



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGION IX
CALIFORNIA

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April 4, 2022

VIA ELECTRONIC MAIL

Dr. Norm Enfield
Superintendent
Chino Valley Unified School District
Norm.Enfield@chino.k12.ca.us

Re: OCR Complaint No. 09-18-1346

Dear Superintendent Enfield:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the Chino Valley Unified School District (District). While we strive to resolve the complaints we receive in a timely manner, we acknowledge the length of time OCR has taken to resolve this case, and we thank the District for its patience.

The complaint alleged that the District discriminated against students on the basis of sex. Specifically, OCR investigated whether the District failed to respond promptly and effectively to notice of sexual harassment of students on the [redacted content] team at a high school (School) in the District during fall 2017.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), as amended, 20 U.S.C. §§ 1681-1688, and its implementing regulation, 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex under any education program or activity receiving Federal financial assistance. The District receives funds from the Department and is therefore subject to Title IX and the regulation.¹

To investigate this complaint, OCR gathered evidence by reviewing documents and statements provided by the District and the Complainant, and by conducting interviews with the District's Title IX Coordinator and three parents of students on the School's [redacted content] team. After a careful review of the information gathered during the investigation, OCR found that the District failed to provide an effective response to notice of harassment in violation of Title IX and its implementing regulation with respect to the issue investigated. On March 31, 2022, the District entered into the attached Resolution Agreement (Agreement), which when implemented will address the noncompliance finding. The applicable factual findings, legal standards, and reasons for the determinations of this matter are summarized below.

¹ Amendments to the Title IX regulation went into effect on August 14, 2020 and can be viewed [here](#). However, OCR investigated this case based on the Title IX regulation that was in effect in November 2017, when the incidents occurred. You can find that regulation [here](#).

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Factual Findings

In fall 2017, the School's [redacted content] team consisted of [redacted content] student athletes with one [redacted content] head coach (Coach B), who is also a [redacted content], and two [redacted content] assistant coaches (Coaches C and D). All [redacted content] players were also enrolled in a [redacted content]-period Athletics Physical Education (PE) course with the [redacted content] head coach (Coach A) as their instructor. As described more fully below, during fall 2017, several incidents of sexually harassing conduct took place among [redacted content] players. Coaches became aware of such conduct in early fall 2017. School and District administrators became aware of the incidents in December 2017, when videos of two such incidents were sent to the Superintendent, and during a series of subsequent investigations involving a School Resource Officer (SRO), multiple School administrators, and outside investigators. The facts regarding the sexually harassing incidents described below are based on interviews or statements that coaches, School administrators, parents, and students provided in the course of the District's and OCR's investigations.

[redacted content] coaches were aware of sexually inappropriate conduct by [redacted content] players within the first seven weeks of the [redacted content] season in fall 2017. Specifically, during an interview with investigators hired by the District, Coach B stated that about six to seven weeks into the [redacted content] season, on the bus returning from an away game, Student 1 took a picture of his exposed genitals. Coach B became aware of this incident because a student asked Coach B if he wanted to see the picture and he responded that he did not and told Student 1 to "put [the picture] away." Coach C similarly told investigators that when a student on the bus tried to hand him a cellphone with a photo of genitalia, he said "no" to the Student, and that Coach B stated, "I don't want to see that." Coach B stated that the following Monday at practice he and Coach C met with the team about the picture-taking and told the team that the picture was inappropriate, could get them in trouble, and that if it happened again, it would be reported to the School administration, which would result in more severe consequences. Coach C stated that they also spoke to the team about how the photo could stay on the internet for the rest of their lives and hinder their future. According to Coach B's interview with the investigators, he told the team members to remove the photos from their phones and the matter was not spoken of again. Coach B told investigators he did not inform either the School Principal or the Athletics Director because he and Coach C handled it, and he "did not want to blow it up and give it a life of its own." Coach B also told investigators that it was not the worst thing that had happened in his career. He did not describe what the "worse thing" he was referring to and whether it involved the [redacted content] team; the investigator's notes do not reflect any follow up with Coach B to obtain further detail.

Coach C also told the investigator about another incident in which a student told him that he had been "pantsexed" in the hallway to the locker room. According to Coach C's interview with the investigator, he, Coach B, and Coach D talked with the team about their actions and used it as a "teaching moment." Coach C did not state when this incident occurred or whether it was reported to the School administration, and the investigator's notes do not reflect that there was follow-up to obtain further detail.

On December [redacted content], 2017, the District's Superintendent received an anonymous email that included clips of two videos. The writer stated, "[redacted content] was assaulted by four [redacted content] players" about [redacted content] weeks prior. The writer stated he or she was afraid to send the videos to anyone at school for fear of being "beaten up." The email named four male students (Students 1-4) whom the writer described as having "pretended to rape" another student. The email went on to state that the videos had been posted on social media and that Students 1-4 often "hit [Impacted Student 1] in his private area and assault[ed] him when left alone in the [redacted content] classroom." It stated that once Student 2 "pretended to have intercourse with [Impacted Student 1] while showing his private area." The writer said there was not a video of this incident, but that [redacted content] had told the writer about it. The email ends, "please help [redacted content]. He doesn't deserve this."

OCR reviewed the videos included in the email. In one video (Video 1), two students (Student 2 and Student 3) are forcibly engaging in mock sexual contact with Impacted Student 1. In the video another student can be seen videotaping the incident with his phone and multiple students are visible within the classroom as the incident occurs. All the students in Video 1 were clothed.

In the second video (Video 2), Student 2 and Student 4 are forcefully engaging in mock sexual contact with Impacted Student 1. According to interviews the District conducted with students, the students called the conduct depicted in Video 2 as a “[redacted content].”

Both Videos 1 and 2 show behavior in which students are placing their crotch area near another’s face and in which students are being physically forceful towards a student.

