



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGION IX
CALIFORNIA

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SAN FRANCISCO, CA 94102

December 19, 2017

SENT VIA ELECTRONIC MAIL

Mark Westerburg
Superintendent
Willits Unified School District
1277 Blosser Lane
Willits, California 95490

(In reply, please refer to case no. 09-16-1384)

Dear Superintendent Westerburg:

This letter is to advise you of the conclusion of OCR's investigation of the above referenced case, which was opened in response to a complaint filed on XXXXX XX, 2016 with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Willits Unified School District (District). The Complainant alleged that the Student¹ was discriminated against on the basis of sex under 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. Specifically, OCR investigated whether the Student was harassed by students at XXX XXXXXX XXXXXX (School) based on her failure to conform with sex stereotypes, and the District failed to respond promptly and equitably to notice of the harassment, including School staff contributing to an overall hostile environment by discouraging the Student from discussing her gender, including her failure to conform to sex stereotypes, openly at school.

OCR is responsible for enforcing Title IX, which prohibits discrimination on the basis of sex, including sex harassment, in programs and activities receiving Federal financial assistance from the Department. The District receives funds from the Department, and is subject to Title IX and its implementing regulations.

To investigate this complaint, OCR gathered evidence by reviewing hundreds of pages of documents and email correspondence provided by both the District and the Complainant, statements provided in the District's data response from the Counselor, XXXX XXXXXXXXXXXX XXXXXX Counselor (XXXX Counselor), and Principal, and the complaint filed with the District under its Uniform Complainant Procedures and the District's response to that complaint. OCR also reviewed applicable policies and procedures and interviewed the Student's XXXX teacher, the Student, and the Complainant. Based on this investigation, OCR found the District out of compliance with Title IX and its implementing regulation with respect to the issue investigated. The applicable legal standards, factual findings, OCR's determination, and the terms of the Resolution Agreement (Agreement) entered into with the District are summarized below.

¹ OCR notified the District of the Complainant's and Student's identities when the complaint was opened. We are withholding their identities here to protect their privacy.

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. Harassment based on sex, including harassment predicated on sex-stereotyping, 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. Thus, it can be discrimination on the basis of sex to harass a student on the basis of the student's failure to conform to stereotyped notions of masculinity or femininity.

Under Title IX and the regulations, once a school district has notice of possible gender-based harassment between students, it is responsible for determining what occurred and responding appropriately. The school district is not responsible for the actions of a harassing student, but rather for its own discrimination if it fails to respond adequately or otherwise creates or fosters a continuing hostile environment. 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 school district knows or reasonably should have known about the harassment; and (3) the school district fails to take appropriate responsive action. These steps are the school 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 and effective. What constitutes a reasonable response to harassment will differ depending upon the circumstances. However, in all cases the school 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, prevent the recurrence and remedy the effects of the harassment. A series of escalating consequences may be necessary if the initial steps are ineffective in stopping the harassment.

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 school district does not tolerate harassment and will be responsive to any student reports of harassment. The school district also should take steps to prevent any retaliation against the student who made the complaint or those who provided information.

The Title IX implementing regulations, at 34 C.F.R. § 106.8(b), also require a school district to adopt and publish grievance procedures providing for a prompt and equitable resolution of student and employee complaints alleging sex discrimination. Title IX implementing regulations, at 34 C.F.R. § 106.8(a), require each school district to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under the regulation, including investigation of any complaint communicated to the recipient alleging any actions which would be prohibited by Title IX. The school district must provide adequate notification of the contact information, including the name (or title), address, and phone number for the Title IX Coordinator, to students and employees (34 C.F.R. § 106.8), and must inform them that inquiries concerning Title IX may be referred to the Title IX Coordinator or to OCR (34 C.F.R. § 106.9(b)).

Factual Findings

Policies and Procedures and Designation and Training of Title IX Coordinators

The District has several Board Policies (BP) and Administrative Regulations (AR), which are applicable to this matter and discussed herein. BP 5145.3 concerning nondiscrimination and harassment, in effect from August 7, 2013 to May 3, 2017, provided that the Board of Education prohibits unlawful discrimination, harassment, and bullying of a student on various bases, including sex and gender. It stated that prohibited harassment and discrimination includes conduct that is so severe and pervasive that it: affects the student's ability to participate in or benefit from an educational program or activity; creates an intimidating, threatening, hostile, or offensive educational environment; has the effect of substantially or unreasonably interfering with a student's academic performance; or otherwise adversely affects a student's educational opportunities. BP 5145.3 also prohibited any form of retaliation against a student who files a complaint or report regarding discrimination or harassment. BP 5145.3 stated that age-appropriate training and information regarding discrimination and harassment, including on the nondiscrimination policy, what constitutes prohibited behavior and how and to whom to report, should be provided to students, parents/guardians, and employees. The Superintendent was designated by BP 5145.3 as the Coordinator for Nondiscrimination (hereinafter "Coordinator") to handle complaints regarding discrimination and harassment on the protected bases. Under BP 5145.3, students who felt that they were subject to such conduct and students and employees who observe such conduct should immediately contact the Coordinator or the school principal. BP 5145.3 provided that upon receiving a complaint, the Coordinator was required to immediately investigate in accordance with site-level grievance procedures specified in AR 5145.7 which address sexual harassment.

As of May 3, 2017, the District adopted an amended BP 5145.3 and added an AR 5145.3. Both were still in effect as of last review on October 30, 2017. BP 5145.3 was amended to include: coverage for acts which occur off campus or outside of school-related or school-sponsored activities but which may have an impact or create a hostile environment at school; and conduct that is persistent. BP 5145.3 states that regardless of whether a complainant complies with formal filing requirements, all complaints alleging discrimination or harassment shall be investigated and prompt action taken to stop discrimination, prevent recurrence, and address any continuing effects. AR 5145.3 designates the Superintendent as the Title IX Coordinator/Compliance officer and includes the phone numbers and District office as the contact information. AR 5145.3 states that AR 1312.3, the Uniform Complainant Procedure (UCP), shall be used to report and resolve complaints alleging discrimination on the basis of sex, including sex stereotyping.

BP 5145.9 concerning hate-motivated behavior, in effect since August 7, 2013 and as of last review on October 30, 2017, prohibits discriminatory behavior or statements that degrade an individual on various bases, including on the basis of his/her actual or perceived gender or sex. This BP states that any student who believes that he/she is a victim of such behavior shall contact the Coordinator/Principal and that staff who receive notice or observe such behavior shall notify the Coordinator/Principal, Superintendent or designee, and/or law enforcement, as appropriate. BP 5145.9 provides that upon receiving the complaint, the Coordinator/Principal shall immediately investigate in accordance with the site-level grievance procedures specified in AR 5145.7.

AR 5145.7, in effect from August 7, 2013 to May 3, 2017, was the grievance procedure designated under BP 5145.3 and 5145.9 to process complaints of sex and gender-based discrimination, harassment, and hate-motivated behavior. AR 5145.7 stated that within 24 hours of receiving a complaint or observing

an incident of harassment involving a student, the school employee shall report to the Coordinator/Principal. In cases involving the Coordinator/Principal, under AR 5145.7 the employee who received the complaint or observes the incident shall report to the Superintendent or designee.

