concluded that while Teacher 1 did not make the statement as the Student alleged and did not identify the Student, a statement of some sort may have been made to the class. As a result, the Principal and the District asked Teacher 1 to make a statement to her XXX period class to clarify that her comment was not connected to any particular student.

X---paragraph redacted---X.

The Student stated to OCR that she reported the harassing comments made about her in XXXX class and on the social media to Assistant Principal 2 during two meetings in June 2015; she could not remember the exact days. The Complainant reported the same comments to the Principal and the Superintendent. The Student stated that when she reported these incidents to him, Assistant Principal 2 told her to stop looking at the social media postings. The Student stated that she also told Assistant Principal 2 that other girls were calling her the four derogatory names indirectly to other people so the Student could overhear it and Assistant Principal 2 was not supportive.

On July XX, 2015, the District notified the Complainant that the District's Uniform Complaint Officer made the following findings pertaining to alleged staff harassment and student harassment: 1) the allegation that the Assistant Principal 1 interviewed the Student on campus without the presence of a female member of administration or another adult present was without merit because the District does not have an obligation to provide a female administrator during an interview of a female student, 2) the District found that some students did make statements calling the Student a "narc" as the Student alleged but they counseled and disciplined any students determined to have engaged in the harassment, 3) the District found that Assistant Principal 2 took adequate actions responsive to the individual student in the XXXX class who made comments in person and in social media, 4) and the District found insufficient evidence that Teacher 1 made an inappropriate comment about the Student in class. The Student and the Complainant stated that the District's Investigator never interviewed them in connection with the investigation. OCR did not receive any interview notes from the District or the investigative file showing which witnesses were interviewed by the Uniform Complaint Officer.

When notifying the Complainant of the results of the Uniform Complaint investigation, the District also offered the Student the following services: a) continued counseling by the School Counselor, b) weekly counseling with the School Psychologist and c) an assessment of the Student to determine eligibility for special education and/or Section 504 eligibility.

On August XX, 2015, the XXXXXX XXX of the 2015-2016 school year, the Student learned from another male student that there was graffiti written using her name in the boy's bathroom. He sent her a picture of the graffiti which showed that there was graffiti written on the bathroom wall of a stall that used the Student's name and used degrading and explicit language XXXX XXXXXXXX XX XXX XXXXXXXX XX XXXXXX XXXXXXXX. The male student reported the graffiti to a custodian and the graffiti was removed. The Student told OCR that when she learned about this graffiti she was frustrated and disappointed because it was her XXXXXX XXX of the new school year, and she thought that all of the harassment from the last school year was over.

The Student stated to OCR that the indirect name calling by the group of female students continued during the 2015-2016 school year, but it was less frequent --- about once a week or once every other week. The Student did not report these comments to school staff or administration.

Sometime during August 2015, the Student learned of indirect comments made about her by another female student who called the Student a slur based on sex and stated that she wanted to take the Student out and kill her because she "narced" on the male student. The Student told OCR that she did not report these comments to any school staff or administration because she did not think they would do anything about it based on her prior experiences reporting harassment to administration.

On or around August XX, 2015, the Principal asked the School Psychologist to begin seeing the Student on a weekly basis to check in with her and make sure she was doing alright. On the same day, the School Psychologist called and emailed the Complainant to see if he consented to her providing counseling services to the Student. The Complainant sent an email reply to the School Psychologist on the same day declining this offer for counseling services.

On August XX, 2015, the Complainant reported the graffiti in the boy's bathroom to the Superintendent and attached a picture of the screen shot of the graffiti. The Superintendent forwarded this email to the Principal.

The Principal told OCR that after he learned of the graffiti incident from the Complainant's email on August XX, 2015, he asked the Campus Monitor on the same day about what happened with the graffiti. The Principal stated to OCR that the Campus Monitor confirmed that the graffiti had been discovered on August XX, 2015. The Campus Monitor stated that he discovered the graffiti before 7:45 a.m. that day, he asked the Custodian to remove it, and the Custodian removed the graffiti before 7:45

a.m., prior to school starting. The Campus Monitor told the Principal that he believes the graffiti was removed within 10-15 minutes of the Custodian being notified about it. The Principal stated to OCR that he told the Campus Monitor to make sure that he notifies administration of any instances of graffiti especially if it was personalized in any way. The Campus Monitor agreed to do this in the future and noted that it was a “slip” for him not to report the graffiti to the Principal.