Initial Investigation (December [redacted content], 2017)

On December [redacted content], 2017, the Superintendent spoke to the Principal and forwarded her the videos. The Principal contacted the SRO, who put the Principal in touch with his Sergeant. According to the Principal’s notes from the events, the Sergeant reviewed the videos and “determined no crime had occurred.” The Sergeant said he would send an officer to Impacted Student 1’s house to inform his parents of the events and to “explain it was ‘at most a misdemeanor battery.’” According to the police report of the interaction with Impacted Student 1 and his parents, Impacted Student 1 reported that the students were “just messing around” and that they were all friends, and his parents did not believe that Impacted Student 1 was being bullied, and described the conduct as “kids being kids.” That evening, after an officer spoke with Impacted Student 1’s family, the Sergeant called the Principal to inform her that “no charges would be filed.”

On December [redacted content], 2017, the Principal initiated a site-level investigation. As part of the investigation, the Principal and assistant principals (APs) interviewed Impacted Student 1, and Students 2 and 3. During the interviews the School administrators asked the students whether they were aware of any inappropriate activity, to describe when it occurred, how commonly it had occurred, who was involved, where it happened, whether those involved participated willingly, whether the student being interviewed felt threatened by others involved, whether the student being interviewed needed supports, and what the interviewed student knew about where Coach A was during the incident.

Impacted Student 1 was interviewed twice by the APs, and the Principal also checked in with him just after a team meeting held on December [redacted content], 2017. Based on these conversations, the Principal subsequently told investigators that Impacted Student 1 “did not seem affected by the incident” and described that he was a “willing participant.” In addition to his interview, Impacted Student 1 provided a written statement dated December [redacted content], 2017, in which he described that he was put on the floor, held by someone, and “humped” and that because he knew it was a “joke,” he let them do it for a few seconds and then he told them to stop after which they then picked him up, hugged him, asked him if he was “okay,” and apologized. He stated that he was fine with it because they were “good friends.”

Students 2 and 3 both described in their interviews that they were “messing around.” Student 2 described physically forceful conduct towards Impacted Student 1 including pretending to “hump” him. He stated that in other instances, when Coach A was in the room while they were outside messing around, they would pick up a student and another “would get between his legs.” Student 3 stated that “everyone is fondling each other,” that it happened before the [redacted content], and that no one said to “stop” or that they were uncomfortable. During his interview, Student 2 stated that the Athletics Director had seen the

videos. From the information provided to OCR, no one followed up with the Athletics Director about whether he had previously seen the videos or was aware of the student conduct.

Outcome of Initial Investigation

According to the Principal's notes, she determined that the students were "just messing around" and imposed in-school suspensions on Students 2 and 3 by placing them in the School's Alternative Learning Center. Both discipline reports referenced the offense as "committing an obscene act" and described the incident from Video 1. At that time, the Principal and APs did not interview any of the coaches about the incidents depicted in the videos, any other students who can be seen in the videos also recording the incident, or any students who may have witnessed the incidents.

On December [redacted content], 2017, the Principal, three APs, Coaches A and B, and the Athletics Director met with the [redacted content] team during the [redacted content]-period Athletics PE class and informed the students that such behavior would not be tolerated and that simulating sexual acts was as inappropriate against a male as against a female. During the team meeting, Coach B reminded the team that he had addressed "inappropriate conduct" earlier in the season (referencing the photo incident on the bus). Following the team meeting, Coach B described to the Principal the prior photo incident involving Student 1 and told her he had spoken with the entire team and "nipped it in the bud", and that "it was a locker room thing and he wanted to handle it there." The Principal stated that this was the first she heard of any earlier inappropriate behavior within the team. At that time, the Principal did not pursue any follow-up regarding this earlier incident described by Coach B.

On December [redacted content], 2017, the SRO addressed the [redacted content] class on horseplay, the misuse of social media, and sexual violence. The District did not provide further specifics as to what was discussed.

Second Investigation (December [redacted content], 2017)

On December [redacted content], 2017, the District's Title IX Coordinator emailed the Superintendent and expressed concerns that the District was obligated "to do more." She urged that the School's administration should speak with each student who witnessed the "assault," gather written statements about the incident and any similar incidents, and offer counseling to all students. She further stated that she believed that there must be at least one student who had been "traumatized" by the event. As a result, the District decided to have the School administrators conduct a more thorough investigation. The same day, the Title IX Coordinator emailed the Principal directing that all the students in the classroom when the video was recorded be interviewed and informing her that legal counsel was preparing interview questions to assist in that process.

On December [redacted content], 2017, the Title IX Coordinator provided the School site administrators with questions drafted by the District's outside counsel and instructed them to conduct interviews of all the [redacted content] team members enrolled in the [redacted content]-period Athletics PE class. The questions focused on where the student (witness) was in the classroom when the incident occurred, what he saw, which students were involved, what the witness was doing when the incident occurred, how it made the witness feel to see it, whether the witness was bothered by what he saw, and, if so, in what ways was the witness bothered by it. Additionally, the questions asked whether Impacted Student 1 had spoken to the witness about happened and, if so, what he said, who the participants were who had engaged in any incidents described, whether participants spoke to the witness about the incident and, if so, what the participant communicated. Finally, the questions asked whether the witness believed that the classroom was a safe place to learn after the incident, and whether there was anything else the witness wanted to tell about the incident. The Principal and APs then divided up the class roster for the [redacted content]

Athletics PE class into four groups, and on December [redacted content], 2017, each administrator conducted individual interviews of the students in one of the four groups using the questions drafted by the District's counsel. In a subsequent interview with a District investigator, the Principal described that she and the other administrators learned from those interviews that "students goof around" in the [redacted content] classroom, that no one complains or asks for it to stop, and that Impacted Student 1 actively participated.

OCR's review of the School administrators' interview notes reflect some students describing the conduct as "jokes," some describing it as "weird," some expressing discomfort and disgust at what they saw, and some stating that while the conduct did not bother them, they knew it bothered others. Some students also stated that they told Students 2 and 3 to stop, but that they did not listen. Other students stated that they tried to get away or stayed away from Students 2 and 3 because they did not want "to be next."

