



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

REGION IX  
CALIFORNIA

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

November 29, 2017

Mr. Randall Booker  
Superintendent  
Piedmont Unified School District  
760 Magnolia Street  
Piedmont, California 94611

(In reply, please refer to OCR docket no. 09-16-1573.)

Dear Superintendent Booker:

This letter is to inform you that the U.S. Department of Education (the Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against Piedmont Unified School District (District). On September 7, 2016, OCR notified the District that it had opened this investigation based on allegations that the District failed to provide a prompt and equitable response to a student's<sup>1</sup> complaint of sexual harassment, pursuant to Title IX of the Education Amendments Act of 1972 (Title IX), as amended, 20 U.S.C. § 1681 *et seq.*, and its implementing regulations at 34 C.F.R. Part 106.

OCR is responsible for enforcing Title IX and its implementing regulations, which prohibit discrimination on the basis of sex in education programs and activities receiving Federal financial assistance from the Department. The District receives funds from the Department and is a public education entity. Therefore, the District is subject to Title IX and its implementing regulations.

OCR investigated the following issues:

- A. Whether the District adopted and published grievance procedures providing for the prompt and equitable resolution of complaints of sex discrimination, including harassment, pursuant to 34 C.F.R §§ 106.8(a), 106.8(b), and 106.9;
- B. Whether the District took effective steps to prevent recurrence of a hostile environment on the basis of sex when the District allowed a respondent (Person A), who allegedly sexually harassed a student complainant (Student 1), to attend multiple school-sponsored events and activities, including: (1) whether the District took prompt action to investigate or otherwise determine what occurred; and (2) whether the District took effective steps reasonably calculated to prevent harassment of Student 1 by Person A at school-sponsored events and activities, pursuant to 34 C.F.R. §§ 106.31 and 106.8;
- C. Whether the District's actions contributed to a hostile environment on the basis of sex when it hired a security guard to shadow Student 1 at a school-sponsored event, pursuant to 34 C.F.R. §§ 106.31 and 106.8; and

---

<sup>1</sup> OCR notified the District of the Complainant and student's identity at the beginning of the investigation. Their identities are withheld here in order to protect their privacy.

- D. Whether the District provided Student 1 with a prompt and equitable response to notice of alleged peer harassment on the basis of sex, pursuant to 34 C.F.R. §§ 106.31 and 106.8.<sup>2</sup>

To investigate the allegations, OCR reviewed documents provided by the Complainant and the District, and interviewed individuals with information relevant to the investigation. OCR concluded that there was sufficient evidence to support a finding of noncompliance with respect to Issue A. With regard to Issues B, C and D, there was insufficient evidence to support a finding of noncompliance. Pursuant to the enclosed resolution agreement, the District agrees to take specific actions to remedy findings of noncompliance with respect to Issue A. The legal standards, factual findings, and analysis of each issue follow.

## **LEGAL STANDARDS**

The regulation implementing Title IX, at 34 C.F.R. § 106.8(a), requires each recipient to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under the regulation implementing Title IX (i.e., Title IX coordinator), including investigation of any complaint communicated to the recipient alleging any actions which would be prohibited by the regulation implementing Title IX. The regulation implementing Title IX, at 34 C.F.R. § 106.8(b), requires that a recipient adopt and publish grievance procedures providing for the prompt and equitable resolution of student and employee complaints alleging any action prohibited by the regulation implementing Title IX. Finally, the regulation implementing Title IX, at 34 C.F.R. § 106.9, requires each recipient to implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school students, 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 at 34 C.F.R. Part 106 not to discriminate in such a manner.

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 is unwelcome conduct of a sexual nature, and can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, including acts of sexual violence. When such unwelcome conduct creates a hostile environment – when it denies or limits a student’s ability to participate in or benefit from the educational program – it is a form of sex discrimination prohibited by Title IX.

Under Title IX and the regulations, once a recipient of federal funds, such as a school district, has notice of possible sexual harassment of a student by a third party that took place in a recipient’s program, it is responsible for determining what occurred and responding appropriately. A school district is not responsible for the actions of the third party, but rather for its discrimination in failing to respond adequately. A school district violates Title IX and the regulations if: (1) the harassing conduct is sufficiently serious to deny or limit the student’s ability to participate in or benefit from the educational program; (2) the school district knew or reasonably should have known about the harassment; and (3) the school district fails to take appropriate responsive action that is within its authority to end any harassment, eliminate a hostile environment if one has been created, and prevent harassment from occurring again.

---

<sup>2</sup> The complaint also alleged that the student had been harassed on the basis of disability by peers. OCR determined that there were insufficient details to infer that discrimination based on disability may have occurred, and is administratively closing that component of the allegation based on Section 108(b) of OCR’s *Case Processing Manual* (CPM). The CPM is available at <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

A school district 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. This includes a review of misconduct that did not occur in the context of an education program or activity but may have had such an impact.