When a student or parent/guardian made a report of harassment, under AR 5145.7 the Coordinator/Principal was required to describe the District's grievance procedure and discuss what actions were being sought by the student. The complaining student had the opportunity to describe the incident, identify witnesses, provide other evidence, and put the complaint in writing. If the student requested confidentiality, he/she was required to be informed that such a request may limit the District's ability to investigate under AR 5145.7. The Coordinator/Principal was required to interview relevant individuals, including the complainant and responding students, anyone who witnessed the reported harassment, and anyone having relevant information. The Coordinator/Principal was required to determine whether interim measures are necessary during the AR 5145.7 investigation.

AR 5145.7 also provided that, in cases of student on student harassment, when both students agreed, the Coordinator/Principal may arrange for them to resolve the complaint informally with the help of a counselor, teacher, administrator, or trained mediator. However, the student who complained would never be asked to work out the problem directly with the individual alleged to have harassed the student, unless both parties agreed, received such help, and were advised of the right to end the informal process at any time.

AR 5145.7 listed a number of factors to be taken into account by the Coordinator/Principal in reaching a decision on the complaint, including: witness statements; the details and consistency of each person's account; the type, frequency, and duration of the misconduct; and the size of the school, location of the incidents, and context in which they occurred. AR 5145.7 required that the Coordinator/Principal conclude the investigation no more than 30 days after receiving the complaint and prepare a written report of findings, which included the decision, reason for the decision, and steps taken during the investigation. The AR provided that the timeline may be extended for good cause and, if so, the student who complained would receive notice of the extension. If it was determined under AR 5145.7 that harassment occurred, the report was required to include corrective actions to address the harassment and prevent any retaliation or further harassment. The report was provided to the student who complained and their parents/guardians, the individual alleged to have harassed the student and their parents/guardians, and the Superintendent or designee. The Coordinator/Principal was required to ensure that the harassed student and his/her parent/guardian were informed of the procedures for reporting any subsequent problems, and to make follow-up inquiries to see if there have been any new incidents or retaliation.

As of May 3, 2017, the District adopted an amended AR 5145.7 which was still in effect as of last review on October 30, 2017. Amended AR 5145.7 states that the Coordinator/Compliance Officer is the Superintendent and provides a telephone number and the District Office for contact information. Amended AR 5145.7 provides that the UCP, AR 1312.3, is the procedure for addressing complaints. It states that the principal or Compliance Officer shall inform the student or parent/guardian of the right to file a formal written complaint in accordance with the UCP and forward any report to the Compliance Officer to initiate the investigation in accordance with AR 1312.3, regardless of whether a written complaint is filed.

BP/AR 1312.3, in effect from September 7, 2016 to May 3, 2017, were the District's UCP. BP 1312.3 stated that the UCP shall be used to resolve complaints of retaliation and complaints of unlawful

discrimination and harassment against any person in District programs and activities based on various protected classes, including sex. The AR provides that all parties involved in the allegation shall be notified when a complaint is filed and when a decision or ruling is made.

AR 1312.3 states that the Superintendent is designated as the compliance officer---the employee responsible for coordinating the District's response to complaints. It provides his title and his physical address, but not his phone number or email address. AR 1312.3 provides that in no instance shall a compliance officer be assigned to complaint in which he/she has a bias or conflict of interest. It further states that any complaint implicating a compliance officer may be filed with the Superintendent or designee, implying that the Superintendent is not the compliance officer. The AR provides that employees assigned to investigate and resolve complaints shall receive training and be knowledgeable about relevant laws and regulations, processes for resolving complaints, standards for reaching decisions, and appropriate corrective measures. AR 1312.3 states that the compliance officer or any appropriate administrator shall determine whether interim measures are necessary during and pending the results of the investigation, and that all complaints shall be investigated or resolved within 60 calendar days of complaint receipt unless the complainant agrees in writing to an extension. The AR states that the compliance officer shall maintain a record of each complaint and subsequent related actions.

AR 1312.3 states that mediation shall be offered to resolve complaints that involve more than one student and no adult, but will not be offered or used to resolve a complaint where there is a reasonable risk that a party to the mediation would feel compelled to participate. It provides that the compliance officer shall also notify all parties of the right to end the informal process at any time, and shall proceed with the investigation of the complaint if the process is unsuccessful. Under AR 1312.3, mediation shall not extend the District's timelines for investigating and resolving the complaint, unless the complainant agrees in writing to such an extension of time.

AR 1312.3 also provides as follows. Within 10 business days after complaint receipt, the compliance officer shall begin an investigation. Within one business day of initiating the investigation, the compliance officer shall provide the complainant with the opportunity to present information and provide notice of the opportunity to present the compliance officer with any evidence, or information leading to evidence, to support the allegations in the complaint. The compliance officer shall collect all available documents and review all available records, notes, or statements related to the complaint, including any information received from the parties during the investigation. He/she shall individually interview all available witnesses with information pertinent to the complaint, and may visit any location where the relevant actions are alleged to have taken place. The preponderance of the evidence standard is used in determining the veracity of the factual allegations in the complaint.

The AR 1312.3 written decision reached by the compliance officer shall include: the findings of fact based on the evidence gathered; the disposition for each allegation as to whether retaliation or unlawful discrimination has occurred; and the rationale for such disposition. AR 1312.3 states that the determination of whether a hostile environment exists may involve consideration of, among other things: how the misconduct affected one or more student's education; the type, frequency, and duration of the misconduct; the relationship between the alleged victim and offender; and the size of the school, locations of the incidents, and context in which they occurred.

AR 1312.3 further provides that for complaints of unlawful discrimination the decision may, as required by law, include: corrective actions imposed on the individual found to have engaged in the conduct that

relate directly to the subject of the complaint; individual remedies offered or provided to the complainant or another person who was the subject of the complaint; systemic measures the school has taken or will take to eliminate a hostile environment and prevent recurrence (e.g., training, school climate surveys, and updates to school policy); notice of the complainant's right to appeal the District's decision to the California Department of Education (CDE) within 15 calendar days; and follow-up procedures to prevent recurrence or retaliation and for reporting any subsequent problems. Remedies for the complainant under AR 1312.3 may include: counseling; academic support; assignment of an escort; restorative justice; and follow-up inquiries to ensure that the conduct has stopped. Corrective action for the respondent may include: transfer from a class; parent/guardian conference; education regarding the impact of the conduct on others; denial of participation in extracurricular activities; and disciplinary action, as permitted by law. The AR states that notice of the decision shall inform the complainant that discrimination complaints may also be filed with OCR.

As of May 3, 2017, the District adopted amended BP/AR 1312.3, which were still in effect as of last review on October 30, 2017. AR 1312.3 includes that in any complaint involving unlawful discrimination or harassment the respondent and the complainant will receive a final written decision, have a right to file an appeal with the CDE and the School Board, under certain circumstances, and receive notification of extensions of timelines.

AR 5145.71, in effect since January 11, 2012 and as of last review on October 30, 2017, provides, in relevant part, that it is the policy of the District that harassment and discrimination against gender nonconforming students, those who do not conform with stereotypical expectations with respect to, for example, behavior, clothing or activities, is prohibited. AR 5145.71 states that the District will investigate all complaints related to such discrimination and harassment but does not explain the complaint procedures under which allegations of discrimination or harassment based on sex stereotyping are to be investigated and resolved.²

BP 0410, concerning nondiscrimination in District programs and activities, in effect August 7, 2013 to March 1, 2017, provided generally that the District programs, activities and practices shall be free from discrimination on various bases, including sex. It stated that students, parents/guardians, employees, employee organizations, applicants for admission and employment, and sources of referral for applicants shall be informed about the District's policy on nondiscrimination and related complaint procedures. As of March 1, 2017, the District adopted amended BP 0410, which was still in effect as of last review on October 30, 2017. Amended BP 0410 includes that allegations regarding unlawful discrimination shall be investigated in accordance with AR 1312.3, the UCP, and identifies the Superintendent as the compliance coordinator and provides an address and telephone number.