The notes of student interviews also indicated that there were other students beyond Impacted Student 1 who had been the target of similar conduct by Students 1-4 and others. Students described either themselves being or witnessing others being "humped" by students. Several students described these incidents as involving forceful physical overpowering of the targeted student including one instance in which the students [redacted content] when engaging in forcing themselves on the targeted student. Students described witnessing students having to experience the conduct, students sometimes being able to fight off the conduct, or being able to threaten students so as not to be targeted. Several students also reported witnessing a student place his genitals on or near the face of a [redacted content] student. One student described that while he initially thought the "humping" conduct he experienced was a joke, it started to happen more and more and that was when he realized it was not a joke. One student stated that when Students 2 and 3 would come towards him, he would tell them "no," that he felt "uncomfortable" and "harassed" because they "overpowered" him and he felt weak in that position; and that he felt unsafe because he felt it could happen again. Other students interviewed also described incidents in which Students 2 and 3 targeted a student and reported that these incidents occurred when Coach A was not present in the classroom. Several students also described conduct involving the private parts of students that took place in the locker room. The locker room conduct that was described included students rubbing their private parts on teammates or hitting students in the butt and private areas. One student described that the locker room conduct was why he did not change in the locker room; that the incidents made him feel awkward, and that he did not want to play [redacted content] anymore.

The Principal reported that the administrators contacted parents of the members of the [redacted content] team to notify them that the students had been interviewed. Two parents told OCR that they did not recall receiving this message.

On December [redacted content], upon the request of the Principal, the SRO interviewed a student who had described an incident in the locker room during which one of the students was holding his exposed penis in the direction of the student's face. According to the interviewed student, the other student then walked away and continued to show his penis to other students throughout the locker room. The interviewed student stated that the same student was known for having sent at least four pictures of his penis to players through social media and that the coaches were aware of this behavior. He also described that the same student exposed his penis near a [redacted content] student's face in the [redacted content]-period Athletic PE classroom. Additionally, he reported having seen the incident captured in Video 2 ([redacted content]) posted on social media. With respect to the incident captured in Video 1, he reported that the conduct captured in Video 1 was not the first time it occurred and that other students had also engaged in the conduct. To the interviewed student's knowledge, no other incidents had occurred since the School began investigating the video. According to the report, the SRO also met with the parent of the interviewed student. Both the interviewed student and his parent did not wish to bring criminal

charges against the student engaged in the harassing conduct but requested counseling and other resources for the interviewed student.

On December [redacted content], 2017, the SRO interviewed Impacted Student 1 to discuss the incidents that were reported in which he had been the target of sexualized conduct. Impacted Student 1 confirmed that the incidents occurred but said they were not against his will. He stated that he did not want to prosecute, that he was not being bullied, and that he was not afraid of retaliation. He declined an offer of counseling services. Impacted Student 1's parent was notified of the interview and also stated that he was not desirous of prosecution and did not believe Impacted Student 1 was afraid.

According to the Principal, the SRO's supervisor directed the SRO to stop the investigation because "no crime had occurred." With regard to the information learned by School administrators during the interviews, the Principal, as described above, had the SRO look into allegations regarding a student who had been described by several students as engaging in unwelcome sexual conduct towards other students, meet with Impacted Student 1 and his parent, and offered counseling to Impacted Student 1. At this time, the Principal and administrators did not follow up to determine whether other incidents needed to be investigated, or whether other students beyond those in Video 1 had engaged in, witnessed, or been subjected to unwelcome sexual conduct.

On December [redacted content], 2017, [redacted content] students reported to the School administrators that Students 1, 2, and 3 approached them to inquire about what the students said to the administrators during their interviews and whether they were the ones who made a complaint. Two of the students expressed that they were afraid that they would be physically harmed if they did not respond "correctly." Also on December [redacted content], 2017, a parent informed AP 3 that a student approached her son and stated that he had heard that he was the one who "told". The parent stated that while her son was not threatened by the student, she just wanted the School to know because "other students may be fishing for what was said" to investigators. The School informed the parent to let her son know to contact the administration immediately if he felt threatened.

On December [redacted content], 2017, with regard to the allegations regarding Students 1-3 questioning students about the interviews, Student 1-3 either received an on-campus suspension or were warned not to intimidate or harass witnesses. School administrators did not inform the reporting students or their parents of the outcome of the inquiry into the harassment or intimidation. Beyond the on-campus suspensions of students, the School did not take further steps to protect or address the fear expressed by the reporting students about intimidation from Students 1, 2, or 3.

Outcome of Second Investigation

On December [redacted content], 2017, the School arranged for two County mental health counselors to be on campus and available to students who requested support following their interviews with administrators. Although one parent reported to OCR that she was not aware of any offer of counseling services for her son, her son sought counseling services on one occasion. In addition, that same parent requested additional support for her son with respect to ongoing anxiety related to being perceived by members of the community to have been the instigator of the investigation; however, there is no evidence that this request was addressed by the District. The District provided no additional evidence that other forms of support were offered to any of the students.

On December [redacted content], 2017, the Title IX Coordinator emailed the Superintendent about her visit to the School and her interactions with the Principal. The Title IX Coordinator informed the Superintendent about the incidents involving a student circulating pictures of his genitals on social media, and her feeling that the Principal did not want to discuss actions taken regarding the coaches and their

failure to report. She shared that the Principal determined that Impacted Student 1 was “okay” with the boys conduct towards him. The Title IX Coordinator described that the Principal told her that she did not want to talk about the “adults” and that further action had been taken when the coaches met with the team about the conduct. The Title IX Coordinator also expressed her concern regarding the lack of supervision of the PE classroom, that the School administration initially only interviewed Impacted Student 1 and Students 2 and 3 in the video but did not interview the other students in the classroom until directed by the Title IX Coordinator; the School administrators only obtained written statements from the three students who were directly involved in the classroom video. She also expressed her disagreement with the Principal’s assessment of the impact on Impacted Student 1 given the severity of the conduct directed towards him, and explained that while the administrators asked the students the scripted questions, they failed to conduct follow-up interviews or get clarification to certain responses. Due to the concerns expressed by the Title IX Coordinator, the District retained a private investigative firm to conduct a further investigation.