When responding to alleged sexual harassment, a school district 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 school district to take steps to protect the complainant from further harassment as necessary, including taking interim measures. The school district should also take prompt and effective steps reasonably calculated to end any harassment, eliminate a hostile environment if one has been created, and prevent harassment from occurring again. The school district also should take steps to prevent any retaliation against the student who made the complaint and/or those who provided information.

## **FACTUAL FINDINGS AND ANALYSIS**

### **A. Whether the District adopted and published grievance procedures providing for the prompt and equitable resolution of complaints of sex discrimination, including harassment, pursuant to 34 C.F.R §§ 106.8(a), 106.8(b), and 106.9.**

At the time that Student 1 first identified Person A to the District (January 20XX), the applicable procedures for resolution of complaints of sex discrimination were Board Policy and Administrative Regulation 5145.7 (BP/AR 5145.7) entitled “Sexual Harassment,” and BP/AR 1312.3 entitled “Uniform Complaint Procedures.” On December 1, 2015, the District withdrew BP/AR 5145.7 and replaced it with BP/AR 5145.3, entitled “Discrimination / Hate-Motivated Incidents and Hate Crimes / Hazing / Harassment (including Sexual Harassment), Intimidation, Bullying, and Cyberbullying.” BP/AR 1312.3 remained in effect.

#### ***BP/AR 5145.7 (in effect July 2000 through November 2015)***

##### **Findings of Fact**

BP/AR 5145.7 applied to sexual harassment of students. They did not include any information about the Title IX coordinator. Parents/guardians received annual notifications of BP/AR 5145.7, the procedures were posted near the principals’ offices, provided in any orientation programs for new students, appeared in any publication that set forth the District’s “comprehensive rules, regulations, procedures, and standards of conduct” and were provided to employees and employee organizations. These procedures provided that students would be informed by the District that they should immediately contact a staff member if they felt they were being harassed. A staff member who received such a report was required within 24 hours to “report complaints of sexual harassment to the principal or designee or to another district administrator.” Staff members who observed incidents of sexual harassment were required to report them. The student could also “file a formal complaint with the Superintendent or designee in accordance with the district’s uniform complaint procedures” (i.e., BP/AR 1312.3).

BP/AR 5145.7 prohibited sexual harassment of any student by any employee, student, or other person. They required that an individual accused of harassment be spoken with individually in the site-level investigation and did not include limitations on the categories of persons reported for harassment (i.e., the respondent) to whom the procedures applied. The procedures applied to sexual harassment of students “at school or at any school-related activity” and stated that no student should “endure ... any harassment which [impaired] the educational environment or a student’s well-being at school,” but did not explicitly cover sexual harassment that occurred off of school grounds and had an ongoing impact on campus. BP/AR 5145.7 provided a detailed list of conduct that may constitute sexual harassment but did not provide examples of sexual violence (i.e., rape, sexual battery, etc.).

The procedure for investigating a complaint of sexual harassment under BP/AR 5145.7 included specific steps in the process, such as speaking with certain individuals and providing an opportunity for the student who alleged

harassment (the student complainant) to “describe the incident, present witnesses and other evidence of the harassment, and put his/her complaint in writing.” The procedure required that the investigation occur “promptly” but did not provide timelines. There was no provision for interim measures pending the outcome of any investigation. If the student complainant and the respondent agreed, they could resolve the sexual harassment complaint informally with the help of a counselor, teacher, administrator, or trained mediator; they were not required to work out the problem directly unless help from the staff or trained mediator was provided. At the conclusion of the investigation, the principal or designee was required to complete a written report of his/her findings, decision, and rationale and present the report to the student complainant and the respondent. The principal/designee was also required by the procedure to check in with the student complainant within two weeks of receiving the complaint to determine if s/he had been subjected to additional discrimination, other misconduct, or retaliation, and if so, would make a record of that information. If the investigation concluded that sexual harassment occurred, the principal/designee was required “to end the harassment, address the effects of the harassment on the person harassed, and prevent retaliation or further harassment.” In addition, the superintendent or designee was required to “take appropriate actions to reinforce the district’s sexual harassment policy,” such as student instruction, staff in-service, counseling, or other actions. There was no right to appeal.

#### Analysis and Conclusion of Law — BP/AR 5145.7

OCR found that BP/AR 5145.7 did not meet Title IX’s procedural requirements in several respects. First, in violation of 34 C.F.R. § 106.8(a), they did not identify or include any information about the Title IX coordinator, nor require that a designated employee (i.e., the Title IX coordinator) coordinate the efforts of the District to comply with Title IX, including the investigation of any complaint. Second, BP/AR 5145.7 did not describe a grievance procedure consistent with the requirements of Title IX and 34 C.F.R. § 106.8(b) because they did not include consideration of 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, and they did not include any timeframes for steps in the investigation process. Third, BP/AR 5145.7 did not provide notice that complainants could file with the Title IX Coordinator or OCR. Lastly, BP/AR 5145.7 did not meet the requirement of 34 C.F.R. § 106.8(b) that the grievance procedure be equitable, because the respondent to the sexual harassment complaint was not provided with rights equivalent to those of the complainant. In specific, complainants were allowed to present witnesses and other evidence but the respondent was not.

