



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

September 10, 2018

VIA ELECTRONIC MAIL

Ed Cora, Superintendent
Santa Paula Unified School District
201 S. Steckel Drive
Santa Paula, CA 93060

(In reply, please refer to case no. 09-18-1246.)

Dear Superintendent Cora:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the Santa Paula Unified School District (District). The Complainant, the parent of a former XXXXX grade student (Student)¹ at an elementary school (School), alleged that the District received notice of allegations that the Student was subjected to harassment by other students on the basis of sex, specifically non-conformity with sex stereotypes, and the District failed to respond in a prompt and equitable manner to notice of the harassment.

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

To investigate this complaint, OCR interviewed the Complainant and gathered evidence by reviewing documents provided by the District and the Complainant. The District expressed interest in voluntary resolution on May 23, 2018, before OCR had completed its investigation, and OCR determined that voluntary resolution was appropriate in this case. Accordingly, OCR did not make a determination as to whether the District was in compliance with Title IX and its implementing regulations with respect to the issue investigated in this complaint. On September 7, 2018, the District entered into a Resolution Agreement (Agreement) to resolve the compliance

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

concerns based on the evidence gathered to date. The applicable legal standards, facts gathered to date, and OCR's resolution of the issue investigated in the complaint is summarized below.

Issue: *Whether the District received notice of allegations that the Student was subjected to harassment by other students on the basis of sex, specifically non-conformity with sex stereotypes, and the District failed to respond in a prompt and equitable manner to notice of the harassment.*

Legal Standard

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. Sex harassment, including gender-based 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 victim's failure to conform to stereotyped notions of masculinity or femininity.

Under the 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 district is not responsible for the actions of a harassing student, but rather for its own discrimination if it fails to respond adequately. A school district may violate Title IX and the regulations if: (1) the harassing conduct is sufficiently serious --- severe, persistent, or pervasive --- to deny or limit the student's ability to participate in or benefit from the educational program; (2) the district knew or reasonably should have known about the harassment; and (3) the district fails to take appropriate responsive action. These steps are the district's responsibility whether or not the student who was harassed makes a complaint or otherwise asks the district to take action.

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 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 of harassment and remedy the effects of the harassment.

In addition, the Title IX regulations establish procedural requirements that are important for the prevention and correction of sex discrimination, including gender-based harassment. These requirements include issuance of a policy against sex discrimination (34 C.F.R. § 106.9) and

adoption and publication of grievance procedures providing for the prompt and equitable resolution of complaints of sex discrimination (34 C.F.R. § 106.8[b]). The regulations also require that recipients designate at least one employee to coordinate compliance with the regulations, including coordination of investigations of complaints alleging noncompliance (34 C.F.R. § 106.8[a]).

Facts Gathered to Date

Background

The Complainant told OCR that the Student was XXX years old and in XXXXX grade at the School during the 2017-2018 school year. She said that he liked to wear bracelets and necklaces; his favorite colors were purple and pink and he drew with crayons in these colors; and he liked princesses, dressing up, and wearing nail polish.

The Complainant stated that from approximately August XX, 2017 to February X, 2018, the Student was harassed by other students based upon his failure to conform to male sex stereotypes. According to the Complainant, the harassment initially was oral and consisted of name-calling and progressed to physical harassment on three different occasions, resulting in the Student being tripped, fallen on and bitten, and thrown to the ground, causing a black eye and a facial abrasion. The Complainant alleged that some, but not all, incidents of alleged harassment took place at the After-School Program for Instruction, Recreation, and Enrichment (ASPIRE), which is held on the School's campus. According to the District's website, ASPIRE is an afterschool program for low income youth that is a collaborative partnership between the District and the Boys and Girls Club of Santa Clara Valley.

Chronology of Alleged Incidents of Harassment

The Complainant stated that in August 2017, a group of students including Student A and Student B asked the Student why he was wearing nail polish. According to the Complainant, the Student described that Students A and B asked this in a "not nice" way. The Complainant told OCR that the Student was upset and asked the Complainant to take the nail polish off and did not wear it again for three months. The Complainant stated that the Student told her that School staff members had witnessed the incident but did not do anything. She did not specify to OCR which School staff members witnessed the incident.