Outside Investigation (December [redacted content], 2017)

On December [redacted content], 2017, the Title IX Coordinator emailed the Principal informing her that the District had retained a private investigative firm to conduct further interviews of the administrators, coaching staff, and students about the video incident. On the same day, the Principal emailed the Superintendent stating that she had concerns about the [redacted content] team members being interviewed again, this time by someone they did not trust, and that Impacted Student 1 had been interviewed several times since the prior week, each time denying that he was a victim.

On December [redacted content], 2017, a student made a written statement to School administrators regarding a prior incident in which another student [redacted content]. Another student made a similar statement to the School corroborating the incident. The reporting student was also subsequently interviewed by the private investigators.

On December [redacted content], two investigators from a private investigative firm interviewed the School administrators, all the [redacted content] coaches, the Athletics Director, and approximately [redacted content] members of the [redacted content] team. After completing the interviews, the investigators provided two reports to the District: one summarizing the interviews of the School administrators and coaches; and the other summarizing the student interviews.

During her interview, the Principal told the investigators that upon being notified about the videos by the Superintendent, she involved the SRO and planned to conduct her own investigation at the site level, which involved interviewing the three students at the center of the videos and addressing the [redacted content] team. The Principal stated that after the three students were interviewed, the SRO told her the conduct was not sexual assault, so she did not suspend the students involved. She also described additional steps she took, including meeting with the [redacted content] team, where she learned from Coach B that there had been a prior incident. She said that her investigation found that Impacted Student 1 was not affected by the Video 1 incident, that students reported other students exposing themselves, and that a student had attempted to touch another student’s face with his exposed penis. She shared that the SRO was directed to stop the investigation because no crime had occurred, that the SRO had spoken to the student who experienced another student try to touch his face with his penis, and that her understanding was that the students were unsupervised in the [redacted content] classroom for approximately ten minutes. She stated she learned this information during the investigation and was unaware the class had been left unsupervised until she viewed the video.

In her interview, AP 1 described that “dry humping” was how the boys played. In his interview, AP 2 stated that in his initial interview of one of the students, the student admitted he had taken pictures of his

genitals and posted them on social media. The student said that Coach B “may have” known of the photos and “may have” told him to stop. AP 2 reported to the investigators that he did not speak with Coach B regarding these allegations. AP 2 stated that he was not aware that Coach A’s [redacted content] period class was being left unsupervised until he viewed the video. In her interview, AP 3 expressed concern that Impacted Student 1 did not think he was a victim and had described the behavior as the way the team “plays.” She was worried that Impacted Student 1 “may not be forthcoming because he was embarrassed or afraid.”

In the Athletic Director’s interview, he expressed surprise at the behavior he saw in the video. He reported he had “only observed a few minor incidents with the class that mainly had to do with them being disruptive.” He was not asked to, nor did he describe what these incidents were. He told the investigator that after reviewing the videos, either the Principal or the SRO told the [redacted content] team to “delete the pictures from their accounts.” The Athletic Director also stated that he prefers coaches to handle matters that arise on the team unless they are “extreme,” in which case they should be reported to the Principal. He also stated that in his “[redacted content] years as a coach, dry-humping is not out of the ordinary.”

During his interview, Coach A reported that on December [redacted content], 2017, the Principal and the SRO came to his room and showed him a video of students “goofing around.” He stated that one of the [redacted content] team’s [redacted content] players was “dry-humping other kids” whom he did not know. He stated that he was shocked by the video, recognized the location as [redacted content] period PE class to which he is sometimes “one to two minutes” late, and that prior to the video he was not aware of problems in his [redacted content]-period Athletics PE class. He stated that he was unaware of any pantsing, groping, or photographing of genitalia. He did not recall Coach B describing the photographing incident on the bus during a meeting with the [redacted content] team.

During his interview, Coach B stated that the video surprised him and that he had never seen anyone target Impacted Student 1. He described the photographing incident that took place on the bus. He told the investigator that in his [redacted content] years in the profession, “this is not the worst thing that has happened, and I wanted to handle it internally.” The investigator did not inquire as to what Coach B meant when he made the statement “not the worst thing that has happened.” He further stated he was not aware of students “pantsing” each other and had never witnessed students grabbing or pushing each other in the locker room or behaving inappropriately in the weight room. In his interview, Coach C described an incident in which a student reported to him that he was pantsed on the way to the locker room and that the coaches used the incident as a “teaching moment” for the students. He also recalled the photo incident on the bus and described it to the investigator. He described that neither he nor Coach B reported the photo incident with other coaches or administrators because they “handled it at the lowest level.” Coach D was also interviewed and stated that he had never observed inappropriate behavior but shared that coaches can only view the middle row of lockers from their office in the locker room.

During the interviews by the outside investigators, students reported that seven of their teammates instigated inappropriate behavior against other students. Students identified fourteen students who were targets of nonconsensual sexualized behavior, including: pantsing; forcibly simulating sex acts (similar to the behavior seen in Video 1) in the locker rooms, in the weight room, and in the PE classroom; unnecessary and deliberate exposure of genitals; being approached by students in a taunting manner with genitals exposed; and comments regarding students’ sexuality.

One student reported to investigators that more than 20 videos of similar behavior to that depicted in the two videos that had been sent to the Superintendent were posted on social media over the course of the 2017 [redacted content] season. The student also stated that multiple students took pictures of their genitals while on the bus for away [redacted content] games and posted them on the [redacted content]

team's shared social media chat group. The reporting student stated that this happened on every bus ride. He also stated that he saw students try to rub their private parts against others in the locker room and they do it to anyone they can catch during clothing changes for games and practices. He stated that the coaches never caught these students doing this because the coaches have their backs to the locker rooms. He stated he did not report these incidents because he was worried he would fall out of favor with the coaches. He also reported the incident in which a student tried to [redacted content]. The student told investigators that he did not feel the class was safe and that he would choose not to play [redacted content] anymore if the instigators remained on the team.