With respect to notice of the procedures, the BP/ARs outlined above can be accessed on the District website. The Title IX information states in part that discrimination on the basis of sex is prohibited. It

² OCR also notes that BP/AR 5145.71 prohibit harassment and discrimination based on perceptions of a person's gender identity, appearance, or behavior. AR 5145.71 also states, among other things, that: 1) students have the right to discuss and express their gender identity and expression openly and to decide when, to whom, and how much to share private information; and 2) students have the right to be addressed by name and pronoun corresponding to their gender identity that is consistently asserted at school. BP 5145.71 states that students shall receive age appropriate information and education related to gender identity and the issues of harassment and discrimination based on gender identity. OCR also notes that AR 5145.3 states that the District considers gender-based harassment to include refusing to address a student by a name and pronoun consistent with his/her gender identity.

identifies the designated individual responsible for coordinating the District's efforts to comply with Title IX as the Human Resources Director and includes the individual's address, number, and email address.

The District stated in its data response that discrimination complaint procedures are contained in the School's Student/Parent Handbook (Handbook), which is sent home to parents and discussed with students during the first week of school. The 2015-2016 Handbook has a section on sexual harassment which defines sexual harassment, states that it is prohibited, and advises students how to make a complaint. The Handbook also has a section that discusses harassment/bullying in general but does not advise students how to file a complaint if they experience harassment on the basis of sex or sex stereotyping.

The 2016-2017 Handbook includes the same information as in the 2015-2016 Handbook, but also adds a section entitled, "Bullying and Harassment." The language in this section states that the District prohibits discrimination and harassment based upon various actual or perceived characteristics, including a person's sex or gender. It further defines bullying as any severe or pervasive physical or verbal act or conduct directed toward another student that has been or can be reasonably predicted to have the effect of causing a reasonable student to experience a substantially detrimental effect on the student's physical or mental health, academic performance, or ability to participate in school activities. However, again, this section does not advise students how to file a complaint if they experience discrimination or harassment on any basis, including on the basis of sex. The 2017-18 Handbook "Bullying and Harassment" section deletes the language concerning prohibition of discrimination and harassment based on a person's perceived sex or gender and deletes the definition of bullying referenced above. It continues not to inform students how to file a complaint.

Concerning designation of a Title IX Coordinator and related training, the District reported in its data response that, during the 2015-2016 school year, the former Superintendent was the Title IX Coordinator. In terms of training, the data response stated that the former Superintendent attended the October 13, 2015 presentation, referenced later in this letter, which was requested by the Complainant. This presentation was also attended by School staff and addressed gender-based harassment. The District reported that on August 28, 2012, the Principal of the School attended training on the same issues, presented by a representative from an organization that supports families of transgender youth. Other staff and parents were included in that training.

X---paragraph redacted---X.

Background

At the time the OCR complaint was filed in April 2016, the Student, a transgender girl, was XX years old and in the XXXXX XXXXX. The Complainant is her XXXXXXXXXXXX XXX legal guardian. The Complainant alleged that from August XX, 2015 to November X, 2015, the Student was harassed and bullied on account of her gender by other students at the School nearly every school day. The Complainant also alleged that during the same time period the Student was discouraged by the Principal, the Counselor, and the XXXX XXXXXX Counselor from discussing her gender openly on the School campus. On November X, 2015, the Complainant decided to remove the Student from the School, due principally to the severity of the harassment and the School's response to it.

According to the Complainant, the Student attended District schools for XXXXXXXXXXXX, and from the XXXXXX through the XXXXX XXXXXX. The Student presented as a boy XX XXXXXXXXXXXXXX, was enrolled in a school outside of the District for XXXXX XXXXXX, and had transitioned to being female XX XXX XXXX XXX XXXXXXXXXXXX the District in the XXXXXX XXXXXX.

The Complainant told OCR that the Student dresses as a girl and has long hair and styles it as a girl. The Complainant reported to OCR that many students in the District know that the Student is transgender, XXX XXXX XX XXXX XXXXXXXXXXXX XXX XXXX XXXXXXXXXXXXXXXX XXXX XXX XXX XXXXXXXXXXXX XX X XXX. The Complainant stated that over the years prior to XXXXX XXXXXX there had been occasional issues of harassment and bullying when the Student was enrolled in the District, but all issues were handled appropriately by school administrators. She stated that when the Student attended XXXXXX, XXXXXX, XXXXXX, and XXXXX grade in the District she was under the supervision of three different principals who knew that she was transgender and were supportive and resourceful in handling any incidents that occurred.

2015-2016 School Year

On August XX, 2015, the Student attended her first day of XXXXX XXXXXX at the School. The Student's XXXXXXXXXXXX XXXXXXXXXXXX, the XXXX teacher, who taught the Student XXXXXXXXXXX XXXX XXX XXXXXXXXXXX XXXXXXXXXXX, told OCR that she attended training on transgender issues when the Student was in XXXXXX XXXXXX in the District; staff from different schools attended. She told OCR that the training discussed children who are transgender and what teachers can do to support them. When the XXXX teacher asked what teachers should do to address questions that arise, the XXXX teacher told OCR that staff members were told by the District not to answer questions from other students about a transgender student.

The Student told OCR that sometime at the beginning of the School year Student XX found a list of students in a XXXXXXXXXXX class. The list had both the Student's the name she used when she previously presented as male ("prior male name" or "prior name") and the Student's current name ("female name") with an "M" labeling her as male. The XXXX teacher confirmed that she saw two rosters at the beginning of the school year that listed the Student as male. One of the rosters was for new XXXXXXXXXXXX students who were paired with XXXXXX XXXXXX students for orientation and activities. The XXXX teacher said that both rosters were corrected. The Student told OCR that before the roster was corrected, Student XX took a picture of one of the rosters XXX XXX XX XX X XXXXXXXXXXX XXXXXX XXXXXXXXXXX. The Student reported this to the Counselor but, to her knowledge, the Counselor did not do anything. Because of the list, the Student told OCR that at the beginning of the year some of her teachers would call her by her prior male name during roll call.

The Student told OCR that on XXX XXXXXX XXX XX XXXXXX, August XX, 2016, three girls called her by her prior name in XXXX, XXXXXXXXXXXXXX, and XXXX classes; she identified the students as Student X, Student XX, and Student X. The Complainant told OCR that on XXX XXXXXX XXX XX XXXXXX, August XX, 2015, the Student informed her that two students called the Student her by her prior male name. After school that day, the Complainant sent an email to the Principal, reporting that two girls were referring to the Student by her prior male name. One of the girls, Student X, was a XXXXXX XXXXXX who was in many of the Student's classes. The Complainant informed the Principal that Student X, another XXXXXXXXXXXXXXXX, had told others about the Student's prior name and about her being a boy in previous years. The Complainant reported that the third girl who was calling the Student by her prior name was a XXXXXXXXXXX XXXXXX, and the Student did not know this girl's name. The Complainant provided the names of two witnesses to the incidents. She told the Principal in the email that the Student did not like to be called

In the September XX, 2015 email, the Complainant requested that the Principal and Counselor take steps to address the school climate and ask the teachers to be vigilant for harassment in the classroom. She provided examples of resources the School could utilize to support the Student and other students who may be gender nonconforming. The Complainant left a copy of a document for the Principal that included information about what should happen under the District's policy if bullying occurs on the basis of sex. On September XX, 2015, the Principal responded via email and stated that she would share the document with staff and parents. She asked the Complainant to let the Principal work with the Counselor to figure out how best to approach the student education, and stated that during restorative practice circles this might be a topic to explore, and that she thought the Counselor could talk to specific students that the Student named as harassing her.