The Complainant stated that from August-November 2017, on the playground, during XXXXXXXX XXXXXXXX XXXXXXXXXXXX XXXXX class, and at ASPIRE, at least six students including Students A, B, and C frequently made fun of the Student for liking "girl stuff" and because his nails had been painted. The Complainant stated that Students A, B, C, and other students also frequently called the Student "gay." On one occasion, Student C and his sister

chanted, “[The Student] likes girl stuff.” The Complainant said that the Student did not know what “gay” meant, but that he was upset about the students making fun of him. He complained to his XXX teacher, to yard staff members, and to ASPIRE staff members. The Complainant alleged that these District staff did not respond to the Student’s complaints except for on two occasions: one time when the XXX teacher overheard the students calling the Student gay and told them to “be nice”; and another time when the XXX teacher switched a student’s behavior card from green to yellow in response to his commenting on the Student’s preference for pink and purple crayons, nail polish, and other things not stereotypically associated with boys. The Complainant did not identify specific dates for when these incidents occurred.

The Complainant told OCR that during the week of November XX, 2017, Students A and B tripped the Student while they were all participating in the “Turkey Trot” race at the School. The Complainant stated that the Student told a teacher, who allegedly dismissed the complaint by saying that the Student was with a group of students who were “all running around.” The Complainant stated that she was concerned because these were the same students who had been name-calling and taunting the Student. When the Student’s father informed a yard duty staff member the next day that the Student had been tripped by Students A and B, she allegedly also said that the Student was part of a group of students who were running around.

The Complainant stated that in early January 2018, the Student fell while he was playing tag with other students during ASPIRE, and Student C fell or jumped on top of the Student and bit him near his groin. The Complainant told OCR that an ASPIRE staff member witnessed the incident and warned Student C not to do it again. When the Student’s father picked him up from the program, the ASPIRE staff member reported the incident to the Student’s father and stated that she would inform the Principal. The Complainant stated that neither she nor the Student’s father was contacted by the Principal or informed of the outcome of any inquiry or investigation into the incident.

The Complainant stated that in late January 2018, the Student’s father informed the ASPIRE supervisor that the Student was afraid to go to the School because he was being targeted and bullied by other students, especially Student B, for liking things stereotypically associated with girls. The Complainant stated that the ASPIRE supervisor responded that she would follow up with the Principal, but that neither the Principal nor anyone else in the District contacted the Complainant or the Student’s father.

The Complainant alleged that on February X, 2018 at approximately X:XX XX on School premises, Student A came up behind the Student, grabbed his arm and pinned it against his back, and then grabbed the Student by his neck and threw him to the ground. The Complainant stated that she took the Student to the emergency room. He suffered a black eye, a facial abrasion, and was assessed for a possible concussion. The Complainant told OCR that she was informed by

the School nurse that a parent witnessed the attack and described it as “unprovoked.” The Complainant told OCR that when she picked up the Student, an office aide informed her that the Principal would handle the incident.

District Investigation

The Complainant told OCR that the Principal called her at X:XX XX on February X, 2018 to discuss the incident with Student A (hereinafter, “February X incident”). According to the Complainant, she told the Principal what happened and asked him what was going to happen to Student A. He replied that he could not tell her due to privacy rules. She told OCR that the Principal asked her if the Student was going to go to School the next day. She replied “no.” The Principal responded that the Student would receive an unexcused absence. The Complainant told OCR that she reminded the Principal that the Student had been tripped and bitten and called “gay” by other students previously. The Principal allegedly replied that there was only so much he could do. The Complainant told OCR that she also asked the Principal if he had received notice of the Student’s father’s report to an ASPIRE staff member in late January 2018 that the Student was afraid to come to school. The Principal allegedly replied that he could not tell her. The Complainant told OCR that she was upset by this response. She asked the Principal, what he thought she should do; should she “pay for private school to keep the Student safe?” The Principal allegedly responded that he would contact the Superintendent and arrange for an intradistrict transfer, and that the Complainant should email her preferred school choice to the Superintendent. The Complainant stated that she also told the Principal the names of some of the students who had been calling the Student “gay.”

