



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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REGION XI  
NORTH CAROLINA  
SOUTH CAROLINA  
VIRGINIA  
WASHINGTON, DC

August 9, 2018

Dr. Amanda Alexander  
Interim Chancellor  
District of Columbia Public Schools  
1200 First Street, NE  
Washington, DC 20002

Re: OCR Case No. 11-11-5901  
OCR Case No. 11-14-1260  
Letter of Findings

Dear Dr. Alexander:

The Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) has completed its combined investigation of the above-referenced cases regarding the District of Columbia Public Schools (DCPS).

Specifically, on January 12, 2011, OCR initiated a Directed Inquiry (OCR Case No. 11-11-5901), pursuant to its authority under Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulation at 34 C.F.R. Part 106, regarding DCPS's response to an alleged incident of sexual assault, wherein XXXXX sexually assaulted XXXXX in a remote area of XXXXX High School (the High School) in XXXXX.<sup>1</sup> As part of the Directed Inquiry, OCR analyzed DCPS's policies and procedures governing sex discrimination, including sexual harassment and sexual violence, and reviewed information about incidents of sexual harassment and sexual violence at DCPS middle and high schools during the 2009-2010 and 2010-2011 school years.

In addition, while the Directed Inquiry was still pending, on June 10, 2014, OCR received the above-referenced individual complaint (the Complaint) against DCPS (OCR Case No. 11-14-1260) from XXXXX (the Complainant) of XXXXX (the Student) at XXXXX Middle School (the Middle School) alleging that:

1. DCPS failed to promptly and equitably respond to the Complainant's reports of a sexually hostile educational environment created by XXXXX at the Middle School during the 2013-2014 school year, including with respect to an incident wherein XXXXX sexually assaulted the Student on school property; and

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<sup>1</sup> OCR became aware of the incident through a news report; as a result, the Director of OCR's Metro Office initiated contact with DCPS's Chancellor's Office.

2. DCPS and the Middle School lacked disciplinary guidelines and grievance procedures with respect to sexual harassment and sexual violence.

OCR investigated the Complainant's individual complaint allegations under Title IX, as well as DCPS's compliance with Title IX's procedural requirements and the extent of reports of sexual harassment or sexual assault/violence at other DCPS schools. In the investigation of the Complaint to date, OCR interviewed the Complainant, DCPS's designated Title IX coordinators, and several other staff and administrators. OCR also reviewed documentation provided by the Complainant and DCPS, including DCPS's Title IX policies and grievance procedures and its records of reports/incidents of sexual harassment or sexual assault/violence involving students at all DCPS schools from the 2012-2013 through the 2015-2016 school years.<sup>2</sup>

Due to the overlapping issues raised in both the Directed Inquiry and the Complaint, OCR combined the Directed Inquiry and the Complaint for investigation and resolution purposes.

### **I. Jurisdiction**

OCR enforces Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any program or activity receiving Federal financial assistance from the Department. The laws enforced by OCR prohibit retaliation against any individual who asserts rights or privileges under these laws or who files a complaint, testifies, or participates in an OCR proceeding. Because DCPS receives Federal financial assistance from the Department, OCR has jurisdiction over it pursuant to Title IX.

During the course of OCR's investigation of the Directed Inquiry and the Complaint, DCPS indicated on multiple occasions that it was interested in resolving both matters with OCR. After carefully considering all of the information obtained during the investigation, OCR identified concerns for some issues that OCR did not fully investigate, as well as violations regarding DCPS's compliance with Title IX on other issues, both of which DCPS agreed to resolve through the enclosed Resolution Agreement, dated August 8, 2018, pursuant to Section 302 and Section 303(b), respectively, of OCR's *Case Processing Manual*. OCR appreciates DCPS's cooperation during the investigation and resolution of this complaint. OCR also acknowledges that DCPS has already taken affirmative steps to improve its response to complaints of sexual harassment and sexual violence. OCR's findings and conclusions are discussed below.

### **II. Legal Issues**

During the course of OCR's Directed Inquiry and investigation of the Complaint, OCR examined the following legal issues:

- A. Whether DCPS complied with the Title IX requirements regarding the designation and notice of the Title IX coordinator. 34 C.F.R. §§ 106.8(a) and 106.9(a).
- B. Whether DCPS complied with the Title IX requirements regarding notice of non-discrimination. 34 C.F.R. § 106.9.

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<sup>2</sup> As of the 2016-2017 school year, DCPS consisted of 115 schools in Washington, D.C. and included: 63 elementary schools; 13 middle schools; 14 high schools; and 25 other schools. During the 2016-2017 school year, over 48,000 students were enrolled in DCPS.

- C. Whether DCPS’s sexual harassment and sexual violence policies and procedures, as written, comply with Title IX. 34 C.F.R. § 106.8(b).
- D. Whether DCPS provided prompt and equitable resolutions to complaints of sexual harassment and sexual violence of which it had notice, including the Complainant’s report of a sexual assault against the Student and other individuals’ complaints/reports of sexual harassment and sexual violence. 34 C.F.R. §§ 106.8(b) and 106.31.
- E. Whether DCPS’s failure to provide a prompt and equitable resolution allowed individuals, including the Student, (to continue) to be subjected to a sexually hostile environment that denied or limited the individuals’ ability to participate in or benefit from the school’s program. 34 C.F.R. §§ 106.8 and 106.31.

### **III. Legal Authority and Standards**

Title IX prohibits discrimination on the basis of sex in education programs or activities operated by recipients of Federal financial assistance. The regulation implementing Title IX, at 34 C.F.R. § 106.31(a), states that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity operated by a recipient of Federal financial assistance.

#### **Title IX Coordinator, Notice of Non-Discrimination, and Grievance Procedures**

The Title IX regulation, at 34 C.F.R. § 106.8(a), requires that a recipient designate at least one employee to coordinate its responsibilities to comply with and carry out its responsibilities under Title IX. The recipient is further required, by the Title IX regulation, at 34 C.F.R. § 106.9(a), to notify all students and employees of the name (or title), office address, and telephone number of the designated employee(s).

The Title IX regulation, at 34 C.F.R. § 106.9, requires that recipients notify applicants for admission and employment, students, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in its education programs or activities, and that it is required by Title IX not to discriminate in such a manner. Such notification shall state at least that the requirement not to discriminate in the education program or activity extends to employment. The notice must also state that questions regarding Title IX may be referred to the recipient’s Title IX coordinator or to OCR.