#### ***BP/AR 5145.3 (AR in effect December 2015 to present; BP in effect January 2010 to present)***

##### Findings of Fact

BP/AR 5145.3 identify the Superintendent (in the BP) and the Director of Curriculum and Instruction (in the AR) as the employees responsible for coordinating the District’s compliance with Title IX, and provide their work addresses, telephone numbers, and email addresses. They state that the Director of Curriculum and Instruction is responsible for handling complaints filed pursuant to the District’s UCP. BP/AR 5145.3 state that the principal or designee at each school is responsible for receiving reports of sexual harassment, and students should report incidents of sexual harassment that they experience or witness to the principal or the principal’s designee “as soon as reasonably possible (within 24 hours).” The procedures also provide for periodic notifications to students, employees, and parents/guardians of the sexual harassment policy, and the posting of the policy near each principal’s office.

BP/AR 5145.3 limit their application regarding third parties to “any other person in the District authorized to transact business or perform services on behalf of the District,” or a student, teacher, administrator, or staff member. They provide that sexual harassment includes such conduct “which takes place on school property, or at any school-sponsored function, or on the way to or from school, or on a school bus.” Later, the procedures state that sexual harassment “in the educational setting” is prohibited. They do not specifically cover sexual harassment that occurs outside of the school setting and impacts a student in the school setting. BP/AR 5145.3 provide a detailed list of conduct that may constitute sexual harassment but do not provide examples of sexual

violence. The student complainant and respondent may agree to resolve the complaint informally with the assistance of a counselor, teacher, administrator, or trained mediator.

The principal and/or designee is responsible for determining whether an alleged act constitutes a violation of the policy, and “in so doing ... shall conduct a prompt, thorough and complete investigation of the alleged incident.” A site-level grievance procedure applies for complaints of sexual harassment. The site-level grievance procedure is similar to the process described in the formerly applicable BP/AR 5145.7. In contrast, it includes equivalent opportunities for both the complainant and respondent to “describe the incident, identify and request the presence of others who witnessed the incident, and to present any other information or evidence.” BP/AR 5145.3 do not provide timeframes for the investigation process. The procedures state that formal complaints of sexual harassment should be filed pursuant to BP/AR 1312.3. There is no provision for interim measures pending the outcome of any investigation.

#### Analysis and Conclusion of Law — BP/AR 5145.3

OCR found that BP/AR 5145.3 did not meet Title IX’s procedural requirements for several reasons. With respect to the Title IX Coordinator, BP 5145.3 incorrectly identifies the Superintendent and AR 5145.3 identifies the Director of Curriculum and Instruction as the employees responsible for coordinating the District’s compliance with Title IX. However, OCR found that only the Director of Curriculum and Instruction has been the Title IX Coordinator since the 2015-16 school year. Second, the procedures do not 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; and third, there are no timeframes, reasonably prompt or otherwise, for the investigation process.

#### *BP/AR 1312.3 (last revised 2007; remains in effect)*

#### Findings of Fact

Per BP 1312.3, complaints alleging unlawful discrimination, including discrimination on the basis of sex, may be filed through the Uniform Complaint Procedure (UCP) described in BP/AR 1312.3. BP/AR 5145.7 and BP/AR 5145.3 also referenced the UCP as the appropriate procedure for filing a formal complaint of sexual harassment. However, AR 1312.3 lays out procedures for only two categories of complaints: (1) complaints about programs including adult education, career technical education, child development, consolidated categorical aid programs, migrant education, special education and child nutrition programs; and (2) complaints about instructional materials, teacher vacancy and misassignment, and school facilities. There are no procedures in BP/AR 1312.3 that would cover complaints of discrimination on the basis of sex in any other programs or circumstances.

#### Analysis and Conclusions of Law — BP/AR 1312.3

OCR found that BP/AR 1312.3 did not meet Title IX’s procedural requirements because they do not describe how or where to make a complaint alleging sexual harassment; they do not identify the Title IX coordinator or the role of the Title IX coordinator; they do not state that the procedures apply to allegations of discrimination or harassment carried out by students and third parties; they do not specify what activities are covered by the prohibition on sexual harassment; and they do not describe a process for the reporting and investigation of complaints of sexual harassment.

Accordingly, OCR found the District out of compliance with Title IX and its implementing regulations with respect to Issue A.

- B. Whether the District took effective steps to prevent recurrence of a hostile environment on the basis of sex when the District allowed a respondent (Person A), who allegedly sexually harassed a student complainant (Student 1), to attend multiple school-sponsored events and activities, including: (1) whether the District took prompt action to investigate or otherwise determine what occurred; and**

**(2) whether the District took effective steps reasonably calculated to prevent harassment of Student 1 by Person A at school-sponsored events and activities, pursuant to 34 C.F.R. §§ 106.31 and 106.8.**

Findings of Fact

*Background*

Pursuant to § 106 of the Case Processing Manual (CPM), OCR will generally take action only with respect to those complaint allegations that have been filed within 180 calendar days of the date of the last act of alleged discrimination, unless the complainant is granted a waiver under CPM § 107. Student 1’s allegations stem from events in summer 20XX which OCR determined to be untimely. Information about the summer 20XX events is provided here for background purposes only; OCR investigated allegations from January 20XX through June 20XX.