On September XX, 2015, the Complainant informed the Counselor by email that Student X had been calling the Student by her prior male name in XXXX class, frequently. She asked the Counselor to speak with Student X and tell Student X that what she was doing was harassment. The Complainant stated that the Student wanted to tell her XXXX class that she was transgender to try to end the name-calling. Later that evening, the Principal emailed the Counselor requesting that she follow-up with the XXXX teacher; the Counselor responded to the Principal and Complainant that she would do so. On September XX, 2015, the Counselor emailed the Complainant that she would follow-up with the Student's teachers. The Complainant never received any further response as to content of the conversations with the Student's teacher or as to whether the follow-up occurred.

During the week of September XX, 2015, the Student, the Complainant, and a friend of the Student's spoke with the Student's XXXX teacher and asked if the Student could speak to her classmates during class time. They proposed that the Student would read something like a script about her being a transgender student, the Complainant would provide some information about transgender children, the Principal or XXXX teacher could make comments, and then the students could ask questions. The Complainant and the Student stated that the XXXX teacher was supportive. The Student told OCR that the XXXX teacher knew that she was having a difficult time and that this could help. She remembered the XXXX teacher telling her that if it got too emotional for the Student, the XXXX teacher would be there to help. The Student told OCR that she thought that doing this might make people understand what she was going through.

The XXXX teacher told OCR that she told the Complainant and Student that they could have a conversation in the class, and that she was backing the student and on board with the idea of the Student sharing, but that she did not want to use a script. The XXXX teacher said that the Student was comfortable in her classroom and felt ready to share the information with the students. However, the XXXX teacher told OCR that the Complainant told her that she had already spoken to the Principal and the former Superintendent about the idea, and the Principal would not give permission for the Student to tell students in the class that she was transgender without notifying parents first. XXX XXXX XXXXXXXX XXXXXXX XXXX XXX XXX XXX XXXXXXXXXXXX XXXX XXXXXXXX XXXXXXX XXXX XXXXXXXXXXX XXXX XX XXX XX XXX XXXX XX XXXXX XXX XXX XXX XX XXXX XXXX XXXX XXXXXXXX XXXXX XXXXXXXXXXX XXXXXXX.

At the end of the conversation about the proposal, the XXXX teacher told the Complainant that she would need to discuss the proposal with the Principal. The XXXX teacher told OCR that she met with the Principal numerous times about what she was proposing to allow the Student to share; when things came up in her classroom, she wanted to provide a safe space for any student to say something and continue the conversation. According to the XXXX teacher, the Principal told her that they would need to get permission from parents before information about the Student being a transgender student was

shared. XXX XXXX XXXXXXXX XXXX XXX XXXX XXX XXXXXXXXXXXX XX XXX XXXXXXXXXXX XXXX XXXXX XXXXXXX
XXXX XX XXX XXX XXXX XX XXXXX XXX XXXX XXXXX XXXX XX XXXX XXX XXX XXXXXXXXXXXX XXXX XXXXXXXX.
She told OCR the Principal told her that she was going to discuss it with the former Superintendent.

X---paragraph redacted---X.

On October X, 2015, the Complainant emailed the Principal, XXXX teacher, and Counselor to provide the contact information for a XXXXX XXXXXXX who could provide training for teachers and parents. In this email, she again notified the District that the Student was being harassed and bullied every day at school, including because many students seemed to “feel it was great fun” to call her by her prior name and were “persistently” calling by her prior name. The Complainant said that the Student had identified that students she did not even know and had not met before were calling her by her prior male name. She again stated that the Student came home in tears some days, and some days she did not want to go to the School in the morning. In the correspondence, she identified that she had reviewed BP 5145.71, which she correctly stated, included but was not limited to: a statement that students have a right to be addressed by a name and pronoun corresponding to the gender that is consistently asserted at school; and a statement that students have a right to discuss their gender openly and to decide when, to whom, and how much to share private information. The Complainant again expressed that the Student was ready to talk to her classmates, believed there would be less harassment if other students really knew who she was rather than it being a “deep secret that was whispered from student to student and that many then tried to use against her.” She stated that she wanted to cooperate with the Principal but that something needed to happen soon to give the Student the ability to attend school without harassment.

On the same day (October X, 2015), the Principal emailed the former Superintendent the Complainant’s email, and stated that she thought the Complainant was going to give her time to train parents and staff but that, according to the Complainant’s email, that did not seem to be happening. Nevertheless, she said that she would set up the training for staff and parents and call the Complainant to schedule a time for the Student to tell anyone interested during XXXXX that week; she asked the former Superintendent if she had any other thoughts. There is no reply email from the former Superintendent in the data provided to OCR by the District.

On October X, 2015, the Principal emailed the Complainant that XXX XXXX Counselor would help with the school climate and would meet with them later that week. She reported that she had set up two training sessions with XXX XXXXXXX identified by the Complainant, one for parents and one for staff to be held on October XX, 2015. The Principal told the Complainant: “If we want the name-calling to stop, I am afraid that the outcome may not be achieved and we will not have a plan in place.”

The Complainant responded the same day thanking the Principal for scheduling the trainings and scheduling the meeting with XXX XXXX Counselor and Principal for October X, 2015. Also, on the same day, the Student’s Conference Record shows that meetings were held between the Dean and Counselor, the Counselor and Principal, and the Dean, Counselor and Student about the approach to the Student’s situation. However, the substance and outcome of these meetings was not recorded.

The Complainant told OCR that at the meeting on October X, 2015, the Principal told her and her husband that the Student would not be allowed to make her announcement during class time and that every student would have to have a signed permission slip before the Student could tell her story because this was “sex education.” She stated that the Principal told them that the Student was not to

speak to her class about being transgender. She said that, instead, the Principal proposed that the Student name XX students who could be trained by XXX XXXX Counselor in small group sessions as allies before the Student could say anything about who she was to her classmates. The Complainant told OCR that she and her husband reluctantly agreed to the plan.

On October X, 2015, the Complainant informed the Principal by email that the Student did not like the proposal of a small group because she did not want it to be such a big deal and just wanted to tell her classmates. She said that the Student wondered why she could not just take a few minutes to explain that she was transgender to the class and be done with it. The Complainant also told the Principal that the Student did not understand why they would need permission slips for her to talk to her classmates about who she was. She stated that many students already knew, and a larger number had an idea that something was different. The Complainant told the Principal that this was about gender expression. The Complainant proposed yet another way that the Student could tell the other students in her XXXX class that she was transgender and noted that the Student just wanted to tell her XXXX class in a simple manner as soon as possible. She reiterated that, based on the District's own policy, the Student had the right to tell students when she wishes and how she wishes.