While several students reported a perception that students targeted by the inappropriate behavior may believe it was simply "jokes," other students reported a belief that when a student is targeted by the inappropriate behavior, the student may have laughed during the incidents as a means of avoiding additional problems. Students described, for example, that one of the targeted students was smaller and more defenseless than the other students, and that they believed that regardless of whether he laughed, he was bothered by the behavior. Some students reported hearing a targeted student tell the other students to stop while the incidents occurred and reported their concern that the targeted student could be physically hurt during these incidents.

One student reported that he tried to stop his teammates from going after a teammate but was told to "shut the f--- up" by the instigating students. This was corroborated by at least two other students' statements to investigators. This student also reported that on the day of the video, another student other than the one targeted in the video, was targeted and was pulled out of his chair despite his protests and sex was simulated against him.

One student reported that his teammates did not say anything because they were afraid they would be "next" or be bullied as a result. He reported that on the same day that the video was taken, he heard someone yell, "let's get [student's name]!" The students then started to "hump" him and he tried to push them back but was unable. He told the investigator that he felt he could not tell anyone what happened due to fear and he believed he "just had to get through it."

Multiple students reported being personally impacted by witnessing or being subjected to this behavior. Students described it as "disgusting" or "shocking," stated that they felt "disturbed" by the behavior, reported being distracted by what was happening and unable to focus on their work. Others reported a desire to "just forget" or "not talk about it anymore," and told investigators they left the team's social media chat group due to the disturbing things being posted there. A few students told investigators that they get in and out of the locker room and the weight room as quickly as possible to avoid this behavior. One student reported being afraid he was going to get hurt when "they" came after him. Some students told investigators that this behavior was "no big deal," that it was simply teenage behavior, and that the students were simply "playing."

A few students reported concern that they would be disfavored by the coaches if they told on their teammates. One student stated that the team "knows how to keep it low" so that the coaches can handle things internally. Multiple students reported being directed by the Principal and coaches to delete any videos or images they had on their phones and told that their behavior could put the coaches' jobs in jeopardy and harm the school and the [redacted content] program's reputation.

Multiple students reported that some students were able to push the instigators off them while other students appeared to have to go along with the behavior for fear of escalating things. A few students also reported a perception that the behavior was primarily instigated by [redacted content] against [redacted content] team members.

One student reported that there two [redacted content] social media groups - one was “clean” and the other was not. He stated that everyone left the “not clean” group because no one wanted to see the pictures saved or posted there. He identified the account holder of the “not clean” group. The District did not provide any information showing that any additional steps were taken to investigate this chat group. This student also stated that the pantsing incident occurred in October and that Coach B told the players to stop taking photographs and videos and posting them. He recalled Coach B stating that if there is a video and it is posted, the police could obtain it and he would have to report the incident to school administration.

An impacted student was interviewed by the investigator and, when asked about a pantsing incident, stated that it had happened “a long time ago and was already handled.” He explained that Coach B yelled at the team and told the team members he would kick them off the [redacted content] team if they failed to delete the video of the pantsed student.

During the interviews, several students reported how Students 1, 2, and 3 told them not to say anything about what happened because it would get them all in trouble. Students 2 and 3 complained that the administration was taking the incident too seriously and it “was not a big deal.”

On December [redacted content], 2017, Students 1, 2, and 3 were disciplined for their conduct related to the District investigation.

Outcome of Outside Investigation (January [redacted content], 2018)

On January [redacted content], 2018, the investigative firm submitted its final report to the District. The investigative report did not include any conclusions regarding whether [redacted content] players were subjected to sexual harassment serious enough to create a hostile environment for the students. Specifically, the report included the following conclusions:

- there were periods of time when the [redacted content] team was unsupervised during [redacted content]-period and that Coach A and the Athletic Director were aware of the lack of supervision;
- School administrators were not aware of the lack of supervision or that [redacted content] players were “dry-humping” each other prior to viewing the video;
- Coaches B and C were aware that a student exposed his genitals and photographed them on at least one occasion while on the team bus and neither coach reported the incident to School administration;
- Coach C was aware of one incident when a player was pantsed in the hallway leading to the locker room and did not report this incident to School administration; and
- the PE teachers and coaches stay in the coaches’ office while players are changing and do not walk through the locker room and the office does not provide a view of all the locker rows.

The District did not provide notice to any of the students or their parents/guardians regarding the outcome of the District’s investigation with the exception of providing the discipline records for Students 1, 2 and 3.

The Title IX Coordinator told OCR that she did not review the investigative report because she is the District administrator responsible for discipline and did not want to give any appearance of bias. She reported that, to her knowledge, counselors were made available to students on one school day and that some students were recommended for expulsion.

Expulsion proceedings were initiated in February 2018 for some students involved in the incidents. In one of the expulsion proceedings the hearing panel determined that there was not enough evidence nor witness statements to move forward with expulsion at that time. The Title IX Coordinator told OCR that parents of student witnesses would not agree to have their student's statements included in the expulsion process and that was one of the factors that resulted in the hearing panel found determining that they had insufficient evidence to move forward with the expulsion. Outcomes of those hearings resulted in students transferring out of the District or enrolling in another school, being required to participate in counseling, receiving community service hours, and being required to comply with District behavioral guidelines.

In March 2018, the District pursued personnel actions against the Athletic Director and Coaches A, B, and C. In each of the actions, the District lists the specific student conduct outlined by witnesses and states, "[s]ome students were so uncomfortable with the classroom environment that they left the room and sat in the hallway or outside." Each coach received directives and/or plans of assistance.

At the June 2018 Board meeting, the Board voted to allow two of the students who had been involved in the incidents to return to the School. They reenrolled in the School at the start of the 2018-19 school year and rejoined the [redacted content] team.