Student 1 attended Piedmont High School (School) XXXXXXXXXXXX XX XXXXX XXXXX XXX XXXXXXXXXXXX XX XXXX XXXX. Student 1 alleged that in summer 20XX at off-campus events, she was subjected to repeated unwelcome sexual conduct by a male student approximately one year older than her (Person A). Person A attended a different school district; both students were members of a XXXXXXXX XXXXX group. The XXXXX group XXXX XXX XXXXXXXXXXXX XX XXX XXXXX XXXXXXXXXXXX on the District’s campus at least two days a week during the 20XX-20XX school years. (Student 1’s allegations regarding Person A’s sexual conduct toward her will be referred hereinafter as “20XX incidents.”) Student 1 asserted to OCR that as a consequence of the 20XX incidents she suffered emotional injury and developed a post-traumatic stress disorder, causing significant anxiety and depression. XXX XXXXXXXXXXXX XXX XXXXXXXXXXXX XX XXXXXXXX XXXXXXXXXXX XXXX XXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX XXXX XXX XXXXXXXXXXXXXXXXXXXX.

To Student 1’s knowledge, Person A continued XX XXX XXXXX until the 20XX-XX school year with a likely gap in participation in 20XX. Student 1 remained fearful of seeing Person A after school. She told OCR that she would leave school right after dismissal to avoid seeing him. On the occasions when she had to stay late after school or go back to the school late in the afternoon or evening XXX XXXXXXXXXXXX XX XXXXXXXX XXXXXXXXXXXXXXXXXXXX, Student 1 had her mother pick her up from school XXXXXXXXXXX XXXX XXX X XXX XXXXXXX XXXX XXXX XXX XXXXXXX.

**20XX-XX School Year ( XXXX grade)**

In October 20XX, a Section 504 Plan was put in place for Student 1 to address some effects of her post-traumatic symptoms, including her chronic anxiety XXX XXX XXXXXXXXXXX XXXXXXXXXXX XX XXX XXXXXXXXXXXXXXXXXXXX XX XXX XXXXXXXXXXXXXXXXXXXX.

**20XX XXXXXXX XXXX**

In January 20XX, Student 1 learned through mutual friends that one of her classmates (Student 2) had invited Person A to the XXXXXXX XXXX. Student 1 told OCR that she spoke to Student 2 and asked her not to bring Person A to the XXXXXXX XXXX, which Student 1 would also be attending. When Student 2 declined, she brought her request that Person A not be allowed to attend to her school counselor (Counselor) and Assistant Principal 1 (AP 1) on or about January XX, 20XX. AP 1 and the Counselor had several conversations with Student 1 and Student 2 about the situation that did not resolve Student 1’s concerns.

On January XX, 20XX, the Principal, the Counselor, and AP 1 met with Student 1 and her parents. Student 1 and her parents stated that Student 1 had experienced a “sexual assault” and identified Person A by name. This was the first time that the District was notified of the identity of Person A. The Principal told OCR that he asked Student 1 and her family whether there was a criminal record or court case regarding the 20XX incidents, whether there was a restraining order in place, and whether they had reported the alleged sexual assault to the police when it occurred. He told OCR that the family did not answer those questions. The Principal then told Student 1 and

her parents that there was no basis to prohibit Person A from attending the event because he was an invited member of the public, and there was no evidence of misconduct by Person A. However, they discussed measures to protect Student 1 at the event.

In the afternoon of January XX, 20XX, the Principal provided the local police department chief with the identities of Student 1, Student 2, and Person A and explained that Student 1 alleged a sexual assault. He also recounted to the police chief the meeting from earlier in the day. Based on the information provided, OCR determined that between January XX, 20XX and the first week of February 20XX, there were several meetings and phone calls between Student 1, her parents, and the police chief regarding the 20XX incidents. According to the District and Student 1, the police department concluded that there was no evidence of a sexual assault but did not have any records of its investigation. The Principal told OCR that the police chief said the allegation involved a kiss and that the chief had spoken with the family previously.

The District's narrative response to OCR's data request stated that Person A had never been a student at the District but it had taken her complaint seriously. It also emphasized that there had been no police reports filed by Student 1's parents following the 20XX incidents, and that there was "no direct evidence" that sexual harassment had occurred.

OCR asked several District administrators whether they separately examined or investigated Student 1's allegation that she had been sexually assaulted by Person A when assessing whether Person A participating in school-sponsored events and activities could create a hostile environment for her. The Principal stated that the District did investigate; they learned in the January XX, 20XX meeting that Student 1 had been "sexually assaulted" and that it involved a kiss. He followed up afterwards by contacting the police department. The Superintendent told OCR the District did investigate, but also stated that it was not the role of the District to doubt the allegations or to try to figure out whether or not what he heard had occurred, and that determining the veracity of the allegations was a matter for the police. The Superintendent stated that the District was diligent in following up with Student 1 later to ensure that Person A was not interacting with her.