The Principal forwarded the October X, 2015 email to the former Superintendent and copied XXX XXXX Counselor and XXXX teacher. The Principal told the Superintendent that she was afraid this would happen, and stated that she was asking other staff not to respond to the Complainant. The former Superintendent replied the same day, saying she had sent the email to legal for their opinion.

On October X, 2015, the Principal met with the Student. The Student told OCR that the Principal told her it would not really work out for her to tell her XXXX group about her being transgender, that it would make students uncomfortable, and that they wanted to make it a safe environment for all students. On the same day, the Principal emailed XXX XXXX Counselor, stating that she finally had a chance to speak with the Student about their "small group plan." The Principal said that the Student had agreed to it once the Principal explained the negative outcome that might happen when she shared her information, if she did not have the support of friends. Later that day, the Student met with a representative of a XXXXXXXXXX who told her that he would be leading the small group the following week.

X---paragraph redacted---X.

X---paragraph redacted---X.

On October XX, 2015 (X XXXXXX) at X:XX XX, the Principal left a voicemail message on parents' phones letting them know about several upcoming school events, including the October XX presentation from XXX XXXXXX who would be discussing medical, emotional, and general information about transgender children and how to approach this topic with children. Also, on October XX, 2015, the Complainant emailed the Principal, Counselor, and XXX XXXX Counselor to let them know that the Student would go to the office on XXXXXX to turn in her suggested names for the small group. Among other things, she asked for additional information about who would be leading the group, including whether it would be XXX XXXX Counselor or the representative from XXX XXXXXXXXXX, and for copies of the syllabus and lesson plans.

On October XX, 2015, the first small group meeting was held. X---paragraph redacted---X. The Complainant told OCR that the representative introduced himself and explained what the group was

going to do but nothing related to the Student or transgender students was discussed. XXX XXXX XXXXX
XXXX XXX XXXXXXXX XXX XXXX XXX XXXX XXXXXXXX XXX XX XXXXXXXX XXXXXXXX XXXX XXXXXXXX XX XXXXX
XXXX XXXXX XXXX.

On October XX, 2015 at X pm, School staff members attended the presentation by XXX XXXXXX the Complainant identified. For staff who could not attend, XXX XXXX Counselor sent them the presentation. On the same day at X pm, the parent informational session was held. The Complainant attended; she told OCR that no parents attended except for XXX XXXXXXXX who were XXXXXXXX XX XXX XXXXXXXXXXXX and went XX XXX XXXXXXXX to provide support. On October XX, 2015, the Complainant emailed the non-profit representative and the Principal and identified several concerns with the small group meeting, including that some of the Student's friends who were supporters had been alienated and may choose not to continue to meet.

On October XX, 2015, the former Superintendent called the Complainant and her husband, apologized for the meeting getting off to a bad start, and stated that the Counselor and XXXX Counselor would now lead the small group. On the same day, XXX XXXX Counselor emailed the Complainant to say that she would be working on the scope and sequence of groups, and stated:

I know it is hard for [the Student] when she feels like she wants to share this big thing she's been holding onto [for] so long. Encourage her that things will happen but in order to ensure her safety and peace of mind this is going to take a little planning and time for the people involved.

In a written statement in the District's data response, the Counselor stated that for the students identified by the Student she obtained permission slips for them to participate in the small group. XXX XXXX Counselor reported that, among other things, the District decided to proceed with the small group because after consulting with outside organizations with expertise, it was determined that this was a best practice and would not do harm to any students at the School.

The Complainant and Student told OCR that during XXXXXX on October XX, 2015, the Student told a group of students --- Student XX, Student XX, Student X, Student X, Student X, Student X, Student XX, and Student X --- that she was transgender and gave them a few sentences of explanation. The Complainant said that the Student was supported by a friend, the students asked a few serious questions, and she was not aware of any resulting complaints or related harassment of the Student based on her sharing. The Student's Conference Record states that on the same day the Student was brought into the office by the Dean to discuss information that she shared with others XX XXXXXXXX, that the Counselor spoke with the Student about her experience XX XXXXXXXX, and that the Counselor consulted with the Principal that day to report the Complainant's response to the "new plan" for the Student.³ The Principal reported to OCR in its data response that the meeting with the Dean was to address the fact that students continued to tease the Student. The Student told OCR that after she shared with the students there was no harassment the rest of that same day; however, she said that students continued to make inappropriate comments to her the next day.

On October XX, 2015, XXX XXXX Counselor informed the Complainant by email that the small group would start on October XX, 2015 and set forth the substance of XXX XXXX sessions, which included things such as confidentiality, building a healthy life style, and bullying.

³ The Student did not remember meeting with either the Dean or Counselor on October XX, 2015.

In the data response, the Counselor stated that the Student was brought to her office by the Dean on two separate occasions due to multiple reports that the Student was discussing her gender with peers XX XXXXXX and was being teased. The Counselor stated that she spoke with the Student about discussing her gender within the support group instead of with classmates who are outside of the group so that she could receive support instead of harassment. The Student told OCR that she remembered the Counselor's statement; however, she said that the problem was that the Counselor was not actually planning a time that the Student could share that she was transgender with the group.

On October XX, 2015, the Complainant emailed XXX XXXX Counselor and Principal that the Student did not plan to attend the small group the following day. She relayed that the Student felt that when XXX XXXX Counselor spoke with her about the small group that her intention was to convince the Student not to share that she was a transgender student. The Complainant said she tried to convince the Student to attend, but the Student felt like she had had almost eight weeks of harassment and was "tired of the whole ordeal." She also noted that the Student had relayed that the harassment had gone down in the last two weeks. However, the Complainant clarified that this meant that the incidents were still occurring several times during most days.

On October XX, 2015, after receiving the Complainant's email, the Principal, Dean, and XXXX Counselor decided that the Counselor would take over the group.⁴ When the Counselor went to pick the students up from class to attend the group, the Student decided to participate. In the District's data response, the Counselor stated that she went over confidentiality, covered group rules, stated that the purpose of the group was to appreciate differences, and had the students engage in ice breaker type games.

The Complainant told OCR that sometime before the small group meeting on October XX, 2015, the Counselor told the Student something to the effect of "if you want to tell anyone your secret, let me know, so that they can feel comfortable." After that meeting, the Complainant and the Student reported to OCR that either XXX XXXX Counselor or Counselor pulled the Student aside and said something to the effect of that with "your situation maybe we should wait to tell other students in case it spreads." In the written statements submitted to OCR, the Counselor and XXXX Counselor neither admitted nor denied making these statements. The Student said that this interaction made her feel like XXX XXXX Counselor or Counselor was saying that she had a disease that could spread to other children if she told them who she was.

On October XX, 2015, the Complainant sent an email to the Counselor and the Principal requesting that the Student and her friend be allowed to lead the next small group meeting so that the Student could talk about being transgender, have time for questions, and then do a teambuilding game. Neither the Principal nor the Counselor responded before the next group meeting on November X, 2015. Later that day, the Complainant sent another email to the Counselor. She stated that the Student felt that the Counselor was talking about her as if she had a contagious disease and was offended by the statement she made to the effect of, "if you want to tell anyone your secret, let me know – so they can feel comfortable." She stated that being transgender is who the Student is and not a secret to be ashamed of. She asked when the Student would get to feel comfortable. She reiterated her request to allow the Student and her friend to lead the group so that the Student could share that she was transgender, allow other students to ask her questions, and then move on.