The Principal told OCR that after talking to the Campus Monitor, he asked Assistant Principal 2 on the same day, August XX, 2015, to do his best to find out who wrote the graffiti. The Principal stated to OCR that Assistant Principal 2 never found out who wrote the graffiti but he does not know specifically what Assistant Principal 2 did to investigate the graffiti incident.

On August XX, 2015, the Principal sent the Complainant an email notifying him of the school’s response to the August 2015 graffiti incident. In this email, the Principal told the Complainant that the school removed the graffiti as soon as possible after the Campus Monitor went to the location and discovered it. The Principal stated that the Campus Monitor did not inform any administrators on campus after discovering the graffiti, and he reinforced to the Campus Monitor that he wants to be notified about any graffiti on campus, especially if it is personalized. The Principal also stated that the Complainant or Student can speak to a counselor or the School Psychologist at the school if they were interested in doing so.

On August XX, 2015, the Complainant sent an email to the Principal stating he was declining the District’s offer to provide counseling services and “check ins” with the Student because neither the School Psychologist nor the School Counselor is a licensed behavioral health practitioner. The Complainant further stated that he felt that being seen by a school psychologist would be considered a service for students with an IEP, which the Student did not possess.

Neither the Complainant nor the Student reported any further incidents of harassment towards the Student to school staff or administration after August 2015.

The Student stated that she experienced the following negative effects as a result of the harassment she was subjected to:

- The Student’s grades dropped more than XXX XXXX XXXXX XXXXX average from her first semester to the second semester of the 2014-2015 school year. The Student’s transcript confirms that her grade point average (G.P.A) was XXXX during the fall semester and she earned a GPA of XXX for the spring semester. Therefore, the Student’s G.P.A. dropped XXX points from the first semester to the second semester of the 2014-2015 school year, after the Student was subjected to harassment during the second semester of the school year.

- From March – June 2015, the Student missed class and had to go home as a result of becoming physically sick at school, including vomiting and headaches, due to the anxiety that she stated was caused by the harassment. The Student's attendance records show that from March – June 2015, she did not attend one or more class period due to illness on six occasions during this four month time period.
- The Student had difficulty focusing in class, she was socially shunned by other students, and she hid in the bathroom to avoid hostile treatment by other students on a few occasions.

Analysis:

First, OCR analyzes whether the District had notice that the Student was being sexually harassed by other students and/or staff and whether the District conducted an actual inquiry about the allegations of harassment on the basis of sex after receiving notice of the harassment. The District is on notice of harassment when a responsible employee receives either actual or constructive notice of alleged harassment. OCR found that the District first received notice that Teacher 1 made the alleged comment about the Student on March XX and XX, 2015 when the Student reported the comment to Teacher 2, Teacher 3, and to the Principal. OCR also found that the District first received notice that other students were sexually harassing the Student by calling her slurs when the Student reported this to the Principal on March XX and XX, 2015. The District also received notice of sexually harassing graffiti about the Student on March XX, 2015 and again on August XX, 2015, when the Student reported the first graffiti incident to Teacher 4 and when the Complainant reported the second graffiti incident to the Superintendent who then notified the Principal.

Even though the Principal denied to OCR that he had notice of the repeated slurs on the basis of sex made by other students until June X, 2015, the Student provided credible and consistent testimony to OCR that she reported the harassing comments made on the basis of sex to the Principal on March XX and XX, 2015 and to two other teachers on March XX, 2015. The Principal and the District also denied having notice of Teacher 1's alleged comment about the Student until May XX, 2015. However, OCR found that the Student provided more credible and consistent testimony that she reported Teacher 1's comment to the Principal on March XX, 2015 and to Teacher 2 and Teacher 3 on March XX, 2015. Accordingly, OCR finds that the District had notice of the harassment on all of the aforementioned dates.