The Title IX regulation, at 34 C.F.R. § 106.8(b), requires recipients to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints alleging any action that would be prohibited by Title IX, including sex discrimination, sexual harassment, and sexual violence. OCR has identified a number of elements in determining if grievance procedures are prompt and equitable, including whether the procedures provide for: (a) notice to students and employees of the procedures, including where complaints may be filed, that is easily understood, easily located, and widely distributed; (b) application of the procedures to complaints alleging discrimination or harassment carried out by employees, students, and third parties; (c) adequate, reliable, and impartial investigation, including an equal opportunity to present witnesses and evidence; (d) designated and reasonably prompt timeframes for major stages of the grievance process; (e) written notice to parties of the outcome and any appeal; and, (f) an assurance that the institution will take steps to prevent further

harassment and to correct its discriminatory effects on the complainant and others, if appropriate. Title IX does not require a recipient to provide separate grievance procedures for sexual harassment complaints, including sexual violence complaints. A recipient may use student disciplinary or other separate procedures for these complaints; however, any procedures used to adjudicate complaints of sexual harassment or sexual violence, including disciplinary proceedings, must afford the complainant and the respondent a prompt and equitable resolution.

### Sexually Hostile Environment and Duty to Respond Promptly and Equitably

OCR's *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, and Third Parties* (January 2001) and *Q&A on Campus Sexual Misconduct* (September 2017) clarify the standards that OCR uses to assess a recipient's compliance with Title IX and its implementing regulations with respect to sexual harassment of students. Sexual harassment that creates a hostile environment is a form of discrimination prohibited by Title IX. Sexual harassment is unwelcome conduct of a sexual nature, regardless of the sex of the student. Sexual harassment may 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.<sup>3</sup> Sexual harassment of a student creates a hostile environment if the conduct is so severe, persistent, or pervasive that it denies or limits a student's ability to participate in or benefit from the recipient's program or activities.

OCR considers a variety of related factors to determine if a hostile environment based on sex has been created and considers the conduct in question from both an objective and a subjective perspective. Factors examined include the degree to which the misconduct 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 of the alleged harasser and the subject of the harassment, the size of the school/recipient, the location of the incidents and the context in which they occurred; and other incidents at the school/recipient.

A recipient has notice of harassment based on sex if a responsible employee actually knew or, in the exercise of reasonable care, should have known about the harassment. A responsible employee would include any employee who has the authority to take action to redress the harassment, who has the duty to report to appropriate school officials sexual harassment or any other misconduct by students or employees, or an individual who a student could reasonably believe has this authority or responsibility. Accordingly, a recipient needs to ensure that employees are trained so that those with authority to address harassment know how to respond appropriately and to explain how the grievance procedure operates, and other responsible employees know that they are obligated to report harassment to appropriate school officials. Training for employees should include practical information about how to identify harassment and, as applicable, the person to whom it should be reported.

Once a recipient knows or reasonably should know of possible sexual harassment, it must take immediate and appropriate action to investigate or otherwise determine what occurred. If an investigation or other inquiry reveals that sexual harassment created a hostile environment, a recipient must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile

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<sup>3</sup> From this point onwards, when OCR generally refers to "sexual harassment," such references may be assumed to include sexual assault and sexual violence.

environment if one has been created, prevent the harassment from recurring and, as appropriate, remedy its effects. These duties are a recipient's responsibility regardless of whether or not the student who was harassed makes a complaint or otherwise asked the recipient to take action. A recipient also has notice of peer or third-party sexual harassment if a responsible employee actually knew or, in the exercise of reasonable care, should have known about the harassment. A recipient's obligation to respond appropriately to sexual harassment complaints is the same regardless of the sex or sexes of the parties involved. If, upon notice, a recipient fails to take prompt and effective corrective action, and its own failure has permitted the student to be subjected to a hostile environment, then the recipient will be required to take corrective actions to stop the harassment, prevent its recurrence, and remedy the effects on the student that could reasonably have been prevented had the recipient responded promptly and effectively. A recipient is responsible for redressing a hostile environment that occurs on campus or in an education program or activity even if it relates to harassment that took place off campus or outside an education program or activity.

Sexual harassment of a student by a teacher or other recipient/school district employee also violates Title IX. If an employee who is acting (or who reasonably appears to be acting) in the context of carrying out the employee's day-to-day responsibilities (such as teaching, counseling, supervising and advising) engages in sexual harassment, the district is responsible for remedying any effects of the harassment on the student, as well as for ending the harassment and preventing its recurrence. This is true whether or not the district has notice of the harassment.

For Title IX purposes, if a student complainant<sup>4</sup> or the student's parent/guardian requests that his or her name not be revealed to the respondent or asks that the recipient not investigate or seek action against the respondent, the recipient should inform the complainant or parent/guardian that honoring the request may limit its ability to respond fully to the incident, including pursuing disciplinary action against the respondent. The recipient should also explain that Title IX includes protections against retaliation, and that school officials will not only take steps to prevent retaliation but also take strong responsive action if it occurs. If the complainant or the parent/guardian still requests that his or her name not be disclosed to the respondent or that the recipient not investigate or seek action against the respondent, the recipient will need to determine whether or not it can honor such a request while still providing a safe and nondiscriminatory environment for all students, including the student who reported the harassment. If the recipient determines that it can respect the request not to disclose the complainant's identity to the respondent, it should take all reasonable steps to respond to the complaint consistent with the request.

In instances where reported sexual harassment may constitute a criminal act, a recipient should notify a complainant of the right to file a criminal complaint with local law enforcement, and should not dissuade a complainant from doing so either during or after the recipient's internal Title IX investigation. Additionally, recipients must take immediate steps to protect the complainant and allow continued access to the recipient's programs and activities.

It may be appropriate for a recipient to take interim measures during the investigation of a complaint. In fairly assessing the need for a party to receive interim measures, a recipient may not rely on fixed rules or operating assumptions that favor one party over another, nor may a recipient make such measures available only to one party. Interim measures should be individualized and appropriate based

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<sup>4</sup> The term "complainant" refers to the complaining party or the individual who filed the complaint of sexual harassment, and the term "respondent" refers to the responding party or the individual whom the complaint was filed against.

on the information gathered by the Title IX coordinator (or other designated responsive employee(s)), making every effort to avoid depriving any student of her or his education. The measures needed by each student may change over time, and the Title IX coordinator should communicate with each student throughout the investigation to ensure that any interim measures are necessary and effective based on the students' evolving needs.

There is no fixed timeframe under which a recipient must complete a Title IX investigation. OCR will evaluate a recipient's good faith effort to conduct a fair, impartial investigation in a timely manner designed to provide all parties with resolution.

An equitable investigation of a Title IX complaint requires a trained investigator to analyze and document the available evidence to support reliable decisions, objectively evaluate the credibility of parties and witnesses, synthesize all available evidence – including both inculpatory and exculpatory evidence – and take into account the unique and complex circumstances of each case.