⁴ X---paragraph redacted---X.

In the District's response, the Counselor acknowledged receiving the Complainant's emails and stated, among other things, that the skills decided upon for this small group were empathy, acceptance and respect, and that the games were chosen to teach the students to be supportive and understanding toward the Student when she shared her information. She stated that the Student was not asked not to share that she transgender, but rather she was told that the groups are run in a certain way and that the foundation was being laid first through lessons to prepare students to receive with care any private information that any student would like to share later in the group as it progressed. The Counselor stated that she decided not to allow the Student and her friend to run a meeting because according to group norms students do not typically run a group.

On November X, 2015, the Counselor and XXXX Counselor led the small group meeting using the same structure from the other meetings but again did not provide a time for the Student to share that she was transgender. According to the Counselor, other students continued to have a good time and the Student attended but did not engage in the games and activities chosen by the staff members.

The Student told OCR that during the school day on November X, 2015 it was just so bad to be at the School. X---paragraph redacted---X. The Student stated that she did not report these things to anyone on that day because she felt the School was not doing anything and that nothing was going to change.

After school on the same day, the Complainant and Student were at the School for a parent-teacher conference. The Student told OCR that while she was XXXXXXXX XX XXX XXXXXXXXXXXX with a friend a XXXXXXXX XXXXX boy – Student X – who was sitting with several other students, yelled “XXXX XX XXXX XXXXXXXX XXX XXX” about her. Either the Student or one of the Student's friends, Student XX, went to get an XXXXXXXXXXXXXX XXXX employee, who then spoke to the boy. The Student said that when she and Student XX were XXXXXXXX XXXX XX XXX XXXXXXXXXXXX, the same boy said, “hey [prior name.]” After the second comment, the Student said she told the Complainant, who told the Student's XXXX teacher. The XXXX teacher told OCR that she spoke to the boy. The XXXX teacher said the boy apologized and the Student accepted.

The Complainant told OCR that after they left the School that day the Student was extremely upset and begged the Complainant not to make her return to the School again. The Student told OCR that she remembered that she went home crying. The Complainant kept the Student home the next school day. The Complainant and Student told OCR that throughout the Student's time at the School she was called the prior male name or referred to as “he” several times a day, every day. The Complainant stated that there may have been only two days out of this entire time that the Student did not report this name-calling to the Complainant. In terms of location, the Complaint stated that the name-calling was generally happening during passing periods or when the students were outside for lunch or break time. The Student stated it also happened in all of her classes. She identified a number of students who engaged in the conduct, including: Student XX, Student XX, Student X, Student X, Student X, Student X, Student XX, Student XX, Student X, Student X, Student X, Student X, and Student X.

The Student told OCR that almost every day when she was enrolled at the School she told the Counselor, XXXX Counselor and/or Dean about what the other students were saying. She stated that they told her they would take care of it, but nothing changed. She said that they would occasionally speak to the students but it did not make a difference. The Complainant stated to OCR that she was never made aware that any student was disciplined, or even that their parents were contacted and counseled about the situation. The Student also reported that she did not see that any of the students received any consequences. In general, the Student said that after she and the Complainant told School staff about a

particular student saying these things to her, the same students would continue to do so, even if they were allegedly spoken to.

The Counselor said in her data response statement she received emails from the Complainant reporting that other students were calling the Student by her prior name. She said that each time she would call the Complainant to identify the students' names and would speak to those students about calling the Student her proper name. However, the Counselor stated that even after speaking with the students, she would receive another email from the Complainant reporting that different students were calling the Student her prior male name.

The Student said the name calling occurred in the XXXX teacher's class once or twice at the beginning of the year, but the XXXX teacher talked to the students and was supportive of the Student and it stopped. X--paragraph redacted--X. The XXXX teacher stated that the other teachers recalled that they were told by the District in the earlier training not to address questions about transgender issues brought up by other students. The XXXX teacher said they did not know what to do.

In the District's data response, the Principal reported that the consequences at the School are progressive beginning with intervention such as conflict resolution, minor consequences such as lunch detention, and progressing to suspension from school for chronically repeated harassment. She stated that only conflict resolution need to be used with respect to the comments being directed toward the Student because each incident involved different students.

On November X, 2015, the Complainant formally withdrew the Student from the School due to the harassment and failure of the District to provide an appropriate response. The XXXX teacher told OCR that the Complainant told her that the Student was tired of "fighting the battle of not being able to be herself at school." The Student told OCR that she would come home crying most nights and that every day she did not want to go to school. She said her academic progress was not impacted because the work was not very challenging.

The Complainant told OCR that shortly after the Student left the School, one of her friends, Student XX, brought the Student her paperback book which she had left in her XXXX classroom. The Complainant reported that XXX XXXX XXXXXXXX XXX XXXXXXXX XXXXXXXX XXX XXXXXXXXXXXX XXXX XXX XXXXX XXX X XXXXXXXX XX XXXX XXXXXXXXXXXX XXX XXX XXXXXX XXX XXXXX X XXXXX XXX XXX written inside the back cover of the book. The Student told OCR that she recognized the handwriting as the handwriting of one of the boys, Student X, who had consistently called her by the prior male name XXX XXX XXX XXXXX XXXXXXXX XX XXX XXXX XXXXX XXX XXXX XXX XXXXXXXX.

On November X, 2015, the Complainant sent an email to XXX XXXX Counselor and Counselor. Among other things, she stated that the small group had been the Student's "undoing." She reiterated that the XX weeks the Student had been at the School had been some of the hardest weeks of her life. She stated that she hoped the District would provide staff and all counselors at the School more training to support the next transgender student who enrolls at the School. The Counselor forwarded the email to the Principal on November XX, 2015.

The Complainant told OCR that on December XX, 2015, she wrote a note to the Dean in which she informed him of the defaced paperback book. She also asked for follow-up on the phone call she made to the Dean earlier, wherein she notified him that a student from the School had identified the student

who had posted the XXXXXX XXXXX photo earlier in the School year. The Complainant told OCR that the Dean never responded.

On January XX, 2016, the Complainant filed a complaint on a form related to AR 1312.1 for "Complaints Concerning District Employees," which was identified as received by the former Superintendent on the same day. The Complainant reiterated nearly all of the incidents and interactions with School staff described herein, stated that the Student had been harassed and bullied nearly every school day while she attended the School, reported that the Principal, XXXX Counselor and Counselor had repeatedly discouraged the Student from discussing her gender at school. She cited to the relevant BP/ARs applicable to her complaint. She requested, among other things, that the District investigate the complaint and that all staff in the District receive training on how to end gender-based harassment. The Complainant also asked that the District provide yearly, age-appropriate direct instruction to students concerning stopping harassment on the basis of sex stereotyping.

The District's responses to the complaint, signed by the former Superintendent, are dated January XX and February XX, 2016. In the responses, the District acknowledges that it did not interview the Student, and states that "for purposes of this Uniform Complaint only, the District is accepting the factual allegations to be generally accurate." The responses do not include a determination as to whether the Student was subjected to a hostile environment on the basis of sex or gender. Instead, they include a list of proposed relief, which included: 1) training concerning gender-based discrimination every other year for District administrators and documentation of such training maintained and provided to the Complainant and Board; 2) a one-time, four-hour training to School administrators about transgender students, including how to support them and align with legal mandates and documentation of such training would be maintained and advisement of completion provided to the Board and Complainant using the monthly Board agenda; and 3) the District would reaffirm its commitment to comply with a variety of state laws related to age-appropriate curriculum concerning a number of issues, several related to gender and sex stereotyping. However, the District did not propose any instruction regarding harassment on the basis of sex, including harassment predicated on sex-stereotyping, and did not provide information about when and how any of the specified instruction would occur.