Despite having notice of the harassment in March 2015, the District failed to make adequate inquiries about the harassment on the basis of sex to promptly determine whether it occurred. School staff never interviewed the Student or other students about the incidents involving harassment based on sex until May XX, 2015 and early June 2015. Even though the Principal and two teachers had notice of alleged harassment of the student based on sex in March 2015, no School staff member tried to interview the Student in March to find out more about what happened in reference to the sex based

harassment incidents. If this was done, the School could have used any information obtained to promptly investigate the harassment incidents. When the School did conduct the interviews in late May and early June 2015, they did not interview all of the students who the Student described as having engaged in the conduct and did not provide any notice of the outcome of their investigation to the Student. Nevertheless, the School took some actions in response to receiving notice and OCR assessed whether the actions were sufficient to stop the harassment, prevent further harassment and remedy the effects on the Student.

OCR found that School staff took the following responsive actions to address the harassment based on sex: 1) they met with one individual student on June X and X, 2015 and told the student to stop making harassing comments based on sex and contacted their parents, 2) on or about May XX and June X, 2015, they met with Teacher 1 and gave her a verbal counseling about not making personalized comments about students, 3) they removed two instances of graffiti once identified and reported, 4) the School Counselor provided the Student with some counseling support from late March 2015 – end of the school year in June 2015, and 5) the Principal asked the campus monitors to observe the Student during lunch time and during passing periods from approximately late March – the end of the school year. In addition, on or around July XX, 2015, the District offered the Student counseling services from the School Psychologist but the Complainant declined them on or around August XX, 2015. OCR found that the School's actions overall were insufficient because of the persistent nature of the treatment. On June X and X, 2015, Assistant Principal 2 met with one individual student alleged to have harassed the Student but this was not sufficient to stop the ongoing nature of the misconduct or prevent it from recurring as evidenced by the fact that the Student experienced two more incidents of peer harassment in August 2015, one involving a second incident of vulgar sexually-based graffiti confirmed by school administration. The Student also reported that indirect harassing comments continued on a less frequent basis throughout the 2015-2015 school year.

Regarding the harassing comments, the District did not attempt to meet with all of the students alleged to have harassed the Student based on sex or determine whether it was necessary to discipline any of these students in order to stop the harassment and prevent it from reoccurring. The Principal met with all of the female students in March 2015 and told them to stop calling the Student a "narc" or other negative comments but he did not specifically address the harassing comments based on sex during these conversations, did not assess whether the harassment was ongoing, and failed to take adequate actions to ensure that the harassment did not continue. In regards to the two graffiti incidents, there is no evidence that the District made the necessary inquiries to determine who was responsible for the first incident on March XX, 2015. With respect to the second incident, the Principal told OCR the School was unable to find out who wrote the second graffiti statement about the Student on August XX, 2015 but did not provide any evidence that interviews were conducted or any students questioned. While it is clear that the School did take some actions to respond to the harassment the Student experienced, the School's actions did not prevent the harassment from reoccurring which is evident by the fact that the harassment continued to the next

school year after the responsive actions were taken. Accordingly, OCR found that School's response was not adequate under Title IX because it was not reasonably calculated to stop the harassment and prevent its recurrence.

Because the District failed to conduct an adequate investigation and make a determination as to whether a hostile environment on the basis of sex had been created for the Student based on the harassing conduct, OCR conducted its own investigation into the underlying conduct. 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 circumstances, 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.

OCR first analyzed whether any or all of the alleged incidents occurred. First, OCR found that Assistant Principal 1 did not ask the Student about her sexual activity or experience during the interview he conducted with her on or about March XX, 2015. In her interview with OCR, the Student did not recall any statements made by the Assistant Principal 1 wherein he inquired about her sexual activity or experience. Rather, she recalled that Assistant Principal 1 asked her about her knowledge of campus drug activities and if she and the male student who was arrested for drug activity were in a relationship. In addition, the Assistant Principal denied making the statement.

