



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

June 26, 2018

VIA ELECTRONIC MAIL

Benjamin Churchill, Ed.D.
Superintendent, Carlsbad Unified School District
6225 El Camino Real
Carlsbad, California 92009

(In reply, please refer to case no. 09-16-1051.)

Dear Superintendent Churchill:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the Carlsbad Unified School District (District). The Complainant, the parent of a student (Student)¹ at Carlsbad High School (School), alleged that the School failed to provide the Student with a prompt and equitable resolution to notice of alleged sexual violence; and that the School's failure to do so allowed the Student to be subjected to a hostile environment on the basis of sex. Specifically, OCR investigated the following issues:

Issue 1: Whether the District has: a) appointed, and provided notice of, a Title IX Coordinator as required by 34 Code of Federal Regulations (C.F.R.) § 106.8(a); b) 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); and c) disseminated a notice of nondiscrimination on the basis of sex as required by 34 C.F.R. § 106.9;

Issue 2: Whether the District provided the Student with a prompt and equitable response to notice of alleged sexual violence of which it knew or should have known under 34 C.F.R. §§ 106.31 and 106.8;

Issue 3: Whether the failure to provide a prompt and equitable response allowed the Student to be subjected to a sexually hostile environment that denied or limited the Student's ability to

¹ OCR previously provided the District with the identity of the Complainant and Student. We are withholding their names from this letter to protect their privacy.

participate in or benefit from the District's programs or otherwise created a sexually hostile environment generally under 34 C.F.R. §§ 106.8 and 106.31.

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 Department. The District is a recipient of financial assistance from the Department. Therefore, OCR had jurisdiction to investigate this matter under Title IX.

To investigate this complaint, OCR conducted interviews with the Complainant, the Student, and eight School staff members, including those responsible for receiving and investigating complaints of sexual harassment, including sexual violence. OCR also reviewed documents and information provided by the Complainant and the District. With regard to issues 2 and 3, prior to OCR completing its investigation, the District expressed interest in voluntary resolution pursuant to OCR's Case Processing Manual (CPM) at section 302, and OCR determined that voluntary resolution was appropriate. As a result, OCR did not make a determination regarding these issues.

With regard to issue 1, OCR found that the District was not in compliance with Title IX with respect to providing appropriate notice to students and employees of the designated employee responsible for investigating complaints of sexual harassment, as well as that the District's grievance procedures for responding to complaints of sexual harassment were not in compliance with Title IX. On June 28, 2018, the District entered into a Resolution Agreement to resolve the areas of noncompliance and concerns identified herein. The applicable legal standards, factual findings, and OCR's resolution of each issue investigated in the complaint is summarized below.

Issue 1: Whether the District has: a) appointed a Title IX Coordinator, and provided notice of the same, as required by 34 C.F.R. § 106.8(a); b) 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); and c) disseminated notice of nondiscrimination on the basis of sex as required by 34 C.F.R. § 106.9.

Legal Standards:

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, including investigation of any complaint communicated to the recipient alleging any actions which would be prohibited by Title IX. 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 Title IX.

Finally, 34 C.F.R. § 106.9 requires each recipient to implement specific and continuing steps to notify applicants for admission and employment, employees, sources of referral of applicants for admission and employment, 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 any educational program or activity which it operates, and that it is required by Title IX and its implementing regulation not to discriminate in such a manner. The notice of nondiscrimination must include a statement that inquiries concerning Title IX may be referred to the Title IX Coordinator or to OCR (34 C.F.R. § 106.9(b)), and the District must provide adequate notification of the contact information, including the name (or title), address, and phone number for the Title IX Coordinator (34 C.F.R. § 106.8).

Findings of Fact – Title IX Coordinator

The District’s narrative data response stated that the Principal and Assistant Principal 1 (AP 1) and Assistant Principal 2 (AP 2) are responsible at the School for receiving and investigating complaints of sexual harassment, including sexual violence; and that Assistant Superintendent of Curriculum & Instruction (Assistant Superintendent) and the Director of Pupil Services (DPS) have these responsibilities at the District level.

The District’s Title IX web page clarified that the Title IX Coordinator with ultimate oversight duties is the Assistant Superintendent, and included his phone number and email address.² The Assistant Superintendent is also identified as the District’s Title IX Coordinator in the 2017-2018 District Student Handbook³ (which included his office address and phone number), as well as in the District’s Uniform Complaint Procedure, Administrative Regulation (AR) 1312.3 (which included his office address and phone number). In contrast, the District’s AR 5145.7 (Sexual Harassment) identified the Principal or their designee as the individual responsible for investigating complaints of sexual harassment, including sexual violence, at the school level and did not include their contact information.⁴ Board Policy (BP) 5145.3 identified the DPS as the “Coordinator for Nondiscrimination” tasked with investigating complaints of harassment or discrimination, and included the District’s administrative office and phone number as contact information. During the course of OCR’s investigation, the District revised its School Student Handbook and the 2018-2019 School Student Handbook provides the name and contact information for the District’s Title IX Coordinator.⁵ BP 410 (Nondiscrimination in District Programs and Activities) did not include information about the District’s Title IX Coordinator.