The District provided OCR with a document, “[Student]: Sequence of Events,”² which chronicled the Principal’s interactions regarding the Student during the period of November 2017-March 2018, and included the Principal’s communications with the Complainant. The entry for February X, 2018 stated: “[Complainant] also gave me the names of several boys who were calling her son “gay.” But [Complainant] was unsure of names and had no last names. One of the boys was named “[first name of Student B].” The District’s narrative data response to OCR³ stated that the Principal’s February X phone conversation with the Complainant was the first time the Principal learned of the biting incident and also that several male students were calling the Student “gay”.

On February X, 2018 at X:XX XX, the Principal emailed the Assistant Superintendent, who was the District’s designated Title IX Coordinator, and the Executive Director of Special Education Services (SPED Director). In his email, the Principal summarized his phone conversation with

² Hereinafter, for purposes of this letter, OCR identifies this document as the “Sequence of Events.”

³ Hereinafter, for purposes of this letter, OCR identifies statements from the District’s narrative data response as “the District stated.”

the Complainant as follows: Student A ran up to the Student and pushed him down hard, knocking him down and causing various cuts on his face; the Complainant reminded the Principal that the Student had previously been bitten by another student; the Complainant asked him what would be done to the other student. He responded that he would investigate but could not give her details on consequences; the Complainant said that the School was unsafe and that she was looking into enrolling the Student at a private school. He mentioned the option of an intradistrict transfer but said that the Assistant Superintendent was the final decision maker on such actions. He reminded the Complainant that there are compulsory education laws and that any day a child was not in school could be considered an unexcused absence; she had responded that she understood.

The Assistant Superintendent emailed the Principal in response at X:XX XX stating that she hoped things could work out at the School, but if not, the Principal should assist with the intradistrict transfer. The Principal responded to the Assistant Superintendent by email an hour later stating that he had already informed the Complainant that she could possibly have a transfer, and asking the Assistant Superintendent if he could tell the Complainant that the District would approve a transfer, so long as there was room at another school. The Assistant Superintendent responded yes, but that that the Principal should first contact the principal of another District elementary school to see if there was room in a District school.

The District stated that the Complainant unenrolled the Student from the School on February X, 2018. The Complainant told OCR that she did not unenroll the Student on February X, 2018, but that she kept him home while waiting to hear from the District about safety measures, as well as whether an intradistrict transfer was possible. The District did not provide documentary evidence in support of its statement that the Student was unenrolled on February X, 2018.

The District stated, and the Complainant confirmed, that on or about February X, 2018, the Complainant contacted the District and left a document listing the first names of students who she alleged had harassed the Student on the basis of his non-conformity with sex stereotypes, as well as a copy of a photo of the Student's facial injury. The District provided the document to OCR. It included a handwritten list of the first names of Students A, B, D, and E. "ASPIRE" is handwritten to the left of the names of Students B, D, and E; the last name of each student's possible teacher is written in parentheses to the right of each name. The sentence, "all called [the Student] gay" is handwritten underneath the photo. The District did not identify whether the handwriting on the document was the Principal's or the Complainant's.

The Complainant told OCR that based upon her February X phone conversation with the Principal, she did not believe that he would take responsive actions and so she filed a police report on February X, 2018. The Complainant provided OCR with a copy of the police report, which stated that the Complainant reported that the Student was "body slammed" by Student A,

that she had contacted School officials but was not satisfied with their response, and that the Student was bullied and called names but that the School was not doing anything to stop the abuse. The report stated that the police advised the Complainant to contact the District office.

The District stated that the Principal began his investigation on February X, 2018, by interviewing Student A, who told the Principal that he pushed the Student because he was afraid of the Student, which caused him to feel angry. The Principal suspended Student A on February X, 2018 for one day and contacted his parents. The District stated that, when the Principal attempted to search for the students whose first names were provided by the Complainant, he found that there were several students with those names in different grades at the School. The Sequence of Events stated that the Principal made several attempts to contact the Complainant on February X, 2018 to gather more information about who had been harassing the Student, but that she did not respond. The Principal stated that his office also tried to contact the Complainant by phone on February XX, 2018 “regarding the District’s efforts” and that she did not reply. The District stated that the Principal’s investigation into the February X incident with Student A was hindered by not being able to speak with the Student. The Complainant denied that she received any messages from the Principal or his staff that she did not respond to. She also told OCR that the District never contacted her to interview the Student.