The Student and Complainant confirmed that no one from the District spoke to or interviewed either of them in relation to the investigation of the complaint. The Principal reported to OCR via email that the former Superintendent used the same two statements that were provided to OCR from the Counselor and XXX XXXX Counselor, as well as the Counselor's database Conference Record entries to process the complaint. She also stated that the former Superintendent interviewed her and the Dean, but the current Superintendent reported to OCR that he was unable to find any notes related to these interviews.

The Complainant told OCR that she has not received any notice of any training provided related to her complaint. The District's data response did not include any evidence that the proposed remedies in the UCP decisions had been implemented by the District.

The District's current Superintendent began in July 2016. After leaving the School, the Student attended the District's independent study program XXX XXXX XXXXX and then transferred to X XXXXXXX XXXXXXX. The Student currently attends the XXXXXXXX XXXXXXX XXXXXXXX XXXXXXX XXXXXXX XXXXXXX XX XX XXX XXXXXXX. The Student informed OCR that everyone at the XXXXXXX XXXXXXX has been very supportive, that if there is an issue, it is taken care of immediately, and students and staff treat her

“how they would treat anyone else.” The Complainant also confirmed that the Student has done well at the XXXXXXX XXXXXXX. The Complainant told OCR that she may consider having the Student return to the District but only if the issues are fully addressed.

Analysis and Conclusion

OCR found that for the entirety of the Student’s approximately two-month period at the School she was subjected to repeated harassment by other students based on her failure to conform to sex stereotypes. Harassing conduct included:

- On September XX, 2015, a female student made a crude remark to the Student, XXXXXXXXXXX XX XXXX XXXXXXXXXXX.
- On November X, 2015, the day after she dis-enrolled from the School and while she was still a student in the District, another student defaced the Student’s book with XXX XXXX XXXXXXXXXXX X XXXXXXX XX XXXX XXXXXXXXXXXXXX XXX X XXXXXXX derogatory and crude remark.
- Students pushed and tripped the Student in the hallways and, during the last week of school, a few students pushed her out of the bathroom.
- Repeated and intentional use of the Student’s prior male name and use of male pronouns by multiple students on a daily basis during the entire time that she attended the School. The Student reported that students she knew and students she did not know, including in other grades who would not otherwise have reason to call her name, engaged in this conduct during XXXXXXX XXXXXXX XXXXXXX XXX XXXXXXXXXXXXXXX XX XXX XXXXXXXXXXX. Several students continued the conduct even after being counseled not to do so by School staff.
- Between approximately September XX and XX, 2015, a few boys told the Student XXXX XXX XX XXXX XXX XXXX XXXXXXXXXXXXXXX XXX XXXXXXX XXXXXXX XX XXX XXX, but they later told her it was a hoax and laughed at her based on her failure to conform to sex stereotypes.
- At the beginning of the school year at least one class roster identified the Student as being male and included her prior male name. The rosters were corrected, but not before another student took a photo of one XXX XXXXXXX XX XX XXXXXXX XXXXX.

OCR found that the a hostile environment on the basis of sex existed because the harassing conduct by peers was persistent and pervasive and impacted the Student’s ability to access the programs and activities to such a degree that she was becoming depressed, cried after school on many days, did not want to go to the School, and ultimately begged the Complainant to remove her from the School.

OCR further found that the Complainant and Student provided almost daily verbal notice and ongoing written notice to the Principal, Counselor, and Dean regarding comments and statements made by other students on the basis of the Student’s failure to conform to sex stereotypes. Such notice was also provided to the former Superintendent on a number of occasions, either through forwarded emails or direct correspondence from the Complainant. The Student and the Complainant also provided notice of the harassment to at least two teachers at the School---the XXXX teacher and, through the Counselor, the XXXX teacher. While the Student confirmed that she did not report the tripping and pushing in the hallway and the students pushing her out of the bathroom, the evidence shows that this was because the Student considered reporting to be futile because the harassment had continued even after she and the Complainant reported it numerous times.

With respect to whether the District provided a prompt and equitable response, the documents provided by the District show that the Counselor and Dean counseled some of the students making the comments on four separate occasions. In addition, the Counselor's data response statement states in general that she followed up with the named students whenever the Student or the Complainant accused a particular student of harassment. However, the former Superintendent, Principal, Counselor and Dean were all aware that the harassing comments did not stop.⁵ For example, on October X, 2015, the Principal acknowledged in writing that the "name-calling" had not stopped; in the District's data response, the Principal acknowledged that as of at least October XX, 2015, the Student continued to be teased based on her sex. Nevertheless, the School acknowledged that it no took disciplinary steps other than counseling several students to stop the harassing comments from reoccurring. The Principal stated that a reason for not using its progressive discipline system applied to other conduct was that the harassment was done by different students. However, the record shows that many of the same students were either involved or were alleged to have been involved in more than one act of harassment, and that the District was on notice of this information.

The Complainant also made a written report on September XX, 2015 that comments were being made in the Student's XXXX class, and the Student reported that such comments began in XXXX class as early as August XX, 2015. Upon receiving notice, the Counselor told the Complainant that she would follow-up but provided no further information to the Complainant or Student about the steps she took in response. Furthermore, due to the lack of investigation conducted by the School as to these incidents and lack of any recorded outcomes or findings, the assertion that students did not engage in multiple acts of harassment after being counseled is not supported. Finally, the fact that the harassment continued to be carried out by different students over the entire time that the Student was enrolled at the School provides additional support for OCR's conclusion that the District's response was not reasonably effective in stopping the harassment, eliminating the hostile environment, and preventing recurrence.

OCR also found that despite numerous verbal reports and at least nine recorded written notifications to the Principal, Dean, and/or Counselor about the ongoing harassment and impact on the Student, the District did not initiate an investigation under its District-level grievance process (AR 1312.3) or its local grievance process (AR 5145.7).⁶ Further, the Complainant was never provided with notice of her right to file a formal grievance.

The District identified the former Superintendent as the Title IX Coordinator in its data response to OCR, and several of the District grievance procedures alternatively identified the Principal as the Title IX Coordinator but neither individual took steps while the Student was enrolled in the District to conduct the prompt investigation required by those procedures or make a determination as to whether the Student was being subjected to a hostile environment, as also required by those procedures and Title IX. In addition, the District did not take reasonable steps to remedy the effects of the daily harassment on the Student, even though the Complainant and Student reported to the District and its staff on several

⁵ The XXXX teacher also counseled students who engaged in the conduct in her class. The Student and Complainant reported that the XXXX teacher's action were effective in stopping the conduct within the XXXX teacher's classroom.

⁶ In this regard, AR 5145.7 states that when a student or parent/guardian makes a report of harassment, the Coordinator/Principal shall describe the District's grievance procedure and discuss what actions are being sought by the student in response to the complaint. OCR did not find any evidence that this requirement was implemented by the District.

occasions that the Student was coming home crying, becoming depressed, and expressing that she did not want to return to School, all due to the harassment she was experiencing from peers. There is no evidence in the record that the District investigated the XXXXXX XXXXX or book defacement complaints reported to the Dean by the Complainant after the Student left the School but while she was still in the District. The Complainant never received a response to these complaints from School staff.