² <https://www.carlsbadusd.k12.ca.us/Title-IX>

³ https://cusd.ca.schoolloop.com/file/1218238651150/1345278693419/5570187130551434818.pdf?filename=K12_Handbook_118.pdf

⁴ The District’s Board Policies and Administrative Regulations are available on its website: Board Policies: <https://www.carlsbadusd.k12.ca.us/boardpolicy>

⁵ https://docs.google.com/document/d/1P-Kx_VLuZi714JEWwRYMH-9Mt2ULYOQs9N2mkQ31Ji4/edit

The District informed OCR that the Title IX Coordinator received training on sexual harassment/violence complaint procedures and investigations numerous times. The District also stated that the Assistant Superintendent/Title IX Coordinator, AP 1, AP 2, and the Principal receive annual training on sexual harassment complaint procedures, including reviewing the District's policies, and that all District administrators receive an additional training on sexual harassment every two years as well as within six months of hire. During interviews, District staff and administrators identified different individuals as the Title IX Coordinator:

- The Director of Secondary Education (DSE) and DPS identified the Assistant Superintendent as the District's Title IX Coordinator.
- The Principal stated that he believed the Title IX Coordinator was the DSE or the DPS; that Title IX athletics issues were addressed by the Athletics Director; and that allegations of sexual violence or assault were addressed at the administrator level.
- Assistant Principals 1 & 2 stated that the DSE and DPS were the District's Title IX Coordinators.
- Two teachers interviewed by OCR stated that they were not certain of the identity of the District's Title IX Coordinator.

Analysis and Conclusions of Law – Title IX Coordinator

OCR found that the District has designated the Assistant Superintendent as the District's Title IX Coordinator with ultimate oversight responsibility, as well as has designated other individuals with sexual harassment complaint response and investigation responsibilities. However, OCR also found that the District provided inconsistent notice of the identity of the Title IX Coordinator, including providing different contact information in different notice documents. For example, the Assistant Superintendent was identified as the Title IX Coordinator on the District's Title IX webpage, as well as in the Title IX statement in the 2017-2018 District Student Handbook and 2018-2019 School Student Handbook, and in AR 1312.3; but the DPS was identified in BP 5145.3, and the Principal or his designee was identified in AR 5145.7, which did not include contact information. In addition, BP 410 did not identify the District's Title IX Coordinator. OCR was also concerned that only two of the five District administrators interviewed and neither of the teachers interviewed could identify the Assistant Superintendent as District's Title IX Coordinator. Moreover, of the three administrators who were not able to identify the Title IX Coordinator, two – the Principal and AP 1 – conducted the investigation into the alleged assault of the Student as described further below. Accordingly, OCR found that the District was not in compliance with the regulation implementing Title IX at 34 C.F.R. § 106.9(a) because the District did not provide consistent and adequate notice of the designation of its Title IX Coordinator.

With respect to training of the Title IX Coordinator, the District informed OCR that all District administrators receive annual training on sexual harassment complaint procedures including reviewing the District's policies. Prior to interviewing the Title IX Coordinator and receiving information about the content of the training and information provided to the Title IX Coordinator, the District expressed interest in voluntary resolution and OCR determined it was appropriate to do so. Accordingly, OCR did not make a determination as to whether the District was in compliance with the regulation implementing Title IX at 34 C.F.R. § 106.8(a) with respect to the Title IX Coordinator's knowledge of Title IX and the District's grievance procedures regarding the same.

Findings of Fact – Grievance Procedures

The District's data response stated that it has two sets of policies and procedures prohibiting sexual harassment and sexual violence: BP/AR 1312.3, Uniform Complaint, and BP/AR 5145.7 5145.7, Sexual Harassment. BP 1312.3 stated that AR 1312.3 shall be used to investigate and resolve complaints "alleging the occurrence of unlawful discrimination (such as discriminatory harassment) based on sex." AR 5145.7 stated that it contains site-level grievance procedures for complaints of sexual harassment including sexual assault. The District's Title IX webpage identifies AR 1312.3 as the grievance procedure for complaints of sexual harassment, including sexual violence. The 2017-2018 District Student Handbook stated that the UCP is the grievance procedure for complaints alleging "unlawful discrimination based on sex"; it also stated that the UCP did not apply to "Title IX complainants if there is no state discrimination law or regulation at issue[.]" During the course of OCR's investigation, the District revised the School Student Handbook; the 2018-2019 School Student Handbook included the identity and contact information for the District's Title IX Coordinator but does not state that the UCP is the relevant grievance procedure.

With regard to investigation of the Complainant's sex discrimination allegation, the District informed OCR that the District followed AR 5145.7, and that this was due to a number of reasons including that AR 5145.7 applied to complaints of sexual harassment, including sexual violence; that the UCP timeline would have presented a barrier; and that a provision in the UCP specifying that a complaint may be dismissed when a complainant refuses to cooperate might have been dispositive because the OCR Complainant allegedly refused to participate in the District's investigation.

Relevant portions of AR 5145.7, which was last revised in September 2012, included the following: the Principal or their designee shall promptly investigate all complaints of sexual harassment by talking individually with the student who is complaining, the person accused of harassment, and any witnesses or others with related information. The student complainant will have the opportunity to describe the incident, present witnesses and other evidence of the

harassment, and put his/her complaint in writing. There was only one deadline in AR 5145.7: the Principal or their designee will contact the student complainant within two weeks of receiving the complaint to determine if they have been further harassed. AR 5145.7 stated that it applied to complaints of sexual harassment in an “educational setting.” AR 5145.7 did not state whether it was the complaint process for students, however, it exclusively used the term “student” throughout when referencing a complainant. AR 5145.7 was silent as to whether it considered the effects of off-campus sexual misconduct when evaluating whether there was a hostile environment on campus or in an off-campus education program or activity.