One parent told OCR that during summer 2018 her son, who was a witness to and a target of the conduct, requested to be transferred out of the School after learning that the two would be returning to the School and team in fall 2018. According to the parent, her son began receiving counseling as a result of challenging emotions that were arising from his witnessing and being a target of the incidents of fall 2017.

In the fall 2018, another student who had been targeted by some of the conduct disenrolled from the School and enrolled at another District school. Because he felt uncomfortable and out of place, according to his parent, the student later enrolled in an [redacted content] school. The student began receiving private counseling following the initiation of the investigation the previous year.

2019 Incident at School 2

During the course of the investigation, OCR learned from publicly available information that an incident of possible sexual harassment had occurred involving [redacted content] players at another high school within the District (School 2). According to email correspondence, discipline records, and other information provided to OCR by the District, on or about October [redacted content], 2019, a campus supervisor who was walking through the boys' locker room came upon a male student on the ground with his pants around his ankles and several other male students smacking his bottom open-handed. The [redacted content] coach was in the locker room office on a personal call when this incident occurred. During interviews with witnesses, the District determined that the incident had been recorded and shared with other students. Several students were found to have engaged in behavior surrounding this incident which resulted in one to five days of suspension for engaging in the physical conduct or for recording the incident and/or sharing it with others. One student's parents appealed his suspension; the outcome of that appeal is not clear from the records provided to OCR.

On October [redacted content], 2019, School 2's Athletic Director and the [redacted content] coach, both of whom are also [redacted content], submitted letters of resignation from their [redacted content] duties.

District records and communications with the [redacted content] coach indicate that in a previous year the coach approved upperclassmen to require teammates to complete "bootcamp-like" exercises in the locker room, which resulted in a student being physically assaulted. The coach had been previously directed to

actively monitor and supervise the locker room and to not be on the phone while fulfilling his supervisory duties. Email communications provided to OCR indicate that the Title IX Coordinator encouraged that a Title IX investigation be conducted. The District provided to OCR no Title IX investigative report or other documents to show whether such an investigation into the incident occurred or what, if any, supportive measures were provided to the impacted student from the October 2019 incident.

Legal Standards

In conducting this investigation and evaluating the district's compliance with Title IX, OCR applied the Title IX regulation in effect during the years that the incidents took place and the legal standards discussed below were in effect during the school years subject to this case investigation.

The Title IX regulation contains a number of procedural requirements, including a requirement that recipients designate at least one employee to coordinate the recipient's efforts to comply with Title IX, including the investigation of any complaint communicated to such recipient alleging its noncompliance with Title IX or any actions that Title IX would prohibit, 34 C.F.R. § 106.8(a). In addition, the Title IX regulation requires recipients to publish a notice of nondiscrimination covering Title IX, and to adopt and publish procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any actions prohibited by Title IX and its implementing regulation. *See* 34 C.F.R. § 106.9(a); *see also* 34 C.F.R. § 106.8(b).

While the Title IX regulation in effect during the school years at issue in this case did not reference sexual harassment, OCR interpreted Title IX at that time to require school districts to respond to complaints or other notice of sexual harassment involving students and employees. Sexual harassment is a form of sex discrimination prohibited by Title IX. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, such as sexual assault or acts of sexual violence. Sexual harassment can create a hostile educational environment based on sex when the harassment is sufficiently serious to deny or limit the individual's ability to participate in or benefit from the recipient's education program or activity.

In determining whether sexual harassment exists and has created a hostile environment based on sex for students, OCR looks at the totality of the circumstances, and considers a variety of factors, including whether the conduct was unwelcome to the student(s), the degree to which the conduct affected one or more students' education; the type, frequency, and duration of the conduct; the identity of and relationship between the alleged harasser and the subject or subjects of the harassment; the number of individuals involved; the age and sex of the alleged harasser and the subject of the harassment; the size of the school, location of the incidents, and the context in which they occurred; other incidents at the school; and whether there were also incidents of gender-based but non-sexual harassment. OCR examines the conduct from an objective perspective and a subjective perspective.

Under the Title IX regulation in effect for the time period reviewed in this investigation, when the recipient has actual or constructive notice of sexual harassment, it must take appropriate steps to investigate or otherwise determine what occurred, and it may be appropriate for a school to take interim measures prior to or during the investigation of a complaint. Interim measures are individualized services offered as appropriate to either or both the reporting and responding parties involved in an alleged incident of sexual misconduct. Interim measures include counseling, extensions of time or other course-related adjustments, modifications of work or class schedules, campus escort services, restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar accommodations. For instance, if a student alleges that he or she has been sexually assaulted by another student, the school may decide to immediately place the students in separate classes, pending the results of the school's investigation.

Once charged with notice of sexual harassment, a school should take steps to prevent any retaliation against the person who made the complaint (or was the subject of harassment) or against those who provided information as witnesses. At a minimum, the school's responsibilities include making sure that the harassed students know how to report any subsequent problems, conducting follow-up inquiries to see if there have been any new incidents or any instances of retaliation, and responding promptly and appropriately to address continuing or new problems. In cases where the harassment is widespread, the school may need to provide training for the larger school community to ensure that individuals can recognize harassment if it recurs and know how to respond.

Legal Analysis and Conclusions

OCR found that student members on the School's [redacted content] team were subjected to harassment based on sex by fellow student athletes on their [redacted content] team and the harassment was sufficiently serious as to limit their ability to access the School's program. OCR further found that the District failed to respond effectively to notice of the harassment and that as a result of the District's failure, students on the [redacted content] team were subjected to an ongoing sexually hostile environment limiting their ability to benefit from the District's programs and activities.

The evidence shows that students on the [redacted content] team experienced unwelcome sexual conduct on the team bus, in the locker room, in the weight room, and in the Athletics PE classroom when students witnessed or were the targets of unwelcome sexual conduct, including: students exposing their genitalia to other players; a student sending images of his genitalia to students during a bus trip from an away game; students placing their genitals on or near the faces of other players; students engaging in simulated sexual acts or "dry humping;" removing students' pants against their will exposing their genital area; and videotaping the incidents of simulated sexual acts that took place at School and posting the images on social media.