Once it decides to open an investigation that may lead to disciplinary action against the respondent, a recipient should provide written notice to the respondent of the allegations constituting a potential violation of the school's Title IX policy, including sufficient details and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved, the specific section of the code of conduct allegedly violated, the precise conduct allegedly constituting the potential violation, and the date and location of the alleged incident. Each party should receive written notice in advance of any interview or hearing with sufficient time to prepare for meaningful participation. The investigation should result in a written report summarizing the relevant exculpatory and inculpatory evidence. The investigator(s), or separate decision-maker(s), with or without a hearing, must make findings of fact and conclusions as to whether the facts support a finding of responsibility for violation of the school's sexual misconduct policy.

For Title IX purposes, a recipient should also provide written notice of the outcome of disciplinary proceedings to the complainant and the respondent concurrently. The content of the notice may vary depending on the underlying allegations, the institution, and the age of the students. For proceedings in elementary and secondary schools, the school should inform the complainant whether it found that the alleged conduct occurred, any individual remedies offered to the complainant or any sanctions imposed on the respondent that directly relate to the complainant, and other steps the school has taken to eliminate the hostile environment, if the school found one to exist. In an elementary or secondary school, the written notice should be provided to the parents of students under the age of 18 and directly to students who are 18 years of age or older.

Regarding the opportunity to appeal, Title IX does not require recipients to maintain an appeal process or processes. However, if a recipient chooses to permit appeals, with respect to its decisions regarding responsibility and/or disciplinary sanctions, a recipient may choose to permit an appeal (i) solely by the respondent; or (ii) by both the complainant and the respondent, in which case any appeal procedures must be equally available to both parties.

Recipients are cautioned to avoid conflicts of interest and biases in the adjudicatory process and to prevent institutional interests from interfering with the impartiality of the adjudication. Decision-making techniques or approaches that apply sex stereotypes or generalizations may violate Title IX and should be avoided so that the adjudication proceeds objectively and impartially.

#### **IV. Analysis of Legal Issues**

##### **A. Whether DCPS complied with the Title IX requirements regarding the designation and notice of the Title IX coordinator. 34 C.F.R. §§ 106.8(a) and 106.9(a).**

#### **Background**

During the Directed Inquiry, DCPS employed a succession of individuals who served in the role of its designated Title IX coordinator. At the beginning of the investigation of the Complaint, DCPS's designated Title IX coordinator was the Deputy Chief of the Office for Teaching and Learning, who served in that role in a part-time capacity since the summer of 2013. Her qualifications and prior experience were unrelated to Title IX, and she received minimal training to fulfill all of the responsibilities of her position, including with respect to DCPS's own policies and procedures on sex discrimination, sexual harassment, and sexual assault/violence; proper investigative methods; and identifying complaints raising Title IX issues.

After receiving budgetary approval to hire a full-time Title IX coordinator, DCPS hired a Civil Rights Compliance Manager and designated that person as the Title IX coordinator (the Coordinator) starting in November 2015. However, during the course of OCR's investigation and as of December 2017, DCPS informed OCR that the Coordinator was no longer employed by DCPS; it has since designated a new Title IX coordinator but has not provided OCR with information regarding this individual's qualifications and training.

Nevertheless, in considering relevant information OCR obtained about the Coordinator and DCPS's internal organization at that time, OCR determined that the Coordinator was a lawyer with compliance experience, and she reported to DCPS's Director of Compliance and Equity, who in turn reported to the Deputy Chief of Compliance. The Coordinator's title and contact information (address, email, and telephone number) were available on the DCPS website, and she received training through a series of online Title IX coordinator training modules and webinars and an Association of Title IX Administrators (ATIXA) training in June 2017. In addition, prior to her departure, the Coordinator stated that she was developing an online complaint system for complainants and "school grievance contacts" at each school, and that she monitored all complaints, including Title IX complaints.<sup>5</sup>

In an interview with OCR, the Coordinator explained that about 85% of her responsibilities pertained to Title IX issues. The Coordinator generally oversaw student discrimination matters; however, DCPS's Labor Management & Employee Relations (LMER) office was responsible for employee-on-employee discrimination and harassment matters per union requirements. The Coordinator also stated she believed that LMER investigates in instances wherein an employee is alleged to have harassed a student, although she remained involved in those investigations to assist with student-related issues, including assessing whether the student needs interim measures or services. However, the Coordinator was otherwise unable to identify each office's complete roles and responsibilities with respect to responding to student and employee-related complaints. Further, OCR's interview with DCPS's Human Resources EEO Director (EEO Director), who was in that position from March 2013 until 2016 and was responsible for investigating employee-on-employee sex discrimination and harassment, revealed similar lack of coordination on Title IX issues. Specifically, the EEO Director knew who was

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<sup>5</sup> The "school grievance contact" is responsible for investigating incidents where a student alleges discrimination or harassment at a particular school, with oversight from the Coordinator.

designated as the Title IX coordinator at that time, but she did not know who investigated sexual misconduct of students and stated that she would refer any such incidents to DCPS's Office of General Counsel.

### Analysis

Throughout OCR's investigation and up until the Coordinator departed in December 2017, DCPS designated a Title IX coordinator and provided notice of that individual's contact information on the DCPS postings of the notice of non-discrimination. Although DCPS did not ensure that the coordinator in place at the beginning of the investigation was properly qualified and adequately trained in the requirements of Title IX, since employing and designating the Coordinator in late 2015, DCPS has increased its efforts towards ensuring that the Coordinator was better equipped to meet the requirements of and authorized to dedicate more time to Title IX compliance responsibilities. The Coordinator had adequate knowledge about the requirements of Title IX and was in the process of being trained further on Title IX coordinator responsibilities, DCPS's draft revised policies and procedures, and investigatory methods; and she was also monitoring complaints and intended to implement an improved tracking system to identify patterns and gauge student awareness of Title IX.

Despite DCPS's efforts above, the Coordinator appeared to have responsibilities over student complaints of sex discrimination only, even though her written job description stated that she would oversee both student and employee sex discrimination issues (with the exception of athletic programming). Further, DCPS had not formally designated an assistant or deputy coordinator for employee matters who would collaborate with the Coordinator to ensure coverage of all of DCPS's Title IX responsibilities, or otherwise clarified the Coordinator's responsibilities versus those of LMER. OCR will receive additional information regarding DCPS's newly designated Title IX coordinator.

### Conclusion

Based on the foregoing, OCR determined that DCPS has taken actions in an attempt to comply with Title IX through the hiring and training of the Coordinator. However, based on its investigation thus far and through the departure of the Coordinator as of December 2017, OCR also determined that it is still unclear whether DCPS has clearly delineated whether its current designated Title IX coordinator has oversight responsibility over all sex discrimination matters, including employee training and complaints. Accordingly, on August 8, 2018, DCPS agreed to implement the enclosed Resolution Agreement, pursuant to Section 302 of OCR's *Case Processing Manual*, regarding this compliance concern, which will enable OCR to assess the designated Title IX coordinator's current qualifications, responsibilities, and knowledge in this regard.