On January XX, 20XX, the Principal emailed Student 1's parents explaining the measures that would be put in place to support Student 1 at the XXXXXX XXXX. These included: the Principal, the two assistant principals, Student 1's counselor, a second guidance counselor, two teachers, and four classified employees would be present to supervise the event; the venue would have four staff members to supervise the event; one employee from a private security would be present to supervise (as requested by the family)<sup>3</sup>; the District would bear all supervision costs; and Student 1 should contact any of the supervising individuals without hesitation at the event if she felt she needed assistance.

Student 1, Student 2, and Person A, all attended the 20XX XXXXXX XXXX the night of January XX, 20XX. Student 1 told OCR that she had not seen Person A since the 20XX incidents. While she stayed for the entire event, she experienced a panic attack in the restroom at one point. She did not report this to School staff. The Principal, AP 1, and the Counselor all told OCR that they saw Student 1, Student 2, and Person A at the event, did not see any interactions between Student 1 and Person A, and stated that all three appeared to be enjoying themselves throughout the event. Student 1 confirmed to OCR that Person A did not interact with her.

#### *Spring 20XX and April XXXXX XXXXXXX*

On February X, 20XX, Student 1's parents emailed the District and explained that Student 1 did not feel safe at the XXXXXX XXXX. They stated that they wanted to discuss how to provide for the "safety and comfort of our daughter" at the School and in after-school activities. Student 1, her parents, and the District continued communicating about the possibility of Person A's presence on campus during spring 20XX. Student 1 and Student 2 were both involved in XXXXX at the School, and therefore both participated in XXXXX

---

<sup>3</sup> The allegations related to the private security employee are addressed in Issue C below.

XXXXXXXX and similar events at the School. In April 20XX, Student 2 asked Person A – at the request of the District and Student 1 – not to attend a XXXXX XXXXXXXX, and he agreed.

***20XX-XX School Year (XXXX grade)***

*December 20XX XXXXX XXXXXXXX*

On December X, 20XX, Person A attended a XXXXX XXXXXXXX at the school where both Student 1 and Student 2 performed. Student 1 did not see Person A but friends told her that he was present. The fact of his presence was extremely upsetting to Student 1, and her parents notified the District of this by email after the XXXXX XXXXXXXX.

*20XX XXXXXXX XXXX*

Person A attended the 20XX XXXXXXX XXXX with Student 2. In anticipation of his presence at the event, on January X, 20XX, the Superintendent emailed Student 1's parents and explained the supports the District would put in place for the XXXXXXX XXXX, i.e., supervision by staff and a meeting with Person A to go over guest rules. By email on January X, 20XX, the Superintendent told Student 1's parents that he did not have "authority or standing to issue a no-contact order as this adult [i.e., Person A] is not a student at" the school. However, he would meet with Person A to discuss the District's expectation that he not interact with Student 1 in any way, as a condition of his attendance as a guest at school events. The Superintendent asked for permission to contact the District's Special Education Director to request an assessment to provide for any additional academic, social, or emotional supportive services needed for Student 1; Student 1's parents declined consent to an assessment on January XX, 20XX.

Leading up to the event, between January XX-XX, 20XX, the Superintendent, Student 1, and Student 1's parents communicated via email several times, with Student 1 and her parents reiterating their request that Person A be banned from the upcoming XXXXXXX XXXX, and the Superintendent reiterating that he could not ban Person A but other steps would be taken to support Student 1. The Superintendent wrote an email to Student 1 and her parents on January XX that for the remainder of the school year, the following supports would be in place: administration and staff would be present at dances, concerts and extra-curricular activities; the Wellness Center would remain available to Student 1; Person A would not be allowed to be present on campus during instructional time; the District would speak with Person A and "verbalize the District's expectations for his attendance as a guest"; and if the parents consented, the District would conduct a social-emotional assessment of Student 1. In addition, for the XXXXXXX XXXX, the District would: hold open the deadline to purchase tickets for Student 1 to enable her to decide whether or not to attend; there would be "ample supervision and security"; he spoke with Student 2 and Person A and relayed that Person A was not to interact with Student 1 in any way as a condition of his attendance and Person A agreed; and Person A was required –as all guests were at that time – to meet with an assistant principal prior to entering the XXXXX regarding expectations for guests.

On January XX, 20XX, Student 1, Student 2, and Person A attended the XXXXXXX XXXX. Assistant Principal 2 (AP 2) was the administrator in charge of that event. When Person A came to the dance, AP 2 reviewed the expectations of guests XX XXXXXXX with Person A. At about X:XX p.m., Student 1 told AP 2 that she wanted to leave and go home. Student 1 told OCR that she was very upset and crying; AP 2 remembered the events and stated that Student 1 appeared very upset but was not crying. AP 2 encouraged Student 1 to stay. She called Student 1's mother and told her that she had requested to go home; her mother and AP 2 talked about what they could do to encourage her to stay. When AP 2 spoke with Student 1, she asked her specifically if they (Person A and Student 2) had spoken to her or looked at her. Student 1 said that they were walking around the rooms, and the room that Student 2 and Person A had chosen to stay in was the same room that Student 1's friends were in. Student 1 and her date were picked up by one of Student 1's parents.