On February X, 2018, the Complainant went to the District office and reported the February X incident with Student A. As a result, a meeting was scheduled with the District’s SPED Director for the next day (February X, 2018).⁴ At the meeting, the Complainant stated that in addition to discussing the February X incident, she informed the SPED Director of previous incidents involving Students A and B and others, including the alleged biting, tripping, and name calling. The District stated that during the February X meeting, the Complainant told the SPED Director that the Student had been subjected to name-calling, that the name calling was due to the Student’s preferred dress and color choices, and that the Student had been called “gay.” The Complainant told OCR that the SPED Director responded by saying she would address this; she offered counseling for the Student and to have his teacher gather the Student’s homework and bring it to the Student at his home. The District confirmed that the SPED Director offered assistance, including counseling, a new school site, a modified schedule, or home instruction, and that the Complainant appeared to agree to counseling and short-term home instruction. The Complainant told OCR that the SPED Director promised to follow up with her, but she never did. The District stated that after the SPED Director offered these supports for the Student, the Complainant “followed up with the Assistant Superintendent.”

⁴ The District did not provide information about what the SPED Director’s role was with regard to harassment complaint investigations, or why a meeting was scheduled with her, and not with the Assistant Superintendent, who was the District’s Title IX Coordinator.

On February X, 2018, the Complainant emailed the SPED Director and asked if a meeting could be arranged with the parents of the students who were “bullying and hurting” the Student. The District did not provide OCR with evidence of a response.

The Complainant told OCR that because the Student was not receiving homework or the other assistance offered by the SPED Director, and because she had no idea what the District was doing in response to the February X incident, she called the Interim Superintendent on February XX, XX, and XX. Each time, the staff person answering the phone told her that the Interim Superintendent was unavailable. The Complainant told OCR that she then contacted the Ventura County Department of Education.

On February XX, 2018, the Complainant emailed the Interim Superintendent stating that the Student had reported to School staff about several bullying incidents; that Student A, who called the Student “gay,” had attacked him; that in the prior month another student bit the Student; that the Principal responded only by stating that it was a “rough neighborhood” and agreeing that an inter-district transfer was best for the Student. The Complainant further stated that the Student should not be the one to leave the school, that removing him would not solve the issue of discrimination and harassment, and that “Title IX Regulations were dismissed.” The Interim Superintendent replied by email later that day and stated that she was not aware of the incident and would follow up with the Principal and get back to the Complainant.

On February XX, 2018, the Complainant emailed the Interim Superintendent and stated that the situation needed to be resolved soon because Student was being deprived of the “right to an education free from discrimination and harassment.” The Complainant stated that she did not receive a response. The Complainant emailed the Interim Superintendent again on February XX, 2018; the Interim Superintendent responded by email on February XX, 2018 and arranged a phone meeting the same day with the Complainant. The Complainant told OCR that she asked the Interim Superintendent what was being done in response to the incidents she had reported, and that the Interim Superintendent responded by asking the Complainant to pick a school to which she would like the Student to transfer and a date he would like to start attending. The District’s narrative response did not address the content of the phone meeting, stating only that its purpose was to discuss the Student’s enrollment. The Complainant told OCR she selected School 2. The Student enrolled and starting attending on February XX, 2108.

The Complainant told OCR that the District did not provide any interim measures to the Student following the February X incident, other than arranging for the intradistrict transfer to School 2. The District’s data response contained no information about the District’s actions, including whether the interim measures offered on February X, 2018 – counseling, modified scheduled and/or home instruction – were provided during the period February X to XX, 2018.