### **B. Whether DCPS complied with the Title IX requirements regarding notice of non-discrimination. 34 C.F.R. § 106.9.**

#### Background and Analysis

In relevant part, DCPS's current notice of non-discrimination states:

In accordance with ... Title IX of the Education Amendments of 1972, ... [DCPS] does not discriminate (including employment therein or admission thereto) on the basis of actual or perceived race, color, disability, religion, national origin, sex, age, marital status, personal

appearance, sexual orientation, gender identity or expression, family status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, status as a victim of an interfamily offense, or place of residence. Sexual harassment, sexual violence and gender identity are all forms of sex discrimination, which is prohibited by the Act. In addition, harassment based on any of the above-protected categories is prohibited.

Discrimination in violation of the aforementioned laws will not be tolerated. Violators will be subject to disciplinary action.

The current notice is confusing and unclear. Specifically, the notice does not define “the Act,” and the Act is not defined there or elsewhere as referring to the Title IX regulation. The notice does direct students, parents, and guardians with sex discrimination concerns to the Coordinator or to OCR.<sup>6</sup> The notice lists the Coordinator’s title, address, and telephone number, and provides an email address for the DCPS Compliance and Policy Division.<sup>7</sup> However, as discussed above, as of December 2017, the Coordinator was no longer employed by DCPS.

DCPS publishes the notice on its general website<sup>8</sup> in a variety of locations and on some of its schools’ individual websites, and it is available in several languages other than English.<sup>9</sup> The notice also references the student grievance procedures and parent, guardian, and visitor grievance procedures, but to date, the link to the student grievance procedures is broken, and the link to the parent, guardian and visitor procedures lead to the new Grievance Policy and Procedure Manual (as discussed below). In addition, some materials for parents included an outdated version of the notice of non-discrimination as well as outdated contact information for the designated Title IX coordinator.

## Conclusion

Based on the foregoing, OCR determined that prior to the Coordinator’s departure, DCPS’s current version of the notice of non-discrimination provided the required contact information for its designated Title IX coordinator; namely, it included the Coordinator’s name, address, email address, and telephone number. In addition, DCPS published its notice in a variety of locations, formats, and languages. However, although OCR determined that DCPS revised its notice of non-discrimination during the course of OCR’s investigation, its current notice still contains some inaccuracies and omissions, and outdated versions of the notice are published in some places. Accordingly, OCR determined that DCPS failed to comply with Title IX requirements regarding the notice of non-discrimination, as required by the Title IX regulation, at 34 C.F.R. § 106.9. On August 8, 2018, DCPS agreed to implement the enclosed Resolution Agreement, which commits DCPS to take specific steps to address this violation, pursuant to Section 303(b) of OCR’s *Case Processing Manual*.

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<sup>6</sup> The notice also directs employees and applicants with inquiries and/or complaints regarding DCPS nondiscrimination policies to DCPS’s LMER office, DC Office of Human Rights, or the Equal Employment Opportunity Commission.

<sup>7</sup> A prior version of the notice of non-discrimination lacked the email address for the designated Title IX coordinator; however, DCPS remedied this issue during the course of OCR’s investigation.

<sup>8</sup> See, e.g., <http://dcps.dc.gov/>, <http://dcps.dc.gov/non-discrimination>, <http://dcps.dc.gov/page/dcps-notice-non-discrimination-and-other-non-discriminatory-provisions>, and <http://dcps.dc.gov/page/dcps-labor-management-and-employee-relations> (as of August 1, 2017).

<sup>9</sup> See, e.g., XXXXX; see also the Middle School’s notice, XXXXX, which contained an invalid link to the notice and only the main telephone number for DCPS, not for the Title IX coordinator; the High School’s website does not seem to include the notice or a link to the notice, XXXXX.

**C. Whether DCPS’s sexual harassment and sexual violence policies and procedures, as written, comply with Title IX. 34 C.F.R § 106.8(b).**

Background

OCR reviewed the following current DCPS policies and procedures for addressing complaints of sex discrimination, sexual harassment, sexual assault/violence, and other reports or incidents of student harassment: (1) DCPS Student Grievance Procedure Regulation (5-B District of Columbia Manual Regulations (DCMR) § 2405, October 3, 2014 Version); (2) DCPS Grievance Procedure for Parents, Guardians, and Visitors (5-E DCMR § 405, April 11, 2014 Version); (3) DCPS’s Grievance Policy and Procedure Manual (June 2017 Version); and (4) DCMR on Student Discipline (August 14, 2009 Version), along with its “Disciplinary Responses to Student Behavior” and “Philosophy and Approach to Student Behavior and Discipline”. In addition, OCR reviewed other information and documentation pertaining to other DCPS policies, procedures, and practices that were relevant to its investigation.

Analysis

OCR reviewed and analyzed DCPS’s Title IX policies and grievance procedures in accordance with the elements described above.

*1. DCPS Student Grievance Procedure Regulation (October 3, 2014)*

The DCPS Student Grievance Procedure Regulation applies to all complaints alleging a violation of Section 504, Title II, Title IX, Title VI, the Age Discrimination Act, or the DC Human Rights Law, as well as a number of specified circumstances, such as where the rights of students or any individual student are being denied or abridged, or where a student is a victim of bullying or harassment, including sexual harassment. The Student Grievance Procedure Regulation includes two options for investigating and resolving complaints. Specifically, Section 2405.4 applies to all grievances generally, whereas Section 2405.5 applies only to allegations of bullying and harassment, including sexual harassment; however, victims of bullying and harassment may follow either set of procedures. In addition, the Student Grievance Procedure Regulation states that a grievance may be filed by a parent or guardian on behalf of a student, “as consistent with § B 2401.15 of this chapter”; however, OCR was unable to locate any such section in the DCMR.<sup>10</sup>

Overall, and in reviewing both Sections 2405.4 and 2405.5, OCR determined that the Student Grievance Procedure Regulation is not prompt and equitable as written because it: provides inequitable notice regarding the outcome of the investigation; provides an opportunity to appeal only to the complainant<sup>11</sup>; and does not provide an assurance that DCPS will take steps to prevent the recurrence of harassment. Further, the Student Grievance Procedure Regulation does not specify that the complainant should be notified of the right to simultaneously file a criminal complaint and a Title IX

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<sup>10</sup> Based on OCR’s review, it is possible that this reference may be a typo, such that Chapter 5-B could instead be 5-E § 2401.15, a provision in the DCPS student bill of rights that grants students the right to present grievances to school authorities and receive prompt disposition from school officials. OCR will address this issue in monitoring should the section appear in any draft revised grievance procedures.

