



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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WASHINGTON, DC 20202-1475

REGION XI  
NORTH CAROLINA  
SOUTH CAROLINA  
VIRGINIA  
WASHINGTON, DC

April 21, 2017

Mr. James D. Quinn, Superintendent  
South Carolina Department of Juvenile Justice School District  
4900 Broad River Road  
Columbia, South Carolina 29212

Re: OCR Complaint No. 11-15-4044  
Letter of Findings

Dear Superintendent Quinn:

The Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) has completed its investigation of the complaint we received on XXXX, against the South Carolina Department of Juvenile Justice school district (the District), specifically XXXX (the School). The Complainant alleged that the District discriminated against XXXX on the basis of sex. Specifically, the complaint alleged that, from at least XXXX through XXXX, the District denied female students equal access to educational programming at the School, including:

1. Removal of female students from the School during XXXX, resulting in a loss of instructional time;
2. Transportation delays of female students to school resulting in a loss of instructional time;
3. Failure to provide English instruction for female students from XXXX;
4. Fewer vocational and life skills classes for female students;
5. Failure to allow movement from class to class for female students;
6. Denial of access to the computerized education system (PLATO) for female students;
7. Frequent failure to provide a teacher for female students; and
8. Delayed access to GED testing for female students.
9. Failure to respond appropriately to internal grievances filed regarding discrimination based on sex within the last 180 days.

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. Because the District receives Federal financial assistance from the Department, OCR has jurisdiction over it pursuant to Title IX.

In reaching a determination, OCR reviewed documents provided by the Complainant and the District; interviewed District faculty/staff; and conducted a site visit XXXX. After carefully considering all of the information obtained during the investigation, OCR concluded that there was sufficient evidence to support findings of noncompliance with respect to allegations 3, 4, 5, and 9: a failure to provide English instruction during XXXX (Allegation 3); a failure to provide

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CATE instruction during XXXX (Allegation 4); a failure to allow movement from class to class for female students (Allegation 5); and a failure to respond appropriately to internal grievances (Allegation 9). OCR identified compliance concerns regarding the method by which girls attended CATE classes (Allegation 4), the girls' access to computers during XXXX (Allegation 6), removal of the girls from the educational setting during XXXX (Allegation 1), and delays in transportation (Allegation 2). OCR also identified a concern regarding the girls traveling as a group instead of by grade level during the XXXX school year. The District agreed to resolve all violations and concerns through the enclosed resolution agreement. OCR identified compliance concerns regarding delayed access to GED testing for female students (Allegation 8) but determined that the District resolved the concern. OCR found insufficient evidence to conclude that the female students received less math, science, or history instruction than the boys during XXXX (Allegation 7). OCR's findings and conclusions are discussed below.

### **Background**

The District provides educational services for all residents of the South Carolina Department of Juvenile Justice (DJJ). The School is “a comprehensive high school offering male and female students in grades XXXX through XXXX a variety of CATE [Career and Technology Education] and academic courses” located at the XXXX of DJJ, XXXX. The Campus also houses XXXX School for grades XXXX through XXXX. The average daily population for the Campus during the XXXX year was XXXX,<sup>1</sup> with about XXXX girls at any given time.

XXXX PARAGRAPH REDACTED XXXX

### **Different Treatment (Allegations 1 through 8)**

In XXXX, there were some XXXX.<sup>2</sup> In an effort to increase student safety XXXX, female and male students, who up until that point had attended classes together, were separated. There was a period of a few weeks during which the female students received educational services in their dormitory, and a period of two to three months during which the female students were confined to one classroom “quad,” or group of rooms. The exact dates of the confinement were not recorded, but School staff told OCR in interviews that it lasted from approximately XXXX until XXXX or XXXX.<sup>3</sup>

During this time, male students followed a regular school schedule, moving from classroom to classroom for different subjects, but instead of traveling by grade level, they traveled according to which dormitory they lived in (or by “pod”), which was not determined by age or grade level. At the end of the XXXX school year, the administration decided that the female students would no longer be confined to the one quad for the XXXX school year, but they continued to all travel

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<sup>1</sup> <http://www.state.sc.us/djj/pdfs/2015-report-card.pdf>.

<sup>2</sup> Staff and administrators at the School provided conflicting information on the nature and exact date of these XXXX. The Superintendent and Principal said XXXX. At least one staff person was unsure of the nature of the XXXX; another reported a XXXX.