The District stated that on March X, 2018, during a meeting with Student B and his parent about an unrelated issue, the Principal realized that Student B attended the ASPIRE program and had a first name identical to one provided by the Complainant on February X, 2018; that the Principal asked Student B's parent if Student B had called another child "gay"; and that the parent responded yes, that it had at happened at the ASPIRE program and Student B and his mother had apologized to the Student. The District stated that it had no record of the incident and so the Principal contacted the ASPIRE supervisor. The District did not provide the date upon which the Principal contacted the ASPIRE supervisor, but the Sequence of Events document identifies the contact as happening on or around March X, 2018.

The ASPIRE supervisor for the Student's group told the Principal the following: 1) she was not aware of any incident when Student B called the Student "gay" and that ASPIRE had no record of such an incident; 2) the Student had several arguments with other students in the program; 3) when the ASPIRE supervisor followed up with the other students, they told her that they were arguing with the Student because he had called them names; 4) the Student went to the ASPIRE supervisor "often" and stated that Student B and two other students hit him; and 5) that "such incidents occurred about twice a week." The ASPIRE supervisor told the Principal that the Student chose pink and purple crayon colors and fairy coloring sheets; that other students found these choices "odd" and asked her why the Student made these choices, and that she responded by telling them to "mind their own business." She said that the Student sat at a different table, and that she not think he could hear the other students asking her these questions.

The District stated that the Principal then re-contacted Student B's parent, who told the Principal that the previous ASPIRE director contacted her in October or November 2017 and reported that Student B had been part of a group of students who had been making fun of the Student because he wore nail polish. The previous ASPIRE director asked Student B's parent to speak with Student B about this behavior and write a letter of apology to the Student. The Complainant told OCR that she never received an apology letter from Student B. The Sequence of Events included that on March X, 2018, ASPIRE staff also told the Principal that the Student had been bitten, and that the Principal reported this incident to the local and district ASPIRE directors.

The Complainant told OCR that she was never informed by the Principal or Assistant Superintendent/Title IX Coordinator that an investigation was being conducted regarding the incidents that occurred throughout the school year or the outcome of those investigations.

With regard to the Principal's training in Title IX investigations and knowledge of the District's grievance procedures for complaints of sex-based harassment, the District stated that all District employees: 1) annually receive a copy of the District's policies, notices, and information about harassment, including sex-based harassment, 2) completed online training for the 2016-2017 school year and a refresher module for the 2017-2018 school year. On March X, 2018, all

District principals received a 2.5 hour training, which included reviewing the District's procedures for investigating complaints of sex-based harassment. All staff responsible for investigating complaints of sex-based harassment at the District level receive training on investigation procedures; the Assistant Superintendent/Title IX Coordinator received such training in June 2015.

Post-February X, 2018

The Complainant stated that she believes the Student's demeanor has changed as a result of the February X and other incidents of alleged sex-based harassment. For example, the Student asked her to remove the pink and purple crayons from his school supplies prior to his first day at School 2 because he was afraid that he would be bullied for using them. He told her that he would not wear necklaces or nail polish to School 2. She observed that the Student will no longer play tag with other children his age because phrases like "there he is, get him" cause him fear. The Student told the Complainant that he could not trust teachers and staff anymore because School staff did not respond to his complaints about being bullied for wearing nail polish, necklaces, and using pink crayons. The Complainant stated that as of April 2018, the Student has received counseling at School 2 and private counseling on weekends.

The Complainant told OCR that the Student received no instruction and no schoolwork from February X to XX, 2018 and that he fell behind academically, and that once he began attending School 2, he had difficulty concentrating. The Complainant told OCR that the District wanted to hold the Student back a year, but that she refused this offer because it would punish the Student for what he experienced at the School. The District informed OCR, and the Complainant confirmed, that on or about June XX, 2018, the District offered the Student 90 hours of compensatory education hours. As of the date of this letter, neither the District nor the Complainant has confirmed to OCR whether this offer was accepted.