<sup>11</sup> If DCPS chooses to permit appeals, with respect to its decisions regarding responsibility and/or disciplinary sanctions, it may choose to permit an appeal (i) solely by the respondent; or (ii) by both the complainant and the respondent, in which case any appeal procedures must be equally available to both parties.

complaint, and DCPS informed OCR that its practice had been to postpone any Title IX investigation until the criminal complaint has concluded.

2. *DCPS Grievance Procedure for Parents, Guardians, and Visitors (April 11, 2014)*

The DCPS Grievance Procedure for Parents, Guardians, and Visitors applies to all grievances filed by any individual other than a student or employee, including but not limited to parents, guardians, and school visitors, who alleges discrimination in violation of Section 504, Title II, Title IX, Title VI, the Age Act or the DC Human Rights Law. This procedure also states that grievances “regarding students” shall be governed by the procedures contained in the DCPS Student Grievance Procedure Regulation.

OCR has identified compliance concerns regarding the Grievance Procedure for Parents, Guardians and Visitors that are similar to those noted for the Student Grievance Procedure Regulation; namely, it does not: specify application to complaints alleging discrimination or harassment carried out by third parties; state that investigations will be adequate, reliable and impartial; provide for written notice of the outcome of the complaint and appeal rights for the respondent, as it does for the complainant<sup>12</sup>; or state that DCPS will take steps to prevent the recurrence of harassment and to correct its discriminatory effects, if appropriate.

3. *DCPS’s Grievance Policy and Procedure Manual (June 2017)*

In September 2016, DCPS adopted a new Grievance Policy and Procedure Manual (the Manual) to serve as guidance for students, parents, and visitors on the process for filing complaints of discrimination under DC and federal civil rights laws; DCPS further revised the Manual in June 2017. The Manual provides the legal framework for addressing complaints of discrimination and explains: the types of grievances covered, key participants in the process, steps in the process, an expedited timeline for complaints of bullying and harassment, and alternative processes and remedies. The Manual also includes a dedicated email address for grievances and a link to an online grievance referral form, which asks complainants to identify their contact information, school, type and description of the incident, and provides an option for anonymous reporting.

OCR determined that the Manual: includes definitions of sexual harassment, including sexual violence and gender-based harassment; explains that DCPS will provide prompt interim measures during an investigation; and more appropriately clarifies that if law enforcement is involved in an incident: “DCPS must and will halt the grievance investigation until the fact-finding portion of the police department’s investigation is complete. DCPS will implement appropriate interim steps during the law enforcement agency’s investigation period. Once the police investigation is complete, DCPS will promptly resume its investigation.”

Overall, OCR determined that the Manual addresses many of the compliance concerns raised in the Student Grievance Procedure Regulation and Grievance Procedure for Parents, Guardians, and Visitors, and it could serve as a more user-friendly resource and implementation guide for students, parents, and staff. The Manual provides for written notice of outcome for both the complainant and the respondent. However, the Manual is inequitable regarding the opportunity to appeal, as it continues to provide an opportunity to appeal only to the complainant and not the respondent<sup>13</sup>; and,

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<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

DCPS will need to revise the Manual in order to incorporate any revisions to the DCMR<sup>14</sup> and to clarify which procedures apply under what circumstances.

4. *DC Municipal Regulations (DCMR) on Student Discipline (August 14, 2009), “Disciplinary Responses to Student Behavior” and “Philosophy and Approach to Student Behavior and Discipline”*

The DCMR on Student Discipline, along with the DCPS Disciplinary Responses to Student Behavior and Philosophy and Approach to Student Behavior and Discipline, specify different appropriate responses to five “tiers” of identified prohibited behaviors, several of which may apply to incidents of peer sexual harassment or sexual violence.<sup>15</sup> In a March 2015 interview, the then Title IX coordinator indicated that the school and Instructional Superintendent are responsible for determining how the disciplinary code applies to an allegation of sexual misconduct. After a student is found responsible in a sexual misconduct complaint investigation, if the student is to be disciplined, the DCPS disciplinary regulation and guidance direct administrators on the process and sanction.

The DCMR on Student Discipline defines sexual harassment as “deliberately harassing another person for sexual reasons or in a sexualized manner with unwanted attention, touching, or verbal comments such that the person is uncomfortable, intimidated, or threatened by the behavior.” That definition fails to make clear that sexual violence is a form of sexual harassment to which a school must respond, suggests a higher bar than Title IX requires to establish a hostile environment, and includes language (“*deliberately* harassing”) suggesting an intent requirement that is not present in its definition of harassment on other bases. An intent requirement may be appropriate for determining appropriate discipline or other interventions, but it should not be used for evaluating a recipient’s obligation to address and remedy sexual harassment or sexual violence.

The DCPS Philosophy and Approach to Student Behavior and Discipline indicates that the school will use non-disciplinary interventions to correct misbehavior, but does not address the needs of the targets of harassment or bystanders that may be affected by a sexually hostile environment.

Based on the foregoing, OCR determined that the DCMR on Student Discipline and the corresponding DCPS Philosophy and Approach to Student Behavior and Discipline, as they apply to sanctioning/disciplining students for incidents of sexual misconduct, are inconsistent with Title IX standards with respect to the definition of sexual harassment and remedial obligations toward all individuals affected by a sexually hostile environment.

*Other Current Policies, Procedures, and Practices*

The *DCPS Parent Handbook* (April 2016 version) and the *Parental Right to Know Guide* (School Year 2014-2015 version) reference where to find the grievance procedures on DCPS’s website, but they contain outdated notices of non-discrimination and information about the Title IX coordinator, and only the *Parent Handbook* reference connects to the current link.

In addition to the above, on February 2014, DCPS entered into a Memorandum of Agreement (MOA) with DC’s Metropolitan Police Department (MPD). Provision 6 of the MOA specifies that DCPS is

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<sup>14</sup> DCPS informed OCR that it had proposed such revisions as of October 2017.

<sup>15</sup> For example, Tier I behaviors include inappropriate displays of affection and directing obscene gestures toward peers; Tier III behaviors include communicating slurs based on sex and engaging in consensual sexual acts on school premises; Tier IV behaviors include sexual misconduct and sexual harassment; and Tier V includes sexual assault.

responsible for enforcing the DCMR on Student Discipline, DCPS policies and procedures related to school safety, and MPD-assigned school resource officers (SROs) or school security teams (SSTs) are not responsible for the administration of discipline. In August 2014, DCPS informed OCR that it does not investigate any instances of student sexual misconduct and that it instead prepares an incident report and then forwards the matter to the MPD Youth Division for investigation, as described below. DCPS's policies, practices, and procedures are not clear on DCPS's role after an incident is referred to the MPD, other than the fact that DCPS may discipline the alleged offender.