OCR next analyzed whether the instances of harassment by Teacher 1 and other students, including the two graffiti incidents, created a hostile environment based on sex for the Student. The District obtained evidence from Teacher 1 and the majority of the students interviewed that Teacher 1 made a comment regarding XXXXX XXXXXXXX XXX XXX XXXXXXXXXXXX XX XX XXXX XX XX XXXXXXXX. There was a dispute about whether the Student's name was included in Teacher 1's statement or not but due to the proximity of the statement to the police activity that had occurred a few days before, it would be reasonable to assume that most students connected the statement to the Student, and that the impact on her was the same.

Even though the District concluded that the evidence was inconclusive that Teacher 1 made the alleged comment about the Student, OCR found that there is sufficient evidence to show that students inferred that Teacher 1's comment was referring to the Student whether or not the Student's name was used in the comment. The District obtained evidence from Teacher 1 and the majority of the students interviewed that Teacher 1 made a comment regarding XXXXX XXXXXXXX XXX XXX XXXXXXXXXXXX XX XX XXXX XX XX XXXXXXXX. Teacher 1 acknowledged that students in her XXX period class were saying that the Student may have XXXX X XXXX XX XXXXX XXXXXXXXXXXX XXX XXXXXXXX XXX and that she said, "XX XXX XX XXXXXXX, XXX XXX XX XXXXXXX, XXXXX XXXXXXXXXXXX XXXX XXXXXXXX XXX."

OCR concluded that Teacher 1's comment about the Student alone was insufficient to create a hostile environment based on sex. However, after Teacher 1 made this comment, other students began harassing the student and the harassment continued into the next school year. Teacher 1 made the comment to her XXX period class on XXXXXX, March XX, 2015 and then the first school day after this comment, on XXXXXX, March XX, 2015, a group of six to ten female students began harassing the Student by calling her the four derogatory names, which included gender slurs. OCR found that the direct name calling by the female students lasted for a period of two weeks and it occurred more than three times a day, lasting for about one – five minutes each time. On March XX, 2015, one week after Teacher 1's comment, the Student discovered graffiti in the girls' bathroom where someone had written sexually harassing graffiti around the toilet seat and the words "slut" and "whore" on the surrounding walls of the stall. From March XX – June 2015, the group of female students began indirect name calling by calling Student the same four derogatory names when talking to other students in areas where the Student could overhear them, such as in hallways or in her XXXX class. In June 2015, the female student in the Student's XXXX class admitted she called the Student the slurs. The indirect name calling by the female students persisted during the next school year, the 2015-2016 school year, but was less frequent. On August XX, 2015, the XXXXXX XXX of the next school year, the Student learned of another incident of sexually harassing graffiti in the boy's bathroom.

In reviewing the totality of the circumstances, OCR found that the harassment was both pervasive and persistent and that it involved, at least in part, both sexually harassing conduct and comments and it continued until the next school year. OCR also had concerns that Teacher 1's comments may have contributed to the creation of a hostile environment for the Student both because of the nature of the comment and because of the timing of the first incidents of harassment on the basis of sex, which occurred immediately after the comment was made.

OCR also found that the harassment limited the Student's ability to participate in her education. The Student reported experiencing headaches and vomiting so severe that she had to go home sick several times during the March – June 2015 time frame; attendance records confirm that the student had six absences during this time frame related to illness. She also reported that she had difficulty concentrating in class and her grade point average (GPA) dropped at least XXX XXXX XXXXX from the first semester to the second semester of the 2014-2015 school year. The Student's transcript confirms this grade drop and shows that the Student's GPA dropped XXX points, from a XXX to a XXX, from the first semester to the second semester of the 2014-2015 school year.

For all of the reasons described above, OCR found that the District violated the requirements of Title IX and its implementing regulations in regards to complaint allegation 1.

**Allegation 2: Has the District a) disseminated notice of nondiscrimination on the basis of sex as required by 34 C.F.R. § 106.9; b) appointed a Title IX coordinator as required by 34 C.F.R. § 106.8(a); and c) adopted policies and procedures that provide for prompt and equitable response(s) to sexual harassment, including sexual violence complaints and reports as required by 34 C.F.R. § 106.8(b)?**

**a) Notice of Nondiscrimination**

Legal Standards

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 employments, student 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 to OCR. 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. The District must also identify and include contact information, including the name, address, and phone number, for the Title IX Coordinator. 34 C.F.R. § 106.8.