*February 20XX XXXXXXX and April 20XX XXXXX XXXXXXXX*



On February X, 20XX, Person A attended a XXXXXX XXXXXXXX in which Student 1 performed. She found out from her friends that he was present, and she became frightened. She called her father and had him meet her at a different exit so she could get into the car immediately. She told OCR that she had trouble sleeping for several weeks afterward. The District was not notified of this incident.

On April XX, 20XX, there was a XXXXX XXXXXXXX at which both Student 1 and Student 2 performed, and Person A was present. Person A lingered by an exit that Student 1 would have taken; Student 1's parents notified the District of this incident in May 20XX when again requesting a ban on Person A.

*May 20XX XXXXX XXXXXXXX*

In May 20XX, the Superintendent called Person A and reminded him of the guest policies and not to interact with Student 1. On May XX, 20XX, Student 1's parents emailed the Superintendent requesting that Person A be prohibited from attending a XXXXX XXXXXXXX on May XX, 20XX. Their email stated that at the last XXXXX XXXXXXXX (April XX, 20XX), Person A's presence "brought up [Student 1]'s past trauma that he had caused, and strongly affected her PTSD symptoms which then affected her studies and grades."

On May XX, 20XX, the Title IX Coordinator emailed Student 1's parents and stated that the District wanted to support Student 1 and that they could support make-ups or accommodations for missed assignments or assessments. Her email reiterated the District's position that it "does not have the authority to enforce a no-contact order as this adult is not a student" at the school. Later on May XX, 20XX, Student 1's parents notified the District that Person A had been at the exit used by XXXXXXXX for a long time after the April XX XXXXX XXXXXXXX was over, and Student 1 had to wait XXXXXXXXXX until he left. The Superintendent responded that he had not been aware of that, and they would make sure that Person A stayed away from such exits. After speaking with the Superintendent and the Principal, AP 2 spoke to Student 2's parent by phone and requested that if Person A was going to attend the XXXXX XXXXXXXX that he stay in the public area, and not be in the non-public areas or where the XXXXXXXXXXXX XXXX XXXXXXXXXXXX.

*May 20XX XXXXXXX XXXX*

On May XX, 20XX, Student 1's parents emailed the District and notified them that Student 1 would not be attending the XXXXXXX XXXX on May XX, 20XX because Person A would be in attendance. The Superintendent stated that the School would hold a ticket for Student 1 in case she changed her mind. He also asserted that "if [the District] were to have received a restraining order, I would then have been able to prohibit his attendance." Student 1 did not attend the XXXXXXX XXXX; the District refunded the ticket.

*June 20XX Graduation ceremony*

On June X, 20XX, Student 1's attorney emailed the District's counsel regarding Student 1's request that Person A be prohibited from attending the graduation ceremony on June X, 20XX. On June X, 20XX, the District's counsel stated in email that there would be as many as 4000 spectators in attendance; there was no time when members of the graduating class would have direct interaction with the audience. She also asserted that graduating seniors would be supervised while lining up, walking to the field, and leaving the staging area after the ceremony. The only time the District thought there may be a possibility for Person A and Student 1 to interact would be when they reconnected with their families. To address that possibility, Student 1 would be monitored by her Counselor. The District also accommodated Student 1's anxiety about the presence of Person A by waiving the graduation rehearsal requirement for her. On June X, 20XX, Student 1 attended her graduation ceremony. According to her, Person A sat in the front row and this was extremely upsetting for her. The Counselor and Principal recalled that Student 1 appeared happy and smiling at graduation.

Analysis and Conclusion of Law

1. *Prompt and immediate action to investigate or otherwise determine what occurred*

Pursuant to Title IX and its implementing regulations, upon notice of alleged sexual harassment by an unaffiliated third party against a student, a school district is required by Title IX to investigate or otherwise determine what occurred in order to assess whether the student could be subjected to a hostile environment in one of its programs or activities.

OCR's investigation raised concerns about the District's understanding of its obligations under Title IX. In this case, Student 1 and her parents first provided the identity of Person A to the District on January XX, 20XX. They stated that a "sexual assault" had occurred and requested that Person A be prohibited from attending the XXXXXX XXXX because his participation at the XXXXXX XXXX could subject Student 1 to a hostile environment on campus. The District made initial inquiries of Student 1 and her parents in the January XX, 20XX meeting regarding what had happened.