While some students stated that they were not impacted by the behavior or thought it was a joke, other students reported to the District that the behavior disgusted or shocked them, impacted their ability to concentrate, caused them to not want to participate in the team's social media, caused them to avoid the locker room, and caused them fear that they would be targeted.

OCR finds that the District had notice of the conduct and failed to provide an effective response to several incidents of sexual harassment.

Initial Investigation

Photo on Bus Incident

First, Coaches B and C knew that Student 1 had taken a photo of his genitalia and shared it with other student [redacted content] players during a bus ride on the way home from a game because at least one student who saw Student 1's photo complained to Coach C during the bus ride. Specifically, Coach C told a student who wanted to share the photo with him "no" and Coach B told the reporting student that he did not want to see the photo and "to put it away." The coaches were the adults on the bus to whom the students were supposed to report inappropriate conduct, including sexual conduct. The coaches' response discouraged the students from reporting sexual misconduct. Even if just one student reported the photo to the coaches during the bus ride, this is notice to the coaches of possible unwelcome sexual conduct. Instead, some students reported to District investigators that they were concerned that if they reported the incidents they witnessed or experienced they would be disfavored by the coaches.

Although both Coaches B and C ultimately met with the [redacted content] team the Monday after bus the incident, the coaches did not recognize the behavior as possibly sexually harassing conduct and did not communicate to any of the students that it could constitute a form of prohibited sexual harassment. In fact, some students' recollection of how the coaches addressed the conduct was to emphasize that it could jeopardize the coaches' jobs and harm the [redacted content] program. The coaches did not conduct any inquiry to identify if the incident was a one-time incident or whether Student 1 or others frequently engaged in this type of conduct. In this case, for example, one of the students told the SRO that Student 1 photographed his genitalia at least four times and sent the photos to others. Most of the students interviewed stated that they knew about the pictures and that they had been posted on a social media group; indeed, some students stated that they left the social media group due to the content. The coaches' response to the conduct was not reasonably calculated to end the harassing conduct or prevent its recurrence. The coaches did not conduct any inquiry into the conduct, did not investigate the impact of the conduct on other students, did not interview any students about the incident, and did not inform anyone in School or District administration about the conduct. Students reported that the team "knows how to keep it low." This suggests an environment in which students are discouraged from reporting possibly sexually harassing behavior. The response was ineffective to address Student 1's conduct, and the evidence demonstrates that his conduct and that of other students escalated during fall 2017. Even if the coaches lacked sufficient training to adequately address an incident of possible sexually harassing conduct, their failure to promptly notify any School or District administrator precluded other responsible District staff from providing timely support to ensure that the conduct was effectively addressed. Coach B's explanation that these incidents were not the worst he had seen in his career reflected and perpetuated an environment in which such behavior was treated dismissively and led students to believe that they had no choice but to tolerate sexual harassment.

Pantsing Incident

Similarly, the District failed to respond effectively to a student's report that his pants had been pulled down against his will. Forcibly exposing a person's genital area is clearly unwelcome conduct of a sexual nature. While Coach C stated that he and Coaches A and B had a talk with the team and that Coach B threatened to remove any student who engaged in such activity, the incident was not investigated and no additional steps were taken to learn who pantsed this student and whether other students had seen or experienced similar forms of unwelcome sexual conduct.

Additionally, even after the coaches notified the Principal on December [redacted content], 2017, about the "inappropriate conduct" of Student 1 taking a picture of his genitals and the pantsing incident, she did not promptly and effectively respond. According to the Principal's written notes about the events and her statement to the outside investigator, the Principal did not articulate any steps she took to address these incidents. Additionally, when the Title IX coordinator asked the Principal about her response to these incidents, she indicated that she did not want to talk about the "adults" and that further action had been taken when the coaches met with the team about the conduct.

Videos 1 and 2

The initial anonymous December [redacted content], 2017 email to the Superintendent included an allegation that the video depicted a mock "rape" and that Impacted Student 1 was an unwilling participant in this activity. Regardless of whether the complained of conduct violated any criminal codes, the email constituted notice to the Superintendent and the Principal of potential sexually harassing conduct.

The Principal's initial investigation was narrow in focus and only considered the criminality of the conduct and not whether it created a sexually hostile environment in violation of Title IX. Here, the SRO, the Principal, and the three APs only interviewed the students engaged in "dry humping" within the

[redacted content] classroom and concluded that the students were “just messing around.” The investigation did not include interviews of the other students who were visible in the video or any other student who may have been in the classroom at the time of incident. It also did not consider what other students saw during the incident or the impact of the incident on those students. Even with the limited focus of the Principal’s initial inquiry, evidence of a more widespread problem was uncovered. Specifically, Student 3 stated that “everyone is fondling each other” and he had not heard anyone say “stop doing that,” and Coach B informed her about the photo incident on the bus. By not following up on Student 3’s comment or the photo incident, this initial investigation failed to consider the frequency, duration, or impact of any inappropriate sexual conduct.

Second Investigation

On December [redacted content], 2017, the School initiated a second investigation at the Title IX Coordinator’s insistence. School administrators conducted interviews of all members of the [redacted content] team with questions drafted by the District’s counsel.