Several District staff contributed to the creation of a hostile environment for the Student. The Principal's actions in telling the Complainant on October X, 2015 and the Student on October X, 2015 that the Student could not discuss her transgender status until students received permission slips and that a structured group was necessary to share information resulted in the Student feeling more alienated and singled out, as the message received by the Student from School leaders was that the Student not conforming to sex stereotypes was a shameful secret or "disease" that could spread and would make other students uncomfortable. As noted by XXX XXXX XXXXXXXX, other students in the School regularly shared personal information about all sorts of issues affecting them on as needed basis and permission slips from parents were not required for those students to do so.⁷ As such, these actions, even if well-meaning, contributed to the hostile environment because they resulted in the Student being treated differently in terms of the manner in which the District regularly addressed communications around issues affecting its students on the basis that she did not conform to sex stereotypes.

After the Complainant filed a formal complaint in January 2014, the District accepted the allegations as true for purposes of resolving the complaint and provided a written response within 40 days. The District elected not to interview the Student, which impacted its ability to accurately assess her need for interim and final individual remedies. Although the former Superintendent reportedly conducted some interviews of School staff, these interviews were not documented or reflected in the written response. The written response summarizes the facts as alleged in the complaint, what the Complainant requested in terms of relief, and what the District proposed in terms of relief---it did not analyze the facts or reach a conclusion as to whether harassment on the basis of sex occurred that rose to the level of a hostile environment. The District's proposed remedies included training for administrators and staff but did not include any consideration of possible individual relief needed by the Student or sex-based anti-harassment training for students. Moreover, the Complainant reported that she did not receive any evidence that any of the remedies were implemented. The District also did not provide OCR with any documentation of implementation.

Accordingly, OCR finds that the District is in violation of Title IX and its implementing regulations because it failed to provide a prompt and equitable response to notice of harassment on basis of sex based on sex-stereotyping.

Grievance Procedures and Title IX Coordinator

In investigating this complaint, OCR also assessed whether the District's grievance procedures, notice of these procedures, and practices with respect to training, disseminating information about, and appointing a Title IX Coordinator were compliant with Title IX and the regulations. OCR examines a number of factors in evaluating whether a recipient's grievance procedures are prompt and equitable as

⁷ OCR also notes that the District's own policy, BP/AR 5145.71 provided a right for its students to share information about their gender expression in the manner of their choosing.

required by 34 C.F.R. § 106.8(b), including whether the procedures provide for the following: notice of the procedure to students and employees, including where to file complaints; application of the procedure to complaints alleging discrimination by employees, other students, or third parties; adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; designated and reasonably prompt timeframes for major stages of the complaint process; notice to the parties of the outcome of the complaint; and an assurance that steps will be taken to prevent recurrence of any discrimination and to correct its effects.

The District has multiple policies and procedures that prohibit harassment and discrimination on the basis of sex. OCR found that the District's policies and procedures were compliant with Title IX in most respects, except with respect to equitable access to appeal procedures, notification regarding extensions of timelines for investigating complaints, consent to extensions for respondents, and an identified complaint procedure for complaints of harassment on the basis of sex stereotyping under AR 5145.71. During the course of the investigation, the District revised BP/AR 5145.3 and AR 5145.7 on May 3, 2017 and BP 0410 on March 1, 2017 to provide that all complaints of discrimination and harassment will be investigated and resolved under AR 1312.3 and respondents have a right to an appeal. Amended AR 1312.3 also clarified that both parties will receive notice regarding extensions of timelines for investigating and resolving complaints.

OCR found that the principal document shared with School students and parents each year, the Handbook did not advise in the 2015-2016, 2016-2017, or 2017-18 school years about how to file a complaint if a student experienced harassment or discrimination on the basis of sex or gender, despite the fact that BP 5145.3 requires such notice in the Handbook. In addition, the 2015-2016 and 2017-18 Handbook do not include a specific prohibition on harassment on the basis of sex or gender, except with respect to sexual harassment.

Title IX implementing regulations, at 34 C.F.R. § 106.8, require each recipient to designate at least one employee to coordinate its efforts to carry out its responsibilities under the regulation, and the school district must provide adequate notification of the contact information, including the name (or title), address, and phone number for the Title IX Coordinator. OCR found that the District was not in compliance with the regulation because the District's policies did not consistently and adequately identify the Title IX Coordinator. Rather, at different points during the investigation they identified different District staff members as the Title IX Coordinator without specifying the relationship between those designated, and only some documents contain the required contact information. In this regard, BP 5145.3 and AR 1312.3 designate the Superintendent as the Title IX Coordinator (called the Compliance Coordinator in District documents) while BP 5145.9 and AR 5145.7, until May 2017 when it was amended, identified the District's principals as the Coordinator(s). The District's website identifies the Human Resources Director as the individual responsible for coordinating the District's efforts to comply with Title IX and lists all of the required contact information.⁸ Until it was amended on May 3, 2017, AR 1312.3 identified the Superintendent's title and physical address but not his phone number. None of the policies or procedures reviewed identified the contact information for the District's principals. In addition, the Handbooks for 2015-16, 2016-17, and 2017-18 do not identify nor provide contact information for the Title IX Coordinator. OCR also had a concern that the training identified by the District for the former Superintendent with respect to relevant Title IX issues only included the training provided during the 2015-2016 school year at the Complainant's request.

⁸ OCR last reviewed this website on October 30, 2017.

Accordingly, OCR found that at the time the OCR complaint was filed the District was not in compliance with Title IX requirements related to development and dissemination of grievance procedures providing for a prompt and equitable response and adequate notification of and training of a Title IX Coordinator or Coordinators. The District has remedied all of the areas of noncompliance with respect to its grievance procedures through revisions, except with respect to adequate notice of the Title IX Coordinator's title and contact information and consistent and adequate identification of how a complaint may be filed and under which procedure.

Conclusion

For the reasons outlined above, OCR found the District out of compliance with Title IX requirements with respect to the issue investigated in this complaint. To address the identified area of noncompliance, the District entered into the attached Agreement which is aligned with the complaint issue, the findings made, and the information obtained by OCR during its investigation. The District agreed to: retain or designate a consultant to support and assist it in implementing the Agreement; if the Student returns to the District, develop a Student Support Plan for her; if the Student returns to the District and experiences further sex-based harassment, respond to the allegations appropriately and report the response to OCR; modify policies and procedures concerning sex-based harassment; clarify designation of at least one trained and qualified Title IX Coordinator; modify its Parent/Student Handbook and web-based notices; and provide training, information, and education to administrators, teachers, parents/guardians, and students regarding issues concerning sex based harassment predicated on sex stereotyping.

Based on the commitments made in the 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 the statute and regulations at issue in the case with respect to the issue investigated.

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. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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.

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 individual may file an OCR 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 we will seek to protect, to the extent provided by law, personally identifiable information which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Thank you for your assistance in resolving this complaint. If you have any questions please contact the OCR civil rights attorney who investigated this matter, Julie Baenziger, at 415-486-5502 or Julie.Baenziger@ed.gov.

Sincerely,

/s/

Laura Faer
Regional Director

Attachment