AR 1312.3 stated that it applied to “complaints of discrimination, including sex discrimination” without specifying whether such complaints could be made by individuals other than students, such as employees and third parties. AR 1312.3 did not state that it applied to the District’s programs and activities, or that the District would consider the effects of off-campus sexual harassment in a District program or activity, when evaluating whether there was a hostile environment on campus, as alleged by the Complainant in this matter. AR 1312.3 provided for the compliance officer to interview both the complainant and the respondent; however, the compliance officer shall also contact the complainant within one business day of initiating the investigation and offer them the opportunity to present information and evidence. Both parties were notified of the conclusion of the investigation and the District’s determination; additionally, the complainant received a “Final Written Decision” (FWD) that included factual findings, conclusions of law, the disposition of the complainant and disposition basis, as well as whether or not a determination was made regarding the existence of a hostile environment. AR 1312.3 provided for the complainant to appeal the District’s determination, and to extend relevant timelines including for filing the complaint, for mediation, and for the delivery of the FWD and report.

Analysis and Conclusions of Law – Grievance Procedures

For these reasons stated below, OCR determined that both of the District’s grievance procedures for complaints of sexual harassment/sexual violence did not comply with Title IX and its implementing regulation at 34 C.F.R. § 106.8(b). OCR also had concerns that the District may not provide adequate notice of its sexual harassment grievance procedures, because it maintains two separate procedures without clarifying when each was to be used.

AR 5145.7 did not afford the complainant and respondent equal opportunities to present witnesses and other evidence. For example, AR 5145.7 stated that the Principal will interview both the complainant and the respondent, however, only the complainant was provided with the opportunity to describe the incident, present witnesses and other evidence of the harassment. AR 5145.7 did not designate reasonably prompt timeframes for the major stages of the complaint process. For example, there were no deadlines for the District to begin or complete its

investigation or notify the parties of the outcome and determination. Additionally, AR 5145.7's informal resolution process did not include the right to end the informal process at any time and proceed with the formal process. AR 5145.7 did not state that it applied to complaints alleging discrimination and harassment carried out by other students, employees, or third parties; it also did not state that it applied to the District's programs and activities, and that the District considered the effects of off-campus sexual misconduct when evaluating whether there was a hostile environment on campus or in an off-campus education program or activity.

AR 1312.3 also contained inequitable provisions. It did not afford the complainant and respondent equal opportunities to present witnesses and other evidence. For example, although there was a provision for the compliance officer to interview both the complainant and the respondent during the investigation, AR 1312.3 provided for the compliance officer to contact the complainant within one day of the complaint being filed and offer them the opportunity to present the information contained in the complaint, or any other evidence. There was no parallel opportunity for the respondent. Similarly, though both parties were to be notified of the conclusion of the investigation and the District's determination, only the complainant received a FWD with significant information. Additionally, AR 1312.3 provided for the complainant but not the respondent to appeal the District's determination; as well as to extend relevant timelines including for filing the complaint, for mediation, and for the delivery of the FWD and report. AR 1312.3 also did not state that it applied to complaints alleging sexual discrimination and harassment carried out by other students, employees, and third parties. It also did not state that it applied to the District's programs and activities, or that the District would consider the effects of off-campus sexual harassment when evaluating whether there was a hostile environment on campus.

OCR was also concerned that the District may not provide appropriate notice to students, parents, and employees of the applicable grievance procedures, including where and how to file complaints of sexual harassment including sexual violence. Specifically, OCR was concerned that the District maintained two grievance procedures for complaints of sexual harassment, including sexual violence; that the two procedures contained different provisions; and that it was not clear when each procedure was used by the District. OCR was also concerned that relevant District publications did not provide adequate notice about the grievance procedures for complaints of sexual harassment. For example, the 2018-2019 School Student Handbook did not include information about how a student can make a complaint. The 2017-2018 District Student Handbook stated that the UCP was the grievance procedure for complaints alleging "unlawful discrimination based on sex"; however, it did not state that sex-based discrimination includes sexual harassment and sexual violence. Additionally, this section stated that the UCP did not apply to "Title IX complainants if there is no state discrimination law or regulation at issue [.]". OCR was concerned that the UCP exception for Title IX complaints not including state law allegations was, generally, confusing as it required an understanding of jurisdictional issues.

Finally, OCR was also concerned that the District's Title IX webpage stated that AR 1312.3 was the applicable grievance procedure for complaints of sexual harassment, including sexual violence, but the District reported using AR 5145.7 to respond to the Complainant's allegation because of the investigative timeline, the Complainant's lack of cooperation, and state law provisions.

Findings of Fact – Notice of Nondiscrimination (Notice)

OCR located the District's Notice in its BP 410 (Nondiscrimination in District Programs and Activities) and BP 5145.3 (Students: Nondiscrimination/Harassment); as well as in the 2017-2018 District Student Handbook. The board policies and District Student Handbook were available on the District's website.

BP 410 stated that District programs, activities, and practices shall be free from discrimination based on sex. BP 5145.3 stated that the District prohibits unlawful discrimination including harassment based on sex. Neither BP 410 nor BP 5145.3 included that the District was required by Title IX and its implementing regulation not to discriminate on the basis of sex, or that questions regarding Title IX may be referred to OCR; however, BP 410 and BP 5145.3 included OCR's contact information among a list of legal resources, and 34 C.F.R. § 106.8 and 34 C.F.R. § 106.9 among a list of statutory references. The 2017-2018 District Student Handbook included a statement of "Student Nondiscrimination/Equal Access" as well as a "Title IX Policy," however, the Title IX Policy referred individuals to OCR at the incorrectly identified "U.S. Department of Health, Education, and Welfare" in Washington, DC. The District's classified and certified employment announcements, which were posted online, did not include the Notice; however, they included an equal opportunity statement, as well as a statement prohibiting sexual harassment.⁶ During the course of OCR's investigation, the District informed OCR that it had created a Title IX website on which the information required by 34 C.F.R. § 106.9 was posted.