Findings of Fact:

The District's policy, Board Policy 5145.3, states that the Director of Technology and Data Services is the position designated to be the Coordinator for Nondiscrimination to handle complaints regarding discrimination, harassment, intimidation, or bullying, and to answer inquiries regarding the District's nondiscrimination policies. The District's Uniform Complaint Form addendum lists the Chief Technology Officer as the employee responsible for handling complaints regarding unlawful discrimination.

The District disseminates a Student Handbook to students and parents each school year and a copy of the handbook is also available on the District's website. The Student Handbook states that the District programs, activities, and practices shall be free from discrimination based on race, color, sex, gender, disability, and several other protected classes. It also states that the District prohibits sexual harassment of any student by another student, anyone employed by the District, or anyone on school property or at a school sponsored activity. The Student Handbook does not state that the District is required by Title IX not to discriminate on the basis of sex in its education programs and activities. The Student Handbook states that complaints regarding discrimination and harassment and inquiries regarding the District's nondiscrimination policies should be directed to the District's Director of Technology and Data Services and lists the office

address and phone number for this position. The handbook does not state that inquiries concerning Title IX may be referred to the Title IX Coordinator or to OCR.

The District publishes information on its website for parents and students. The District's website contains a document titled, Notice of Parent and Legal Guardian Rights. This document contains a notice of non-discrimination stating that Title IX of the Education Amendments of 1972 and state law prohibit discrimination on the basis of race, color, national origin, or sex in federally financed education programs or activities. The notice further states that District programs shall be free from discrimination based on sex, gender, and several other protected classes. The notice also states that any questions or concerns about noncompliance can be directed to the District's Director of Technology and Special Projects and lists the office address, phone number, and email address for this position. The notice does not state that inquiries concerning Title IX may be referred to the Title IX Coordinator or to OCR.

The District's website also contains a non-discrimination notice that states that District programs, activities, and practices shall be free from discrimination based on sex, gender, and several other protected classes. This notice does not state that the District is required by Title IX not to discriminate on the basis of sex in its education programs and activities and it does not refer complaints to the Title IX Coordinator or OCR. The notice also does not list the name and contact information (the office address, phone number, and email address) of the Title IX Coordinator. Instead, the notice refers people to contact the District's Chief Technology Officer for any Title IX complaints or questions and lists this person's name, phone number, and email address; the office address for this person is not listed.

#### Analysis:

The District posts a notice of nondiscrimination in its Student Handbook, on its website, and on a document that is posted on the website titled, "Notice of Parent and Legal Guardian Rights." However, these notice provisions violate the requirements of the Title IX regulations for several reasons. First, the notice of non-discrimination is not contained in several bulletins, announcements, catalogs, or application form that is disseminated to students, parents, employees, applicants, and unions. Second, the notices and Board Policy do not make it clear who is designated to be the Title IX Coordinator. Some notice provisions mention that the Coordinator for nondiscrimination complaints is the Director of Technology and Data Services while other provisions state that the Director of Technology and Special Projects or the Chief Technology Officer handles these complaints. Therefore, the notice provisions create confusion regarding who is the designated Title IX Coordinator, if there is more than one Title IX Coordinator, and who discrimination complaints should be sent to. Third, not all of the District's notice of nondiscrimination provisions contain the name, address, and phone number for the Title IX Coordinator; some of the notice provisions are missing at least one of these items. These notice provisions also refer complaints to the Director of Technology and Data Services, the Director of Technology and Special Projects, or the Chief Technology Officer without clarifying that this person is serving as the Title IX

Coordinator. Accordingly, OCR found that the District's notice of nondiscrimination provisions violate the requirements of Title IX.

As a matter of technical assistance, OCR also recommends that the District revise its notices of nondiscrimination contained on the District's website and in the Student Handbook to specify that Title IX requires that the District not discriminate on the basis of sex. Currently, these notices only specific that discrimination on the basis of sex is prohibited but do not provide information about Title IX as described in the regulation.