This second investigation focused mainly on what students witnessed during the Video 1 incident and did not inquire about any other incidents such as the conduct in Video 2, the pantsing, and the photos of genitalia, all of which were revealed in the initial inquiry. Even though many students told School administrators about other incidents of pantsing, dry-humping, and other unwelcome sexual conduct, the administrators did not ask the students to expound upon these incidents and did not further investigate them. Instead, the Principal concluded that “students goof around” and that “no one complains or asks for it to stop.” This comment is contrary to what was reported by the students during the investigation. While some students did think the sexual acts were jokes, many also expressed discomfort and disgust at what they witnessed. Additionally, students reported that they did tell Students 2 and 3 to stop, but that Students 2 and 3 did not listen, and several students in the classroom tried avoiding Students 2 and 3 out of fear of being targets themselves. Additionally, while Impacted Student 1 denied that the conduct was unwelcome, students described Impacted Student 1 as smaller, that those targeting him were team [redacted content] and expressed concern for his safety. Also, at least one administrator indicated a concern that Impacted Student 1 was not forthcoming due to embarrassment or fear. A school has a duty to respond to harassment about which it knows or should know. During the second investigation, the School administrators were made aware of many other instances of sexual conduct that adversely impacted students, yet they did not follow up on those reports or otherwise respond.

OCR is also concerned that in response to reports of intimidation by Students 1-3 of student witnesses, while the District took steps to discipline Students 1-3, there is no evidence that the reporting students were provided information on how their complaints were addressed or how to report any subsequent problems. Additionally, after an impacted student informed the District about an instigating student’s potentially intimidating conduct towards him, there is no evidence that School administrators responded promptly or effectively to this subsequent incident.

Outside Investigation

After reviewing the December [redacted content] interviews and speaking to the Principal, the Title IX Coordinator raised concerns about the adequacy of the investigation leading the District to retain an outside firm to conduct a third investigation into Video 1.

The outside firm’s investigation, like the two previous investigations, failed to ask follow-up questions of students about the sexual conduct they reported they had witnessed in the locker room and the classroom. The investigators obtained information from School administrators and coaches about the initial incidents involving photographing genitals and pantsing, and the investigators learned from the student witnesses

the details of many pantsing incidents, including the concerning frequency and duration of the conduct. The student witnesses also discussed the Video 1 incident and provided additional examples of when other similar conduct occurred. The investigators learned that while Impacted Student 1 denied being a target, other students stated that *they* were targets or attempted targets of Students 1, 2, 3 as well as other students. There were other students who also denied being targets yet were named by other students as such. And while at least two students identified a specific teammate as a target, it is not clear that the investigators inquired as to what happened to that student. Additionally, members of the [redacted content] team shared information regarding potentially sexually harassing behavior that they witnessed and/or were subjected to, and discussed the impact this had on them, including difficulty concentrating, thoughts of quitting the team, being fearful and anxious about being in the locker room or weight room, and feelings of guilt and remorse about not intervening on other students' behalf. Nonetheless, despite collecting this information, neither the District nor their private investigators made any findings or conclusions as to whether the conduct constituted sexual harassment or whether it created a hostile environment based on sex for the members of the team. The investigation was further not adequate or effective because it did not ask about any ongoing potentially sexually harassing conduct between the students and did not specifically identify the incidents that required a District response. Moreover, the District's statement in the March [redacted content], 2018 disciplinary notices to the Athletic Director, Coaches A and B regarding the level of discomfort of some student who chose to leave the classroom shows the District had reason to believe that the behavior was creating a hostile environment for students. Despite this written acknowledgement in the discipline notices to its staff, the District failed to take any adequate corrective actions to address the hostile environment for the student athletes.

The multiple investigations into the incidents also demonstrated to the student athletes the District's inability to adequately address the conduct, possibly leading the students to doubt and lose confidence in the process.

In addition to the ineffective response, the District also failed to consider interim supportive measures to protect the student athletes from the unwelcome sexual conduct. Other than making counselors available for one day, on December [redacted content] and prior to completion of its investigation, the District failed to examine whether other interim measures and supports such as additional counseling, changes in class schedules, or other forms of support were needed. The failure to consider whether the student athletes were subjected to a hostile environment may have undermined any responsive measures and exacerbated any harm, resulting in students seeking private counseling, quitting the team, and even leaving the School altogether. Also, there is no evidence that the District communicated with the larger [redacted content] team community (students, coaches, and students' parents) to clarify the types of conduct that could constitute sexual harassment, that such conduct was prohibited, and how to file a formal complaint through the District's Uniform Complaint Process if they wished to do so. Such a communication could be part of an effective response to ensure that a hostile environment did not persist or recur. Here, the sole evidence provided to OCR that parents of the [redacted content] team members were notified of any investigation was through the District's statement that it left voicemails or spoke with parents to inform them of an investigation. However, this information is disputed by at least one parent who reported that neither she nor her husband received such a call. This lack of information-sharing may have contributed to an environment in which student athletes felt unsafe to return to the School and to the [redacted content] team. Finally, while the District attempted to expel Students 2 and 3, it determined it could not use the student statements from the investigations in the proceedings due to the lack of parental consent; another indicator of the lack of communication with community about the environment surrounding the [redacted content] team and the District's responsibility to respond to complaints as well as the prohibition against retaliation.

2019 Incident at School 2

Based on a review of the information provided in response to OCR's request for all documents related to the October [redacted content], 2019 incident at School 2, OCR has a concern that the District's failure to respond appropriately to known incidents of possible sexually harassing conduct extends to other schools within the District, including a failure to provide interim supportive measures to the impacted student(s), failure to conduct a Title IX investigation despite the Title IX Coordinator's request that it do so, and a failure to take steps to ensure that the behavior does not recur, such as conducting additional training regarding sexual harassment for both students and staff.

For the foregoing reasons, OCR found that the District violated Title IX with regard to the issue investigated in this case.

Conclusion

On March 31, 2022, the District agreed to implement the attached Agreement, which will address the violations and concerns OCR identified in this case.

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 areas of noncompliance and concerns identified by OCR. OCR will monitor the implementation of the Agreement until the District is in compliance with the terms of the Agreement. Upon completion of the obligations under the Agreement, OCR will close 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 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 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.

If you have any questions about this letter, please contact Maria Asturias, Civil Rights Attorney, at Maria.Asturias@ed.gov or 415-486-5595.

Sincerely,

/s/

Kana Yang
Team Leader

cc: William A. Diedrich, Counsel for the District (by email only)