Analysis, Concerns, and Conclusions of Law

OCR found that BP 410 and BP 5145.3 and their legal and statutory references complied with Title IX with respect to required substantive content, but were deficient with regard to notice of the Title IX Coordinator, specifically. This deficiency is discussed in the Title IX Coordinator section above. OCR has not reviewed the District's Title IX website specifically for its compliance with 34 C.F.R. § 106.9. In addition, OCR identified a concern that the notice of nondiscrimination was not included among the District's online-job announcements, and the Title IX notice in the District Student Handbook referenced an agency that no longer exists, the U.S. Department of Health, Education, and Welfare. However, during the course of OCR's

⁶ <http://www.carlsbadusd.k12.ca.us/classified>

investigation, the District informed OCR that it had created a Title IX website on which the information required by 34 C.F.R. § 106.9 was posted. Prior to OCR completing its review to determine whether the notice of nondiscrimination had been properly updated and distributed, the District requested to enter into a voluntary resolution, and OCR determined it was appropriate to do so.

Issue 2: Whether the District provided the Student with a prompt and equitable response to notice of alleged sexual violence of which it knew or should have known under 34 C.F.R. §§ 106.31 and 106.8.

Issue 3: Whether the failure to provide a prompt and equitable response allowed the Student to be subjected to a sexually hostile environment that denied or limited the Student's ability to participate in or benefit from the District program or otherwise created a sexually hostile environment generally under 34 C.F.R. §§ 106.8 and 106.31.

Legal Standards:

Sexually Hostile Environment and Duty to Respond Promptly and Equitably

The regulation implementing Title IX, at 34 C.F.R. § 106.31, provides that “. . . no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any . . . education program or activity” operated by recipients of Federal financial assistance. Sexual harassment that creates a hostile environment is a form of sex discrimination prohibited by Title IX. Sexual harassment is unwelcome conduct of a sexual nature. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, including sexual violence.

When a student sexually harasses another student, the harassing conduct creates a hostile environment if it is so severe, persistent, or pervasive that it denies or limits a student's ability to participate in or benefit from the recipient's program or activities. If a recipient knows or reasonably should know about student-on-student harassment, Title IX requires the recipient to respond in a prompt and equitable manner by taking immediate action to eliminate the harassment, prevent its recurrence, and address its effects.

When responding to alleged sexual harassment, a recipient must take immediate and appropriate action to investigate or otherwise determine what occurred. The inquiry must be prompt, reliable, and impartial. Pending the outcome of a response to a report or an investigation of a complaint, Title IX requires a recipient to take steps to protect the complainant from further harassment as necessary, including taking interim measures. The recipient also should take steps to prevent any retaliation against the student who made the complaint and/or those who provided

information. A recipient must consider the effects of off-campus misconduct when evaluating whether there is a hostile environment on campus or in an off-campus education program or activity.

Other actions may be necessary to repair the educational environment. These may include special training or other interventions, the dissemination of information, new policies, and/or other steps that are designed to clearly communicate the message that the recipient does not tolerate discrimination and will be responsive to any student reports of discrimination.

Title IX and its implementing regulations are intended to protect students from discrimination on the basis of sex, not to regulate the content of speech. In cases of alleged sexual harassment, OCR considers the protections of the First Amendment of the U.S. Constitution where issues of speech or expression by students or employees are concerned.

Findings of Fact

The following facts were relevant to OCR's analysis.

Alleged Sexual Assault

During 2014-2015 school year, the Student was in the XXXXX grade and was enrolled in a XXXXXXXXXXXX class at the School with XXXXXXXXXXX X XXX X. The Student and XXXXXXXXXXX X XXX X participated in a school-sponsored trip to a XXXXXXXX XXXXXXXXXXXX XXXXXXXX XXXXXXXXXXXXXX XXXXXX that took place XX X XXXXXX XX X XXXXXXX XXXX from XXXXXX XX-XXXXX X, 2015. The Student and XXXXXXXXXXX X XXX X XXXXXXX XXXXXXXXXXXX XX XXX XXXXXXXXXXXXXX XXXXXX. X---paragraph redacted--X. The Student told OCR that he never informed anyone at the School that he felt uncomfortable around XXXXXXXXXXX X XXX X.

The Student told OCR that he was XXXXXXXXXXXXXXXX XXXXXXXXXXX XXXX X XXXXXXXX XXX sexually assaulted XXXXXX XXXXXX XX XXX XXXXXXXXXXXXXX XX XXX XXXXXX XXXX XX XXXXXXXXXXXX X XXX X XXX XXXXXXXXXXX XXXXXXX XXXX XX XXXXXX XXX XXXXXX. The Student told OCR that he did not tell anyone XXXXXX XXX XXXXXXXXXXX at the time they occurred because he did not remember XXX XXXXXXXXXXX due to being traumatized. The Complainant told OCR that after she tried unsuccessfully to reach the Student on his cell phone, she XXXXXX XX XXX XXXXXX XX XXXXXX XX XXXX. The Complainant told OCR that he complained that he felt nauseous, had difficulty concentrating, and had pain XX XXX XXXX XXXXXXXXXXX XXX XXXXXXXXXXX. The Complainant told OCR XXXX XXX XXXX XXXX XX XXX XXXXXXXXXXX XXXX XXXX XXX XXX XXXX X XXXXXXXXXXX XXX XXXXXXX XX XXX XXXXXX XX XXX XXX. The Complainant told

OCR that she did not realize what had happened at the time. The Complainant told OCR that she never provided this information to the District for its investigation.