## **b) Title IX Coordinator**

### Legal Standards

The regulation implementing Title IX, at 34 C.F.R. § 106.8(a), requires each Recipient to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under the regulation implementing Title IX (Title IX coordinator), including investigation of any complaint communicated to the recipient alleging any actions which would be prohibited by the regulation implementing Title IX. The District must also identify and include contact information, including the name, address, and phone number, for the Title IX Coordinator. 34 C.F.R. § 106.8.

### Finding of Fact:

The District's policies and website list different people responsible for coordinating compliance with the regulations and coordinating investigations of discrimination complaints. As described above, when providing notice of nondiscrimination the District refers to the Director of Technology and Data Services, the Director of Technology and Special Projects, or the Chief Technology Officer as the coordinator of discrimination investigations. The District does not refer to a Title IX Coordinator or Title IX Officer in any of the notice of nondiscrimination provisions listed on its website or in the Student handbook. When providing notice of nondiscrimination on the website or in the Student handbook, the District provided the title, phone number, and email address of the Chief Technology Officer as the complaint coordinator but did not provide the office address. In other notice of nondiscrimination provisions, the District listed the Director of Technology and Data Services or the Director of Technology and Special Projects as the complaint coordinator and listed the title, office address, email address, and phone number for this person without listing the name.

The District's website is the only place where reference to a "Title IX Officer" can be found. The District's website contains a Human Resources page. This webpage contains a document with an organization chart for the Human Resources Department that was last updated on November 15, 2016. On this document, the name of the Interim Chief Human Resources Officer is listed along with his job responsibilities. The organization chart notes that Title IX Officer is one of the responsibilities of the Interim Chief Human Resources Officer. Other job duties listed for this position include overseeing human resources department and staff, employee relations support, lead negotiator for all bargaining units, employee discipline, and Uniform Compliance Officer.

The name, title, email address, and phone number of the Interim Chief Human Resources Officer is listed on the organization chart and the office address is listed separately on the Human Resources Department webpage. The District's website and other available information on the internet indicate that the former Chief Human Resources Officer served as the Interim Superintendent for the District from January 2016 - June 2017.

### Analysis

OCR's investigation revealed that the District has not fulfilled the requirement of adequately notifying all of its students and employees of the name or title of the Title IX Coordinator because the District's website and notice of nondiscrimination refer to several different people as the point of contact for Title IX sexual harassment complaints, creating confusion as to who is the Title IX Coordinator. In addition, each of the District's notice of nondiscrimination provisions does not contain the name or title, address, and phone number for the Title IX Coordinator. Furthermore, the District's notice provisions do not clarify if they have designated more than one Title IX Coordinator, do not describe each Coordinator's responsibilities, and do not designate one Coordinator as having ultimate oversight. For these reasons, the District's website and policies do not comply with the requirements of Title IX.

### **c) Grievance Procedures**

#### Legal Standards

The regulation implementing Title IX, at 34 C.F.R. § 106.8(b), requires that a Recipient adopt and publish grievance procedures providing for the prompt and equitable resolution of student and employee complaints alleging any action prohibited by the regulation implementing Title IX.

#### Findings of Fact:

The District's Board Policy 5145.7 and Administrative Regulation 5145.7 outline the District's grievance policies and procedures for handling complaints of sexual harassment. Board Policy 5145.7 (BP 5145.7) and Administrative Regulation 5145.7 (AR 5145.7) contain the following relevant provisions:

- AR 5145.7 provides notice to students and employees of the procedures for filing complaints. It notes that a sexual harassment complaint can also be filed by an employee.
- AR 5145.7 and BP 5145.7 state that any student who believes he or she has been subjected to sexual harassment or who has witnessed sexual harassment can file a complaint with any school employee. The policies broadly state that they apply to anyone who has been subjected to sexual harassment. This suggests that they include complaints alleging discrimination or harassment carried out by employees, students, and third parties. Board Policy 5145.7 states

that the sexual harassment policy applies to sexual harassment of students at school or at school-sponsored or school-related activities but it does not address off campus activity.