District's Grievance Procedures for Complaints of Sex-Based Harassment

The District's policies and procedures for complaints of sex-based harassment include Administrative Regulation (AR) 1312.3: Uniform Complaint Procedures (UCP) and AR 5145.3: Nondiscrimination/Harassment. The UCP is the grievance procedure for complaints of noncompliance with Title IX. At the time of the incidents that are the subject of this complaint, the UCP stated that the compliance officer maintains a record of each complaint and subsequent related actions taken during the investigation and informs parties of the investigation status at appropriate intervals. The compliance officer also prepares and sends the complainant a written report of the District's investigation and decision, including a "Final Written Decision", which includes findings of fact, conclusions of law, complaint disposition and rationale, and corrective actions, if warranted; and that the District may take appropriate remedies to address the unlawful

discrimination or harassment, including offering counseling; academic support; health services; information about available resources and how to report similar incidents or retaliation; separating the victim from respondents, provided that it does not penalize the victim; and conducting follow-up inquiries to ensure the conduct has stopped and there has been no retaliation.

Analysis and Concerns

The facts gathered to date raise a concern that ASPIRE staff and some School staff had notice, during the period from August 2017 through February 2018, that Students A, B, and C may have subjected the Student to oral harassment due to his alleged failure to conform to sex stereotypes, and that the oral harassment was coupled with instances of physical aggression by the same students. The physical aggression included Students A and B allegedly tripping the Student in November 2018, Student C biting the Student in January 2018, Student A knocking the Student to the ground in February 2018, and Student B allegedly regularly hitting the Student at the ASPIRE program.

The Complainant told OCR that the Student reported these incidents to his teachers, as well as to ASPIRE staff and yard staff; that in some instances, these staff members witnessed these incidents; and that the Student's father informed ASPIRE staff in January 2018 that the Student was being "bullied" and targeted by students, especially Student B, and that he was afraid to go to school. She stated that after the early January biting incident, an ASPIRE staff member allegedly responded by stating he/she would inform the Principal. Documentary evidence from the Principal's investigation in February and March 2018 indicated that the current ASPIRE supervisor was aware that Student C had bitten the Student, and may have been aware as well of oral and physical harassment of the Student at the time it was occurring; and that the previous ASPIRE director was aware that Student B and other students made fun of the Student for wearing nail polish and had called him "gay."

With regard to the alleged oral and physical harassment occurring at the ASPIRE program, OCR is concerned that the District may not have responded promptly and equitably to notice of sex-based harassment. For example, the District provided evidence that Student had been bitten in the groin while at ASPIRE in early January 2018, and that the ASPIRE supervisor had notice of this incident. However, the evidence to date from the District does not include information about how the ASPIRE supervisor responded, including whether she took prompt and appropriate steps to investigate or otherwise determine what occurred; whether she made a determination regarding whether the Student was being subjected to harassment based on sex, and communicated her determination to the Complainant; and whether she reported the incident to the Principal or the Assistant Superintendent/Title IX Coordinator. The documentary evidence gathered to date also does not include how the Principal, once he became aware in March 2018

that the Student had been bitten, responded other than that he reported it to ASPIRE directors. The evidence provided to date by the District also does not include information about how the ASPIRE supervisor responded to the Student's father's alleged report in late January 2018 that the Student was being bullied and targeted by Student B and others and was afraid to go to school, including whether the ASPIRE supervisor investigated and responded or relayed the father's concern to the Principal or Assistant Superintendent/Title IX Coordinator.

OCR is also concerned that, based upon the evidence provided to date, the District's inquiries into and responses to the Student's reports of alleged sex-based harassment may not have been reliable or reasonably effective. For example, the District stated that the ASPIRE supervisor told the Principal in March 2018 that she responded to the Student's reports that he was being hit by Student B and other students by asking the students why they were arguing, and that they responded that the Student had called them names; and that her response to students who asked her about the Student's pink and purple crayon and fairy coloring sheet choices was to tell them to "mind their own business." In addition, the District stated that Student B's parent told the Principal that the previous ASPIRE director had asked Student B to write the Student a letter of apology because Student B had made fun of the student for wearing nail polish; the Complainant told OCR she never received the letter. Further, the Complainant told OCR that the Student reported conduct that may have been sex-based harassment to his XXX teacher, but the XXX teacher allegedly responded by asking the students to "be nice," and on one occasion, switched a student's behavior card from green to yellow.