The Complainant told OCR that during the period from XXXXX X to XXX X, 2015, the Student began to recall being sexually assaulted XX XXX XXXX and informed the Complainant. The Student told OCR that once he began to remember, he emailed the XXXXXXXXXXX XXXXX XXXXXXXXXXX XX XXX XX XXXX XXX XXXXX XXX XX XXXX XXX XXXX XXXX XXXX XXXXX XX XXXXXXXX X XXX XXXXXXXX X. The Student told OCR that the XXXXXXXXXXX XXXXX XXXXXXXXXXX did not respond to his email, and that he did not have a copy of it. The District's data response did not include a copy of this email.

Notice to the District

The Complainant told OCR that she met with the Student's school counselor on XXX X, 2015 and informed her that the Student had been "touched inappropriately by other students," but that she did not tell the counselor the names of the students or details about the alleged inappropriate touching, including when or where it occurred. The Complainant told OCR that she asked to accompany the Student to his classes on campus, but the counselor said no and gave her a complaint form to fill out and return, which the Complainant stated she did not do. The District's narrative response stated that the counselor retired and declined to participate in OCR's investigation, but that she had provided the District with a written summary of her interactions with the Student. The District provided the summary to OCR and it did not indicate that the Complainant reported that the Student was inappropriately touched. Additionally, the Principal told OCR that he reviewed the counselor's other records and found no mention of the Complainant's alleged report to the counselor.

The Complainant told OCR that on or around XXX XX, 2015 she reported the sexual assault to the city police department, which opened a criminal investigation. The Student told OCR that he gave a statement to the police and that he would provide it to OCR, but as of XXXX 2018 he had not done so. The Student told OCR that he was asked by the police to contact XXXXXXXXXXX X XXX X by phone and try and talk to them about the alleged assaults, that he did so but they hung up on him, and that a police detective was present in the room with him during the calls.

The XXXXXXXXXXX XXXXX teacher told OCR that XXXXXXXX X's father called him on the night of XXX XX, 2015 and said that the Student had called, separately, XXXXXXXX X and XXXXXXXX X earlier that night and attempted to engage them in conversation about the alleged assaults, but that they hung up without responding and that both students' parents called the police to report the phone calls. The XXXXXXXXXXX XXXXX teacher told OCR that he told the Principal about XXXXXXXX X's father's call the next morning, XXX XX, 2015.

The District's narrative data response stated that the District first became aware of the alleged sexual assault on or about XXX XX, 2015, when a city police detective contacted the School Resource Officer (SRO) to arrange to interview Students X XXX X, the XXXXXXXXXXX XXXXX teacher, and the XXXXXXXXXXX XXXXX XXXXXXXXXXX XXX XXX XXX XXXX chaperone XX XXX XXXXXXXXXXX, and the SRO informed the Principal. The Principal told OCR that he did not know at that time what the specific allegations were, or the identity of the student who had made them.

The Principal told OCR that he immediately asked AP 1 to find out what happened; AP 1 told OCR that she emailed the XXXXXXXXXXX XXXXX teacher and asked what was going on. The XXXXXXXXXXX XXXXX teacher told OCR that he responded that he heard anecdotally that the Student was alleging that he was XXXXXXXX XXX XXXXXXX XXXXXXXXXXX XXX sexually assaulted XX XXX XXXXX XXXX XX XXXXXXXX X XXX X XXXXXXX XXX XXXXX XX XXXXX XX XXXX XX XXX XXXXXXXXXXX, as well as that XXXXXXXX X's father had called him the night before.

The SRO told OCR that he was contacted by a city police detective on XXX XX, 2015; informed that there was an allegation of "something sexual" involving students; and asked to facilitate interviews by informing the Principal, getting the students out of class, and sitting in on the interviews to assess whether there was a safety concern for the School, and that he did so.

District's Investigation

The Principal told OCR that he and AP 1 began the District's investigation on XXX XX, 2015 by interviewing the XXXXXXXXXXX XXXXX teacher, XXX XXXXXXXXXXX, and parent chaperones. The Principal told OCR that he was advised by the police detective not to interview the students while there was an active criminal investigation. The Principal told OCR that the XXXXXXXXXXX teacher stated that the Student never informed him of the alleged assaults, XXX XXXX XXXXX XXX XXXXXXXXXXX XXX XXXXXXX XXXXX XXXXXXXXXXXXXXXXXXX XXXX XXXXXXXXXXX X XXX X XXXXX XXX XXX XXX XXXXXXX without indicating that he felt uncomfortable. The XXXXXXXXXXX teacher told OCR that he interviewed the parent chaperones, who stated that they checked the students' room on the night of XXXXX X, 2015 and did not hear or see anything indicating XXX XXXXXXX XX XXXXX XX sexual assault; the XXXXXXXXXXX teacher also interviewed the XXXXXXXXXXX XXXXX XXXXXXXXXXX, who served as the XXXX XXX chaperone, and she stated that she checked the Students' room between XXXX and XXXX XX on XXXXX X, 2015, and that they were talking quietly and she told them to be quiet. The XXXXXXXXXXX XXXXX teacher provided OCR with a document he said was given to him by the XXXXXXXXXXX XXXXXXXXXXX that listed XXXXXXX XXXXX XXXX XXXXXXXXXXX,

and included her handwritten note that XXX XXXXXXXX XXX XXXXXXXX X XXX X were talking quietly in their room when she checked on them on XXXXX X, 2015.