Further, with respect to DCPS's recordkeeping procedures pertaining to Title IX complaints, DCPS schools document reports of sexual harassment against students and student sexual misconduct on incident report forms. Information collected on the report forms includes the incident type, the date and location of the incident, identities/demographics of the parties involved, identities of the school officials involved, a description of the incident, and whether the MPD was notified. Since October 2014, it has been DCPS's practice for SROs/SSTs to forward copies of all such incident reports to the Title IX coordinator; prior to that, the Office of School Security (OSS) maintained the incident report records without Title IX coordinator oversight or involvement. DCPS's most recent Title IX coordinator [the Coordinator] told OCR that she has been reviewing the incident reports as part of her initial effort to assess the student climate with regard to sexual harassment, as discussed below.

However, OCR determined that DCPS's recordkeeping system remains inadequate to identify systemic problems or instances involving individuals who have repeatedly been implicated in incidents sexually harassment and violence. DCPS has improved its system by arranging for all reports to be forwarded to the Title IX coordinator, but those reports do not provide information on the parties involved, the outcome of the investigation, or any corrective measures taken, including whether interim measures or final remedies were provided.

### Conclusion

Based on the foregoing, OCR determined that none of DCPS's existing grievance policies and procedures comply with Title IX's requirement for grievance procedures that provide a prompt and equitable resolution to complaints of sex discrimination, including sexual harassment and sexual violence. Individually, and in totality, the multiple procedures may cause confusion as to which procedure applies to specific types of complaints, incidents, or reports, including those filed by and against students, employees, and third parties. Furthermore, DCPS has not adequately publicized the grievance procedures, especially to students.

OCR identified multiple Title IX violations with the grievance procedures, including but not limited to an inadequate definition of sexual harassment; inequitable notice of the outcome to the parties; and inequitable appeal rights for respondents.<sup>16</sup> OCR also identified Title IX violations with respect to the MOA with MPD and DCPS's recordkeeping procedures and practices with respect to DCPS's delay in conducting or absence of a Title IX investigation due to a parallel criminal investigation, and inadequate recordkeeping/tracking of complaints.

Therefore, OCR determined that although DCPS has undertaken efforts to revise its Title IX grievance policies and procedures in various ways during the course of OCR's investigation, such policies and

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<sup>16</sup> If DCPS chooses to permit appeals, with respect to its decisions regarding responsibility and/or disciplinary sanctions, it may choose to permit an appeal (i) solely by the respondent; or (ii) by both the complainant and the respondent, in which case any appeal procedures must be equally available to both parties.

procedures fail to comply with the Title IX regulation, at 34 C.F.R. § 106.8(b). On August 8, 2018, DCPS agreed to implement the enclosed Resolution Agreement, which commits DCPS to take specific steps to address this violation, pursuant to Section 303(b) of OCR’s *Case Processing Manual*.

- D. Whether DCPS provided prompt and equitable resolutions to complaints of sexual harassment and sexual violence of which it had notice, including the Complainant’s report of a sexual assault against the Student and other individuals’ complaints/reports of sexual harassment and sexual violence; and**
- E. Whether the failure to provide a prompt and equitable resolution allowed individuals, including the Student, to be subjected to a sexually hostile environment that denied or limited the individuals’ ability to participate in or benefit from the school’s program. 34 C.F.R. §§ 106.8 and 106.31.**

During the course of OCR’s investigation of the Complainant’s Complaint and the Directed Inquiry, OCR reviewed multiple incidents and complaints/reports of sexual harassment and sexual violence at DCPS schools. OCR’s findings and conclusions are discussed below.

### ***1. The Complaint***

#### **Background**

With respect to the Complaint, during the 2013-2014 school year, the Student was XXXXX.

The Complainant alleged that DCPS failed to promptly and equitably respond to her reports of a sexually hostile environment created by XXXXX at the Middle School during the 2013-2014 school year, as it pertained to the Student, including with respect to an incident wherein XXXXX sexually assaulted the Student on school property on XXXXX (the Incident). The Complainant claimed that on numerous occasions, XXXXX. Specifically, regarding the Incident, the Complainant asserted that XXXXX. The Complainant also alleged that DCPS failed to provide her with notice of any grievance policies and procedures pertaining to sexual harassment and sexual violence, and the Complainant was otherwise unable to locate such policies and procedures on the DCPS/Middle School website. After the Incident, the Complainant withdrew the Student from the Middle School.

Regarding the Incident, OCR reviewed information and documentation indicating that XXXXX.

The next day, XXXXX.

When XXXXX. The Complainant then went to the MPD and reported that XXXXX had sexually assaulted the Student.

An MPD detective went to the Middle School on XXXXX Per its practice, DCPS also referred the matter to MPD for further criminal investigation, but neither DCPS administration nor the Middle School conducted a Title IX investigation of the Incident.<sup>17</sup>

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<sup>17</sup> DCPS counsel explained that DCPS “stayed their hands” in all matters other than the education of the Student until the conclusion of the criminal process, so as not to interfere with that process. Furthermore, DCPS believed that the MPD is statutorily prohibited from revealing confidential juvenile law enforcement information and records to DCPS. OCR’s reading of these statutes does not necessarily comport with DCPS’s belief, as DCPS is included in the list of exempted

In response to its general investigation of the Incident, on XXXXX.<sup>18</sup>

In the interim, in XXXXX.

The Complainant XXXXX.

### Analysis

Based on OCR’s investigation to date, OCR determined that DCPS failed to provide a prompt and equitable resolution to the Complainant’s report that XXXXX sexually assaulted the Student during the Incident on XXXXX. Specifically, DCPS failed to take any action to respond to the report and it failed to involve or otherwise ensure the oversight of the former Title IX coordinator in any investigation of the Incident. Rather, the Middle School initially addressed the Incident as one only involving a disciplinary matter, and it deferred to the MPD to investigate the corresponding criminal complaint. However, DCPS never inquired as to when the MPD concluded the fact-finding portion of its investigation or concluded its investigation to determine if it should proceed with its independent Title IX obligation to investigate the alleged sexual assault. Moreover, DCPS acknowledged to OCR that it “does not investigate any instances of criminal student-on-student misconduct, including those that are sexual in nature.”

OCR also determined that DCPS failed to assess whether the Student required any interim measures or other remedies to protect her from any further harassment and to ensure that she had equal access to its education programs and activities, pending a final outcome of the investigation; and it also failed to consider whether other students, including XXXXX, required the same. DCPS only provided the Student with XXXXX, without consideration of its obligations under Title IX, when it: XXXXX<sup>19</sup>); offered the Student XXXXX; and insisted that the Complainant XXXXX that resulted in DCPS failing to provide the Student with educational services for over six months.