Because OCR has not completed its investigation, it did not interview the Principal, the previous or current ASPIRE supervisor, the XXX teacher, or Student B's parent regarding these incidents. The evidence gathered to date, however, raises concerns that both ASPIRE supervisors and the Student's XXX teacher were aware of conduct that may have been sex-based peer harassment of the Student and may not have promptly reported it to the Principal or Title IX Coordinator; and/or that the District did not conduct reliable investigations to determine what occurred and taken reasonably effective steps to prevent recurrence and remedy a hostile environment.

OCR is also concerned that the evidence gathered to shows that the District may not have conducted a prompt and equitable investigation of the February X incident involving Student A. The District stated that the Principal was responsible for investigating and responding to complaints of sex-based harassment at the School, and that to investigate and respond to the incident, he interviewed Student A on February X, 2018, and Student A stated that he pushed the Student because he was angry and afraid of the Student. He also suspended Student A for one day (February X, 2018) and contacted his parents. Because OCR did not complete its investigation and did not interview the Principal, OCR could not determine whether these were the only responsive steps taken by the Principal. However, to date, OCR has not received any evidence that the Principal or District: 1) identified and interviewed any witnesses to the incident

(such as the nurse or parent); 2) asked Student A about other alleged sex-based incidents, including that a student with Student A's first name had allegedly previously called the Student "gay" and tripped him 3) determined whether the Student was subjected to a hostile environment based on sex or provided the Complainant with notice of the outcome of his investigation.⁵ Similarly, OCR is concerned that the Complainant told the SPED Director on February X, 2018 that the Student had previously been harassed because of his interests and preferred color choices that were not stereotypically male, and the evidence to date does not show how the District responded to notice of those allegations.

OCR is further concerned that there is no evidence that the District provided the Student with interim or other protective measures in lieu of a transfer out of School. The District and the Complainant agree that on February X, 2018, the SPED Director offered the Complainant interim measures for the Student, including counseling, homework assistance, and home instruction. However, OCR did not receive any evidence that these measures were provided to the Complainant, even though the Complainant followed up on at least three separate occasions with the District.

To complete the investigation, OCR would conduct interviews of District staff, such as the Principal, the Student's ELD teacher, the SPED Director, the Assistant Superintendent/Title IX Coordinator, yard staff, the current and previous ASPIRE supervisor/director.

Conclusion

To address the issues alleged in the complaint, the District, without admitting to any violation of law, entered into the enclosed Agreement which is aligned with the complaint allegations and the compliance concerns OCR identified during its investigation.

The Agreement requires the District to: 1) take steps that ensure that its Title IX Coordinator and other individuals with Title IX-related complaint investigation duties have appropriate knowledge about Title IX in compliance with 34 C.F.R. § 106.8(a); 2) provide mandatory Title IX-related training on recognizing and responding to sex-based harassment and distribute a guidance memorandum to ASPIRE and playground staff at District elementary schools; 3) send the Complainant a written report describing its investigation and including notice of the outcome of the investigation consistent with the District's UCP; and 4) upon notice of any further allegations of sex-based harassment directed at the Student during the 2018-2019 school year,

⁵ The District stated that the Principal's investigation was hindered by him not being able to speak with the Student; however, to date there is no evidence other than the District's statement that the Principal tried to contact the Complainant to interview the Student. The documentary evidence provided by the District to date shows that the Assistant Superintendent and Interim Superintendent were in contact with the Complainant during the period in which the Principal stated that he tried unsuccessfully to reach the Complainant, but that neither informed her that the Principal was trying to reach her to interview the Student.

inform OCR of the alleged conduct within 30 days; and 5) after the District completes its investigation, provide OCR with the District's response, including conclusions as to whether harassment occurred, and steps taken to stop the harassment, prevent its recurrence, and address its impact.

Based on the commitments made in the enclosed Agreement, OCR is closing the investigation of this complaint as of the date of this letter, and notifying the Complainant concurrently. When fully implemented, the Agreement is intended to address the complaint allegations. OCR will monitor implementation until the District is in compliance with its terms. Upon completion of the obligations under the Agreement, OCR will close the case.

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

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

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

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

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

Sincerely,

/s/

Rhonda Ngom
Acting Team Leader

Enclosure