The Principal told OCR that on XXX XX, 2015, the detective told him that the criminal investigation was inconclusive and that he (the Principal) was free to contact the students. The District stated that the SRO and AP 1 called the Complainant on XXX XX, 2015 and arranged for a meeting on XXXX X, 2015 to discuss the police investigation, gather more information about the alleged assault, and discuss ways to meet the Student's educational and safety needs. The Principal told OCR that he explained to the Complainant at the meeting that he did not have access to the information she had provided to the police, and that he asked her to provide the District with the same information, including a copy of the police report and a statement the Student had given to the police, but that the Complainant refused and said the police were handling it. The Principal told OCR that he also asked the Complainant why she didn't notify him about the alleged assault, and she responded that she had told the police. The Principal told OCR that he responded that the District would still look into the allegations.

The Complainant told OCR that she asked the Principal if he was aware of what had allegedly happened XX XXX XXX XXXXXXXXXXXX and he responded yes, in general. The Complainant told OCR that she did not provide the Principal with additional details about the alleged assaults, other than to state that the Student had been sexually assaulted XXXXX XXXXXXX XXX XXXX XXXXX XX XXX XXX XXXXXXXXXXXX, because she provided the details to the police. The Complainant told OCR that the police department would not give her a copy of the police report. The Complainant told OCR that the Principal and AP 1 did not tell her at the XXXX X meeting that they would investigate or that she could file a complaint. The District provided OCR with a copy of an email from AP 1 to the Complainant on XXXX X, 2015 stating that the District would conduct a follow-up internal investigation, as well as develop a plan to support the Student, and asking the Complainant to provide any new information. The Complainant told OCR that this email was the only time the District mentioned an investigation to her.

On XXXX X, 2015, the Principal and AP 1 interviewed XXXXXXXXXXX X XXX X, individually, as well as another potential student witness (XXXXXXXX X). According to District notes from the interviews, XXX XXXXXXXX were surprised by the allegation and denied that the assaults occurred. The Principal and AP 1 also interviewed the SRO on XXXX X, 2015 and asked for information about the police investigation. The Principal told OCR that the SRO responded that he could not share details about the content of the interviews unless there was a danger at the School, and that his assessment was that there was not one. According to interview notes with the SRO, the SRO said he did not hear anything during XXXXXXXXXXX X XXX X's interviews with the detective that supported the Student's allegations. The SRO provided the District with a statement signed on XXXX X, 2015 indicating that, based on the police or

District interviews of the students, he believed there was no reason to be concerned about the Student's safety on campus.

The Principal told OCR that the District's investigation was difficult because he did not know the specific allegations because the Complainant refused to cooperate, including refused to let the Student be interviewed, refused to provide a statement, and refused to provide a copy of the police report. The Principal and AP 1 requested information about the allegations from the Complainant at least four times from XXXX X, 2015 to XXXXXXXXXX X, 2015. The Complainant acknowledged to OCR that the District requested information and that she did not provide it; the Student told OCR that no one at the District ever asked him questions about the alleged assault.

The Principal told OCR that he verbally informed the Complainant on XXXXXXXXXX X, 2015 that the District did not have a conclusion about her allegations. The Complainant told OCR that she did not know if the District conducted an investigation, including whether it made a determination as to whether the sexual assault occurred. In XXXXXXXXXX 2016, the Principal, Director of Pupil Services, AP 2, and SRO each told OCR that they did not know if the investigation was concluded. In XXXXXXXXXX 2018, the District informed OCR that the investigation was no longer open and that the District concluded that the Complainant's allegation was unsubstantiated. The District did not state whether the Complainant had been informed that its investigation had concluded, that a determination had been reached, and that she had been made aware of any right to appeal, as provided for in the District's grievance procedure (AR 1312.3).

Interim Measures: Safety and Education Plans

The Complainant told OCR that the Student stopped attending School in XXX 2015 because he felt unsafe and the District did not have a plan to ensure his safety. The Complainant told OCR that during the XXXX X, 2015 meeting with the Principal and AP 1 she requested that XXXXXXXXXX X XXX X be removed from XXX XXXXXXXXXX XXXXX, but that the District refused and instead offered that the Student could work independently in a workroom during that class period. The District and the Complainant provided OCR with copies of approximately a dozen emails between the Complainant's attorney and the Principal during the period from XXXX X, 2015 to XXXX XX, 2015. The emails showed that both individuals cancelled meetings; that the Complainant's attorney requested immediate interim safety remedies; that there was a delay in the Principal responding because he stated that he had not obtained a signed release from the Complainant permitting him to talk to her attorney; and that the District's counsel began to communicate directly with the Complainant's attorney in late XXXX, 2015. The Complainant told OCR that her attorney ceased representing her during the summer of 2015.

The Principal told OCR that the District did not immediately remove XXXXXXXXX X XXX X from the XXXXXXXXXX XXXXX on XXX XX, 2105 because he was not certain what the allegations were; the Student had been absent from School even prior to the allegations; and the police detective told him not to contact the Student until after its investigation had completed. The Principal told OCR that XXXXXXXXX X XXX X were not removed from the XXXXXXXXXX XXXXX after the police investigation concluded because the Complainant requested during the XXXX X, 2015 meeting that the Student be allowed to stay home for the remainder of the school year, and the Principal had agreed. The District provided OCR with attendance records for the Student which showed that he was absent every day from XXX X, 2015 through the last day of school, XXXX XX, 2015, with the exception of XXX XX, 2015 when he attended school.

According to the District, the Principal and administrators created a safety plan for the Student for the remainder of the 2014-2015 school year and shared it with the Complainant during the meeting on XXXX X, 2015. The District provided OCR with a copy of a XXXX X, 2015 email from the Principal to AP 1 summarizing the plan that was presented: home hospital, a safety transfer, arranging the Student's classes so that he was not in any class with XXXXXXXXX X XXX X, and offering him mental health counseling services. The Principal told OCR that the Complainant rejected the safety plan because it did not provide for the removal of XXXXXXXXX X XXX X from the XXXXXXXXXX XXXXX and for her to accompany the Student on campus. The Principal told OCR that he also scheduled a Student Success Team (SST) meeting with the Complainant, the Student, and his teachers for XXXX X, 2015 to discuss an educational plan. The Complainant told OCR that her attorney advised her and the Student not to attend the SST meeting because it would be traumatizing for the Student.