However, rather than conduct its own inquiry to determine what occurred, the Principal focused in the January XX, 20XX meeting on whether criminal charges had been filed or a restraining order entered. Based on the parents' response that a restraining order had not been entered and criminal charges had not been filed, he told Student 1 and her parents that Person A could not be prohibited from attending the XXXXXX XXXX, but that the District would put other measures in place to support Student 1. During OCR's investigation, the District told OCR that it worked with the local police department to investigate the allegations against Person A, and because "no objective evidence" supported the sexual assault allegation, the District could only provide certain supports and protective measures for Student 1. However, OCR found through its interviews and review of documents and the timeline established from the evidence that the District reached a determination that it did not need to further investigate *before* speaking with the police department. The Superintendent also told OCR that it was not the District's role to doubt Student 1's report, nor to determine whether or not a sexual assault had occurred, and that determining the veracity of the allegations was a matter for the police. As a matter of technical assistance, OCR advises the District that while the results of a police investigation may be relevant to determining whether or not sexual harassment or assault occurred, the legal standards applied and offenses considered by law enforcement under the penal code and the District under Title IX are different. The District has a responsibility under Title IX for conducting its own inquiry and making its own determination, which is separate and apart from any law enforcement or criminal investigation or response.

Nevertheless, as described in the next section, the District worked with Student 1 and her parents to put in place certain measures to help her attend events for the rest of her high school career. OCR concluded that in the specific circumstances of this case, because the District put in place effective supportive and protective measures for Student 1 promptly after receiving notice from Student 1 and her parents of an alleged sexual assault there was insufficient evidence to support a finding of noncompliance.

*2. Effective steps reasonably calculated to prevent harassment*

Pending the outcome of a response to a report or an investigation of a complaint, Title IX requires a school district to take steps to protect the complainant from further harassment as necessary, including taking interim measures. As discussed under Issue A, neither of the sexual harassment procedures in effect during the relevant time period (BP/AR 5145.7 and BP/AR 5145.3) addressed taking steps to protect a complainant from further harassment pending the completion of an investigation. Nevertheless, OCR found that in this case, the District implemented reasonable interim measures designed to ensure that further harassment did not occur.

The District provided the Student with access to counseling at the Wellness Center and academic support from the Counselor throughout her remaining years in high school, both of which she utilized. In October 20XX, the District developed a Section 504 Plan to address her anxiety, post-traumatic stress symptoms related to the 20XX incidents, and the effects of XXX XXXXXXXXXXXXXXXXXXXXXXXXXXXX. For the January 20XX XXXXXX XXXX, the District provided extra supervision from its staff, paid for an extra private security officer, and encouraged Student 1 to let any supervisor know if she feared for her safety at the XXXXXX

XXXX. Later in spring 20XX, the District asked Student 2 to ask Person A not to attend a XXXXX XXXXXXXX, and he agreed. In 20XX, the District informed Student 1 that the Wellness Center remained available to her, that the District had prohibited Person A from being present on campus during instructional time, and that administration and staff would be present at dances, concerts, and extra-curricular activities to ensure that further harassment did not occur. The Superintendent spoke with Person A in spring 20XX (between the 20XX XXXXXXX XXXX and the May 20XX XXXXX XXXXXXXX) and advised him not to interact with Student 1; one of the assistant principals checked in Person A and Student 2 at a XXXXX and explained the behavior expectations. In another instance, an assistant principal asked Person A to refrain from going XXXX XXXXX XX XXXXXXXXXXXXXXX. The District also recognized that the Student may benefit from an evaluation for special education, and asked for consent to conduct an assessment of Student 1 to determine if there were additional supports they could provide to her. (Student 1's parents declined consent.) Lastly, the District waived the timeline for purchasing XXXX tickets and the mandatory graduation rehearsal to accommodate her anxiety about seeing Person A and accommodated her request for extra time on tests and assignments.

Student 1 and her parents asserted that these steps were insufficient, and repeatedly asked that Person A be prohibited from attending any school events where she was present. However, the District is not required to implement the exact steps requested by a complainant. Rather, it is required to implement reasonable measures that will prevent further harassment. The District communicated routinely with the Student and her parents about their concerns, and provided a number of protective measures which were individualized to the Student's schedule and concerns.

OCR notes that one of the steps that the District could have implemented, namely a letter or directive to the parties involved to refrain from contact, including verbal, written, or other communications at school or at school activities, was not issued. Such letters are typically referred to as "no contact letters," "avoidance of contact orders," or similar names, and do not require court or police involvement. The District insisted to the Student and her parents that it had no authority to direct Person A to refrain from contacting Student 1. However, the District did establish informal "no contact" requirements by telling Person A to refrain from speaking with or approaching Student 1, and to ask him not to be in certain areas following XXXXXXXXXXXXXXX. OCR found the District's efforts were effective in this regard, as there was no evidence that Person A made any contact with Student 1 at any of the events he attended. OCR concluded that there was insufficient evidence to support a finding of noncompliance with respect to this issue.

**C. Whether the District's actions contributed to a hostile environment on the basis of sex when it hired a security guard to shadow Student 1 at a school-sponsored event, pursuant to 34 C.F.R. §§ 106.31 and 106.8.**

Additional Findings of Fact

When the District denied Student 1 and her parents' request that Person A be banned from attending the January 20XX XXXXXXX XXXX, it agreed to hire an employee from a private security company XXXXX XX X XXXXXXX XX XXXXXXX XXX XXXXXXX to supervise. This agreement is documented in the District's January XX, 20XX email. The Principal's email stated that it would have one employee from the private security company who would be present to supervise (as requested by the family); the District paid for the security personnel.