- AR 5145.7 states that the Director/Principal shall initiate an impartial investigation and consider the specificity and reliability of the information so the first part of this element is met. The policy calls for an adequate, reliable, and impartial investigation. The policy also states that the Director/Principal shall interview individuals relevant to the investigation, including the person accused of harassment and the parent/guardian of the alleged harasser if the alleged harasser is a student. The policy states that the student who is complaining shall have an opportunity to describe the incident, identify witnesses, and provide evidence of harassment. The policy is silent on whether the responding party (Respondent) has an equal opportunity to present witnesses and evidence. It does not state that the Respondent should have the opportunity to present witnesses and relevant evidence.
- AR 5145.7 states that the Director/ Principal shall initiate a partial investigation of the harassment complaint within five school days of receiving notice of the complaint. This policy further states that the Director/Principal shall conclude the investigation and prepare a written report of his/her findings no more than 30 days after receiving the complaint. The policy also states that this 30 day timeline may be extended for good cause and if an extension is granted, the Director/ Principal shall notify the student who complained and explain the reasons for the extension.
- AR 5145.7 states that a written report of the investigation findings should be prepared summarizing the reasons for the decision and steps taken during the investigation. This policy states that the report shall be presented to the student who complained, the person accused, the parents/ guardians of the student who complained, and the Superintendent or designee.
- BP 5145.7 states that when the Superintendent or designee has determined that harassment has occurred, he/she shall take prompt, appropriate action to end the harassment and to address its effects on the individual who subjected to the harassment. AR 5145.7 states that the written report of the findings shall include any corrective actions that have or will be taken to address the harassment and prevent any retaliation or further harassment.

### Analysis

OCR examines a number of factors in evaluating whether a District's grievance procedures are prompt and equitable, including but not limited to whether the procedures provide for the following: 1) notice of the procedure to students and parents of elementary and secondary school students and employees, including where to file complaints; 2) application of the procedure to complaints alleging discrimination by employees, other students, or third parties; 3) adequate, reliable, and impartial

investigation of complaints, including the opportunity to present witnesses and other evidence; 4) designated and reasonably prompt timeframes for major stages of the complaint process; 5) notice to the parties of the outcome of the complaint; and 6) an assurance that steps will be taken to prevent recurrence of any discrimination and to correct its effects.

The District's Board Policy 5145.7 (BP 5145.7) and Administrative Regulation 5145.7 (AR 5145.7) outline the District's grievance policies and procedures for handling and responding to complaints of sexual harassment. OCR found that BP 5145.7 and AR 5245.7 provides the complainant with the opportunity to present witnesses and other evidence, applies to students, employees, and third parties who have been subjected to harassment, contains a reasonable timeframe for resolution (30 days), written notice to both parties of the outcome of the complaint, and an assurance that steps will be taken to prevent recurrence of discrimination and to correct its effects. However, the policy does not state that it applies to off campus activities with a nexus to campus or that the respondent should have an equitable opportunity to present witnesses and evidence as required by Title IX's implementing regulations. Accordingly, OCR found that the District's sexual harassment procedure, as written, does not meet Title IX requirements.

### Conclusion

This concludes OCR's investigation of the complaint and should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter.

To address the issues alleged in the complaint, the District, without admitting to any violation of law, entered into the enclosed Resolution Agreement (Agreement) which is aligned with the complaint allegations and the findings and information obtained by OCR during its investigation. The Agreement provides the Student an individual remedy in the form of payment for counseling services from a provider of choice, including a licensed behavioral health practitioner, requires the District to revise its policies and procedures and notices of nondiscrimination to comply with Title IX requirements, and requires the District to provide training on sexual harassment and the revised policies and procedures for Title IX investigators, staff, and students.

Based on the commitments made in the enclosed 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 Agreement is intended to address all of OCR's compliance concerns in this investigation. OCR will monitor the implementation of the Agreement until the District is in compliance with Title IX and its implementing regulations.

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 District may not harass, coerce, intimidate, retaliate, 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 records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personal information which, if released, would reasonably be expected to constitute an unwarranted invasion of privacy.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Sewali Patel, Civil Rights Attorney, at 415-486-5380 or [sewali.patel@ed.gov](mailto:sewali.patel@ed.gov).

Sincerely,

/s/

Katherine Riggs  
Acting Team Leader

cc: XXXXX XX XXXXXXXXXXXX, counsel for the District