The Principal told OCR that he held the SST meeting anyway and that School staff created a "Strategy, Intervention, and Action Plan" (education plan) for the Student to complete missing assignments before the end of the year. The Principal told OCR that the plan consisted of the Student's counselor contacting his teachers to determine what the Student's current grade was, what assignments needed to be made up, what his grade would be if they were not made up, and considering alternate testing locations; the counselor would then communicate this information to the Student, who would complete the assignments and turn them in to the counselor, who would facilitate their exchange with the Student's teachers and answer any questions. The Principal stated that he informed the Complainant that tutoring was available every day after school off campus. The District stated that the counselor communicated the education plan to the Complainant; the District provided OCR with emails among staff during the period XXXX X, 2015 – XXXX XX, 2015 (the last day of school) describing the arrangements made for the Student to pick up and turn in assignments through his counselor.

The Complainant told OCR that the educational plan was insufficient because the Student needed a more structured learning environment than their home. She said she emailed the Principal and requested that he have a safe space at school to complete his assignments with her or another adult present at all times, as well as a tutor to assist him. She told OCR that this was necessary because the School was a “high risk environment” XXXXXXXX XXXXXXXX XXXXXXXX XXX XXXXXXXXXXXXXXXX XX XXX XXXXXXXX XXXXXXXX. The Principal responded by email on XXXX XX, 2015 stating that they had previously agreed that the counselor would be the Student’s point person for facilitating the transfer of assignments, that the status of all assignments was on the School’s online system, and that she should let him know if she encountered a problem. The Principal told OCR that he followed up with the Student’s teachers and counselor, who reported no problems with the existing arrangement.

The Complainant told OCR that the School did not help the Student over the summer and instead tried to have him transferred to a different school, which she rejected. The Principal told OCR that because there was no summer school at the Student’s high school, it offered the Student the opportunity to take summer school at High School 2. The District provided OCR with a copy of an XXXXXXX XX, 2015 email from the Principal of High School 2 to the Complainant explaining that it was a summer program, not a transfer.

The Principal told OCR that he met with administrators and staff to create educational and safety plans for the Student to return to school in Fall 2015. The Principal stated that he, AP 2, the DSE, and the DPS met with the Complainant and the Student on XXXXXXXXXXX X, 2015 and shared the following: the Student’s absences from the previous year would be excused; the Student would work with his counselor to create a plan to make up missed assignments and communicate directly with his teachers; the District would change grades as necessary after assignments were completed; the Student would be able to access tutoring off campus; staff would help the Student register for classes; and the District recommended a new SST meeting. The District’s narrative data response stated that it also proposed to the Complainant the following safety plan: the Student could carry his cell phone with him at all times, as well as download “panic apps” for his cell phone; AP 2 would introduce the Student to the SRO and others in the safety office and arrange a meeting to address any concerns; the Student’s counselor would introduce the Student to school psychologists, with whom he could have counseling; the Student would be allowed to leave class at any time for anxiety; the District would ensure that the Student and XXXXXXX X were not in any classes together (XXXXXXXX X XXX XXXXXXXXXXX); AP 2 would show the Student all single access restrooms on campus that could be locked from the inside; the Student would be shown the location of security cameras on campus for safety; and the Student should tell School staff immediately if he felt threatened.

The Complainant rejected the safety and education plan because she wanted herself or another adult to accompany the Student on campus at all times. She also wanted the District to provide

individual tutoring to the Student on campus. The Complainant told OCR that the Student was not safe because XXXXXXXX X was still on campus during the 2015-2016 school year XXX XXXXXXXX XXX XXXXXXXX XXXX XXXXX XXXX XXXXX XXXXXXXX XXXXXXXXXX.

The District stated that the Student finished his XXXXX grade course work in XXXXXXXX 2016, but that he attended school inconsistently during 2015-2016. The Complainant told OCR that the Student did not feel safe on campus during 2015-2016 or during 2016-2017, because XXXXXXXX XXX XXXXXXXX was at the School, XXX XXXXXXXX XXX XXXXXXXX XXXXX XXXXXXXX XXXX XX XXXXXXX XXX XXXX XXXXXXXX XX XXX XXXXXXX XXXXXXXX XXXXX XXXXXXXXXXXX XXXX XXX XXXXX. The Student told OCR that he did not feel safe when he attended School, but that he did not share with any staff at the School during this time that he felt unsafe. The District informed OCR in XXXXXXXX 2017 that the Student had turned 18 and had disenrolled from the School in XXXXXXXX 2017. The District also informed OCR that the Principal had left the District.

Analysis & Concerns

OCR found that the District was on notice of the alleged sexual assault(s) and took immediate and appropriate action to investigate or otherwise determine what occurred, including conducting a prompt, reliable, and impartial investigation. OCR determined that the District was on notice of the alleged sexual assault on XXX XX, 2015 when the SRO informed the Principal that a police detective was coming to campus to interview XXXXXXXX X XXX X, the XXXXXXXX XXXXX teacher and XXX XXXXXXXX. The Complainant alleged that she provided notice earlier, on XXX X, 2015, to the Student's counselor that the Student was inappropriately touched by other students, but she did not provide any specifics.