In addition, DCPS did not offer the Student any individual remedies under Title IX, although XXXXX.<sup>20</sup> DCPS also did not notify the Complainant of the discipline imposed on XXXXX that directly related to the Student. Furthermore, DCPS did not take any steps to prevent the recurrence of any sexually hostile environment or to assess whether any remedies were appropriate.

As to whether the Student was subjected to a sexually hostile environment, there was some evidence to indicate that the alleged sexual assault denied or limited the Student’s ability to participate in or benefit from DCPS’s programs, and that DCPS’s inadequate response to notice of the alleged sexual assault continued to deny or limit her ability to participate in or benefit from DCPS’s programs. In particular, XXXXX. DCPS’s proposed XXXXX, along with its failure to assess whether the Student (or other students) required interim measures pursuant to Title IX and independent of XXXXX, also contributed to a months-long delay in the Student’s receipt of educational services.

Although the evidence obtained thus far raises a compliance concern that the Student may have been subjected to a hostile environment as a result of DCPS’s failure to provide a prompt and equitable

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entities that are allowed to review “juvenile social records” or “police and law enforcement records” and DCPS is allowed to review these records to allow for “delivery of services” to the individuals/family members under Family Court jurisdiction. *See* D.C. Code § 16-2332(c)(4)(D); § 16-2333(b)(4)(C).

<sup>18</sup> After MPD’s criminal investigation, XXXXX

<sup>19</sup> The Complainant informed OCR that this is one of the reasons why she refused to return the Student to DCPS for XXXXX.

<sup>20</sup> The XXXXX.

resolution to the Incident, in the absence of completing a full investigation, OCR is unable to make a determination as to whether the Student was subjected to a hostile environment on the basis of sex.

### Conclusion

Based on the foregoing, OCR determined that DCPS's response to or resolution of the Incident was neither prompt nor equitable, in violation of the Title IX regulation, at 34 C.F.R. §§ 106.8 and 106.31. OCR determined that DCPS failed to assess whether the Student or other students required interim measures and failed to conduct a Title IX investigation of the Incident to determine whether a sexual assault had occurred. On August 8, 2018, DCPS agreed to implement the enclosed Resolution Agreement, which commits DCPS to take specific steps to address this violation, pursuant to Section 303(b) of OCR's *Case Processing Manual*.

Further, although there is some evidence that the Student was subjected to a sexually hostile environment, OCR is unable to make a determination based on the evidence gathered in the investigation to date. Accordingly, on August 8, 2018, DCPS agreed to implement the enclosed Resolution Agreement, which commits DCPS to take specific steps to address this concern, pursuant to Section 302 of OCR's *Case Processing Manual*.

## **2. Other Incidents Reviewed pursuant to OCR's Directed Inquiry: 2009-2010 and 2010-2011 School Years**

As part of OCR's Directed Inquiry, OCR requested that DCPS provide information regarding all allegations of sexual harassment, including sexual assault/sexual violence, at DCPS middle and high schools for the 2009-2010 and 2010-2011 school years. DCPS cited only three incidents at the High School, all of which occurred during the 2010-2011 school year: two incidents involved sexual harassment, and the third involved a sexual assault (this incident prompted OCR's initiation of the Directed Inquiry).

### Sexual Harassment

The two incidents of sexual harassment occurred in XXXXX. OCR determined that DCPS's handling of one or both of the sexual harassment incidents indicates a possible: failure to assess whether the parties required interim measures, and if so, whether they were timely provided; failure to maintain documentation regarding its response to such incidents, including interview notes; and lack of an appropriate response to an incident when the identity of a respondent or group of respondents is unclear, including providing parties with written notice of the outcome. The information obtained indicated that DCPS considered only discipline as a response when other measures may be available under such circumstances, such as training of students on sexual harassment. Further, the documentation indicates that with respect to employees, and pending the placement of an employee on administrative leave or an anticipated resignation, DCPS did not initiate any investigation to determine whether the alleged sexual misconduct occurred and whether any remedies were necessary for the student and any others that may have been impacted, to remedy any discrimination and its effects, and to prevent any further such misconduct from recurring.

### Sexual Assault

Regarding the incident of sexual assault at the High School in XXXXX, it was alleged that XXXXX. Ultimately, DCPS determined that XXXXX. However, it is unclear from the information provided

whether DCPS assessed whether the complainant or other students required any interim measures or final remedies, such as a request to transfer to another school, in addition to the discipline imposed upon XXXXX, or whether written notice of the outcome was provided to all parties.

OCR determined that although DCPS initiated a Title IX investigation regarding this incident, as noted, there is no indication that DCPS pursued a Title IX investigation until after MPD ceased pursuing criminal charges.<sup>21</sup> It is unclear from the documentation provided whether DCPS maintained close contact with the MPD or deferred its own investigation until police involvement had completely ended. Without further explanation, any undue delay would signal a failure to promptly respond. In addition, and based on a lack of documentation, it is not clear whether school personnel understood the responsibility to report incidents of sexual harassment and sexual assault/violence to DCPS's Title IX coordinator.

In response to the incident, on XXXXX, staff from the Chancellor's Office XXXXX.

Following the incident, XXXXX.<sup>22</sup> The XXXXX did not, however, focus on addressing sexual harassment or sexual assault/violence more specifically.<sup>23</sup>

Despite the XXXXX, DCPS and High School personnel, including the Principal, provided no information indicating that as of 2012, DCPS had taken any specific actions to train staff and students on sexual harassment or sexual assault/violence. On XXXXX, OCR staff visited the High School. OCR interviewed the Principal, who informed OCR that school staff has informally emphasized to students the norms of acceptable behavior and that behavioral expectations are included in the student and staff handbooks. He noted that students met both in small groups and at grade level assemblies several times a month to discuss a variety of topics, none of which was sexual harassment or sexual assault. He also named several organizations and guest speakers, including MPD officers, who have addressed students on a number of topics, including behavioral norms and student responsibilities; however, none of these pertained to sexual harassment and sexual assault/violence.

OCR summarizes its findings regarding the incidents reviewed during the Directed Inquiry along with those reviewed during the Complaint Investigation below.

### **3. District-Wide Incidents Reviewed during the Complaint Investigation: 2012-2013 through 2015-2016 School Years**

As part of the Complaint investigation, DCPS also provided OCR with records of approximately 265 incident reports involving sexual harassment and sexual violence of students by students, employees or third parties, from the 2012-2013 through the 2015-2016 school years. With respect to almost all reports, DCPS was unable to provide case files or other documentation of the schools' or DCPS's responsive actions beyond the security officers' incident reports. DCPS incident reports do not provide substantial information about the investigation or outcome of each incident.