Student 1 told OCR in her interview that the District hired the security guard from a different company than she and her family requested; however, this statement is unsupported in the documents provided. Student 1 stated that the security guard followed her all night and that this caused her embarrassment. She stated that he was often no more than twenty feet away from her, possibly as close as five to ten feet away from her.

OCR asked AP 1 about his observations of the security guard at the 20XX XXXXXXX XXXX. AP 1 stated that Student 1 seemed to be enjoying herself, and the security guard was acting the same as everyone else who was

supervising: walking around and watching from a distance. He did not observe the security guard as close to Student 1 as within five to ten feet. The Principal stated that he identified Student 1 and Person A at the beginning of the event and asked the security guard to keep Student 1 in his sight. He stated that he did not observe anything of note with respect to the security guard following Student 1 or standing too close and observed that Student 1 and her date appeared to enjoy the event.

Analysis and Conclusion of Law

OCR found that the District agreed to hire a security guard for the 20XX XXXXXX XXXX at the request of Student 1 and her parents, and did so as part of its efforts to help Student 1 feel safe at the event, not to harass her. Student 1 told OCR that the security guard was shadowing her at the event, sometimes as closely as within five to ten feet. But two of the District staff members who attended the event informed OCR that the security guard was conducting himself just as the District staff supervising did; they did not observe him shadowing Student 1 in such a way that would identify to others that he was specifically watching Student 1. Due to the fact that the security guard was hired and paid for by the District at the request of Student 1 and her parents, and no staff members observed the security guard over-stepping his boundaries in a way that targeted Student 1, OCR concluded there was insufficient evidence to support a finding of noncompliance with respect to this issue.

**D. Whether the District provided Student 1 with a prompt and equitable response to notice of alleged peer harassment on the basis of sex, pursuant to 34 C.F.R. §§ 106.31 and 106.8.**

Findings of Fact

Student 1 alleged in her complaint that she was subjected to retaliatory harassment by Person A and Student 2, that she provided actual notice to the District of the harassment, and that upon information and belief, those allegations were never investigated. On January XX, 20XX, Student 1 told the Superintendent in an email that there had been rumors spread among her peers that XXXX XXX XXXXXXXXXXX XXXX XXXXXX X XX XXXXXX XXXX XXXX XXX X XXX XXXXXX XXX XXXXXXXXXXX XXXXXX XXXXXX. On January XX, 20XX, the Superintendent emailed Student 1 and asked her to inform the high school administrators or her counselor so they could take action regarding the spreading of rumors. She confirmed to the Superintendent that she had notified the Principal.

AP 2 was assigned to investigate Student 1’s allegations. X---paragraph redacted---X.

Analysis and Conclusion of Law

OCR’s interviews with AP 2 and review of documentation provided by the District demonstrated that the District promptly – within a week – investigated Student 1’s allegation that she was being retaliated against by Student 2 for her complaint regarding Person A. The District could not corroborate that statements about Student 1 had been made by Student 2, but did conclude that the students involved were speaking with one another about Student 1’s allegations against Person A. The District directed them to cease discussing the issue with peers. AP 2 also contacted the parents of the students and shared her conclusions and warnings with them. OCR did not obtain any evidence that the alleged name calling or rumors continued after the warnings, indicating that the District’s response was effective in preventing further conduct. Accordingly, OCR concluded there was insufficient evidence to support a finding of noncompliance with respect to this issue.

**CONCLUSION**

The District has entered into the enclosed Agreement to address the deficiencies and violations identified in this case. The Agreement includes but is not limited to:

- Revision of the District’s notice of nondiscrimination to include required contact information for the Title IX Coordinator and referral information for OCR;

- Revision of its policies and procedures, including BP/AR 5145.3 and BP/AR 1312.3, to be consistent with Title IX requirements; and
- Title IX training for District employees who are directly involved in receiving, investigating, and/or resolving reports of sex discrimination, including sexual harassment, or who will otherwise assist in the coordination of the District's compliance with Title IX.

When fully implemented, the Agreement is intended to address all of OCR's compliance concerns in this investigation. OCR will monitor the implementation of the Agreement until the District is in compliance with Title IX and its regulation, which were at issue in the case. This concludes OCR's investigation of the complaint and should not be interpreted to address the District's compliance with any other regulatory provisions or to address any issues other than those addressed in this letter. OCR is closing the investigation of the complaint as of the date of this letter, and notifying the Complainant concurrently. 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 individual may file another complaint alleging such treatment. Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. 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 cooperation in resolving this case. If you have any questions regarding this letter, please contact Civil Rights Attorney Laura Welp at (415) 486-5577 or [laura.welp@ed.gov](mailto:laura.welp@ed.gov).

Sincerely,

/s/

Kana Yang  
Acting Team Leader

Enc.

Cc: XXX XXXXXXX, Counsel for District  
Fagan Friedman & Fulfrost, LLP (by email only)