OCR also determined that the District commenced an investigation promptly, on the same day it received notice from the SRO of the alleged assault, including interviewing the parent chaperones; interviewing the XXXXXXXX XXXXX teacher and XXXXXXXX XXXXX XXXXXXXX XXX XXXXXXX XX XXX XXXX chaperone; reviewing her notes from curfew on the night of the alleged assault; and reviewing videotape of the Student's participation XX XXX XXXXXXXXXX. Within approximately two weeks, the District also interviewed XXXXXXXX XX XX XXX X, as well as met with the Complainant and asked to interview the Student and for a copy of the statement he gave to the police and a copy of the police report. The District subsequently requested at least four times to interview the Student and for the Complainant to provide information about her allegations. By the Complainant's own statements, she refused to permit the Student to be interviewed or give a statement to the District, and did not provide details about the alleged assault to the District, including details that she

shared with OCR. Based on the preponderance of the evidence, OCR determined there was insufficient evidence that the District's inquiry was not prompt, reliable, and impartial.

OCR also found no evidence that the District, once notified on XXX XX, 2015, did not offer the Student appropriate interim measures. The District provided evidence that the Student had not been in School since XXX X, 2015, and that on XXXX X, 2015 the Principal offered the Complainant a safety plan for the remainder of the 2014-2015 school year that included the option of completing the year through the Home and Hospital Instruction Program; through a safety transfer to a different high school; or, if the Student returned to the School, with his classes arranged so that he was not in any class with XXXXXXXX X XXX X. The plan also included mental health counseling services, the ability to carry his cell phone with him and leave class if needed, and that he could meet with the SRO to discuss safety concerns. The District told OCR it developed this plan based upon the information provided by the SRO, including that he had no reason to think the Student would not be safe on campus; and based on the Complainant's refusal to provide any information about the alleged assaults or that the Student would not be safe. The Principal told OCR, and the Complainant confirmed, that she rejected the safety plan as not adequate because it did not include the removal XX XXXXXXXX X XXX X from XXX XXXXXXXX XXXXX, as well as did not permit her or another adult to accompany the Student on campus at all times. The District offered a similar safety plan for the following year, and the Complainant again rejected it for the same reasons. Given the absence of evidence that the Student was not safe, and the refusal of the Complainant to provide such evidence to the District, OCR could not determine that the safety plan was not an adequate interim remedy.

The District also provided evidence that it offered the Complainant an education plan as an interim measure. The education plan for the remainder of the 2014-2015 school year included holding an SST to determine his current grade and which missing assignments could be excused and which needed to be made up; designated the Student's counselor as an intermediary helping facilitate the transfer of information and assignments between the Student and his teachers; and offered tutoring every day after school off campus. When the Student was not able to complete all his work during the remainder of the year, the District offered the Student the opportunity to attend summer school at another District High School and dismissed his absences. The District offered a similar educational plan for the following year. There was no evidence that the educational plan was not adequate to meet the Student's academic needs. Instead, the evidence showed that the Complainant did not attend the SST, rejected the education plan, rejected the summer school opportunity, and requested an individual tutor for the Student.

OCR found no evidence to substantiate the Complainant's allegation that she was unaware that the District investigated: by the Complainant's own testimony, AP 1 told her on XXXX X, 2015 that the District had begun an investigation. However, OCR identified a concern with respect to

the District's notice to the Complainant regarding the outcome of its investigation. The Principal told OCR that he orally informed the Complainant on XXXXXXXXXX X, 2015 that, with regard to the outcome of the investigation, "it did not have a conclusion." This statement could be interpreted as a conclusion that the allegation could not be substantiated or, alternatively, that the investigation had not concluded and was on-going, as the Principal and AP 1 stated to OCR in XXXXXXXXXX 2016. The District's counsel told OCR in XXXXXXXXXX 2018 that the investigation was no longer open, but did not state when it concluded or whether the Complainant was informed.

Relatedly, the District told OCR that it investigated the Complainant's allegation pursuant to AR 5145.7, which stated that at the conclusion of the investigation a report shall be presented to the Complainant and shall include the District's decision as to whether the harassment occurred, the reasons for the decision, and a summary of steps taken during the investigation. In this case, there was no evidence that the District provided the Complainant with such a report. The District expressed interest in voluntary resolution on XXXXXXXXXX XX, 2017, before OCR had completed its investigation. In order for OCR to complete its investigation and make a determination, OCR would need to interview AP 1 regarding the Complainant's alleged notification and her response; OCR would also need to interview District administrators as to when the investigation concluded and whether notice was provided to the Complainant at that time.

Conclusion

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.

The resolution agreement requires the District to revise and post its notices of nondiscrimination to comply with 34 C.F.R. § 106.9; to revise and publish its Administrative Regulation 5145.7 (Sexual Harassment) and Administrative Regulation 1312.3 (Uniform Complaint) to comply with 34 C.F.R. § 106.8(b); to ensure that its Title IX Coordinator and other individuals with Title IX-related complaint investigation duties have appropriate knowledge about Title IX in compliance with 34 C.F.R. § 106.8(a); and to send to the Complainant a written report describing its investigation and including notice of the outcome of the investigation consistent with the District's AR 1312.3, which it has identified as the relevant grievance procedure for complaints of sexual harassment, including sexual violence.

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 the complaint allegations. OCR will monitor implementation until the District is in compliance with

its terms. Upon completion of the obligations under the resolution agreement, OCR will close the 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 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 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, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

Thank you for your assistance in resolving this case. If you have any questions regarding this letter, please contact OCR attorney Matthew Wood at Matthew.Wood@ed.gov or (415) 486-XXXX.

Sincerely,

/s/

Rhonda Ngom
Acting Team Leader

Cc: X XXXXXXX

Enclosure