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<sup>21</sup> In some instances, the involvement of police may legitimately require that a district delay its own investigation particularly during the evidence gathering stage of the criminal process. However, the district should maintain close contact with the police regarding the status and determine what steps can be taken during the pendency of the criminal process. Generally, once the evidence gathering stage is complete, the district should promptly proceed with its own investigation.

<sup>22</sup> Based on the information available to OCR, in XXXXX.

<sup>23</sup> As noted above, to XXXXX.

## Conclusion

Based on OCR's review of incidents/reports of sexual harassment and sexual assault/violence through OCR's Directed Inquiry (school years 2009-2010 and 2010-2011) and through the investigation of the Complaint (school years 2012-2013 through 2015-2016), OCR determined that in totality, there is sufficient evidence to indicate that DCPS failed to provide a prompt and equitable resolution of such incidents/reports over a period of approximately six years. OCR also notes the significant increase in the number of incidents/reports that DCPS reported to OCR between the two timeframes, such that the number of incidents rose from three (albeit at the middle and high school levels only) to 265.

OCR determined that the extent of sexual harassment or sexual violence allegations is concerning at all school levels. As reflected in school incident reports, many students – both male and female – at a number of schools have allegedly been the target of or witness to sexually explicit or suggestive comments, offensive touching, and sexual violence. OCR determined that in most instances, DCPS: often referred the matters to the MPD without any consideration as to whether the cases involved sexual harassment or sexual violence under Title IX, or taking any actions to address incidents pending the resolution of criminal complaints; failed to involve the Title IX coordinator; referred alleged incidents of sexual violence to a counselor for mediation, but it is unclear from the documentation provided whether such mediations were voluntary or required; failed to assess whether students required interim remedies and final remedies; failed to make determinations as to whether sexual harassment and sexual violence occurred, even in instances where an investigation was initiated and there was involvement by the Title IX coordinator; and failed to provide complainants and respondents with written notice of the investigation outcome. Further, as discussed above with respect to DCPS's grievance policies and procedures and practices, OCR determined that DCPS failed to retain adequate documentation of complaints/reports received. Accordingly, on August 8, 2018, DCPS agreed to implement the enclosed Resolution Agreement, which commits DCPS to take specific steps to address these violations, pursuant to Section 303(b) of OCR's *Case Processing Manual*.

Further, although DCPS failed to retain adequate documentation of complaints/reports received, OCR determined that given this failure, in addition to the ongoing complaints/reports received and the lack of response thereof, as described above, it is likely that a sexually hostile environment existed and/or currently exists within DCPS schools, and that DCPS's failure to provide a prompt and equitable resolution to such complaints/reports continued to allow students to be subjected to a hostile environment. Specifically, based on the limited documentation reviewed, OCR determined that there were numerous incidents where the conduct could have been sufficiently serious so as to deny or limit a student's ability to participate in or benefit from DCPS's program. In many instances, DCPS's responses to reported incidents often involved nothing more than a referral to the MPD. There is no evidence that DCPS determined whether the alleged misconduct occurred and, if so, whether it constituted sexual harassment or sexual violence; whether there was a sexually hostile environment for individual students or others; or that it provided appropriate remedies beyond discipline for the respondents in some cases. In particular, DCPS has not taken steps to prevent recurrence of incidents of sexual harassment/violence or assessed the effects on students in the schools where incidents of sexual harassment/violence may have occurred. Also concerning is DCPS's apparent lack of oversight and documentation of its responses when students, parents or staff report student incidents of sexual harassment or sexual violence. Because DCPS's incident records lack sufficient information to ascertain whether sexual harassment/violence was substantiated or the impact on students' ability to benefit from DCPS's programs, OCR would need to conduct further investigation in order to

determine if DCPS's failure to provide prompt and equitable resolutions permitted a sexually hostile environment to exist. OCR is unable to make a determination based on the evidence gathered in the investigation to date. Accordingly, on August 8, 2018, DCPS agreed to implement the enclosed Resolution Agreement, which commits DCPS to take specific steps to address any possible hostile environment that existed and/or continues to exist, pursuant to Section 302 of OCR's *Case Processing Manual*.

## V. Conclusion

Throughout OCR's investigation and resolution of the Complaint and the Directed Inquiry, DCPS expressed its ongoing commitment and willingness to make the changes necessary in furtherance of its efforts to comply with Title IX. As stated above, on August 8, 2018, DCPS agreed to implement the Agreement, which commits DCPS to take specific steps to address the identified compliance concerns and violations of Title IX, pursuant to Section 302 and Section 303(b) of OCR's *Case Processing Manual*. Under Section 302 of OCR's *Case Processing Manual*, the Agreement, when fully implemented, will resolve the allegations identified. The provisions of the Agreement are aligned with the allegations and issues raised by the Complainant, as well as the information obtained during OCR's investigation of the Complaint and the Directed Inquiry, and are consistent with applicable law and regulation. OCR will monitor DCPS's implementation of the Agreement until DCPS is in compliance with the statutes and regulations at issue. Failure to implement the Agreement could result in OCR reopening these matters. Under Section 303(b) of OCR's *Case Processing Manual*, a case or complaint will be considered resolved and DCPS deemed compliant if the DCPS enters into an agreement that, fully performed, will remedy the identified area of noncompliance.

DCPS understands that by signing this Agreement, it agrees to provide data and other information in a timely manner. Further, DCPS understands that during the monitoring of this Agreement, OCR may visit DCPS, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether DCPS has fulfilled the terms of this Agreement and is in compliance with the regulation implementing Title IX at 34 C.F.R. Part 106, which was at issue in these cases. Upon completion of the obligations under this Agreement, OCR shall close the Complaint and the Directed Inquiry.

As stated in the Agreement entered into by DCPS on August 8, 2018, DCPS understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10) or judicial proceedings to enforce this Agreement, OCR shall give DCPS written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

This concludes OCR's investigation of the Complaint and the Directed Inquiry. This letter should not be interpreted to address DCPS's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in individual OCR cases. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that DCPS must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, or participates in an OCR proceeding. If this happens, the individual may file a retaliation complaint with OCR.

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

OCR greatly appreciates DCPS's cooperation during the investigation and resolution of the Complaint and the Directed Inquiry. If you have any questions regarding this letter, please contact the attorneys assigned to these cases: Kristi Bleyer at 202-453-5901 or [kristi.bleyer@ed.gov](mailto:kristi.bleyer@ed.gov), and Joseph Wheeler at 202-453-6031 or [joseph.wheeler@ed.gov](mailto:joseph.wheeler@ed.gov).

Sincerely,

Letisha Morgan  
Team Leader  
Office for Civil Rights  
District of Columbia Office

Enclosure

cc: Anitra Allen-King, Resolution Director, via email: [anitra.king@dc.gov](mailto:anitra.king@dc.gov)