<sup>3</sup> There were some discrepancies in the reported end date for the isolation of the female students. Administrators believed the confinement ended in XXXX, but staff who worked directly with the girls reported that the confinement lasted until XXXX or XXXX.

together. At the same time, the male students resumed traveling by grade level rather than by pod. This schedule was in place when OCR conducted its site visit in XXXX.

The educational services provided to the female students were different during the period in which they were confined to their dormitory and the quad than the ensuing period from XXXX through the present. OCR will therefore analyze these two periods separately then analyze issues that spanned the entire time period.<sup>4</sup>

### Legal Standard

The Title IX regulation, at 34 C.F.R. § 106.31(a), provides that no person shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under the Division’s education programs or activities on the basis of sex.

When investigating an allegation of different treatment, OCR first determines whether there is sufficient evidence to establish an initial, or prima facie, case of discrimination. Specifically, OCR determines whether the District treated the students less favorably than similarly situated individuals of a different sex. If so, OCR then determines whether the District had a legitimate, nondiscriminatory reason for the different treatment. Finally, OCR determines whether the reason given by the District is a pretext, or excuse, for unlawful discrimination.

### Confinement Period (Approximately XXXX through XXXX)

In its notification letter, OCR included as Allegation 5 a failure to allow movement from class to class for female students. As explained above, School staff acknowledged that the girls were confined to one quad from approximately XXXX through XXXX. The Complainant alleged further that when the girls were in the one quad, they often did not have anything to do except write or draw and they did not have access to the computerized education system (PLATO). Because each of the consequences of the girls’ confinement to the one quad is addressed as a separate allegation, OCR will not separately analyze the confinement itself. However, in the course of its investigation, OCR identified an additional issue which is addressed below – that the girls traveled from class to class as a group during the XXXX school year, while the boys traveled by grade level.

### *Failure to provide instruction for the female students (Allegations 3, 4, 7)*

The Complainant alleged that from XXXX to XXXX, the female students did not have an English teacher. She also alleged that the girls often “did not have any teacher in their one classroom, not even a qualified substitute.” Written documentation and staff interviews confirmed that the girls had more limited access to an English teacher and to CATE instruction than the boys when the girls were confined to the one quad, but there is insufficient evidence to conclude that the girls had more limited access to the other core subjects.

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<sup>4</sup> OCR will address some allegations together and not always in the order listed above.

**English Instruction (Allegation 3).** OCR reviewed the English instruction offered girls throughout the XXXX semester, which lasted from XXXX to XXXX, and compared the English instruction received by the female students to that offered to male students.

*Staffing Changes*

The District started the XXXX semester with XXXX or XXXX English teachers. The District did not provide in its documentation or clarify in its interviews the exact date when an English teacher left, but one of the two English teachers left at or very close to the start of the XXXX semester, leaving XXXX English teacher (English Teacher I) as of XXXX. There were at least two occasions in which the availability of English instructors changed from then on. First, a new English teacher was hired in XXXX. This increased the number of available English instructors to XXXX: the new English teacher and English Teacher I. Shortly after the new English teacher joined the staff, in XXXX or XXXX, English Teacher I, the only other certified English teacher on staff, left the School. From that point forward there was one English instructor, the new English teacher, on staff. This changed in XXXX, when an associate teacher started at the School and began teaching English.

*Staff Assignments*

This chart summarizes the timeline of English teacher assignments to male and female students:

<b>Female Students</b>	English Teacher I	English Teacher I	No instructor	Associate Teacher	The new English teacher
<b>Date Range</b>	XXXX	XXXX	XXXX*	XXXX	XXXX
<b>Male Students</b>	English Teacher I	English Teacher I + the new English Teacher	The new English Teacher	The new English teacher	The new English teacher

\*English Teacher I was present on XXXX.

During the early part of the XXXX semester, English Teacher I provided the female students English instruction when she was in attendance. However, English Teacher I was often absent and left the School XXXX. English Teacher I was absent for a total of XXXX days, including XXXX. English Teacher I never returned after the prolonged absence that began on XXXX.

In XXXX, while English Teacher I was still on staff, the District hired the new English teacher. The new English teacher stated that she was not initially assigned to the girls and was unaware of anyone teaching the girls in the period after English Teacher I left. The girls did not have an English instructor until the associate teacher began in XXXX, at which time she was assigned to teach the girls. The new English teacher started teaching the girls sometime after that. Although she could not recall the exact date, it was before the summer session, which runs from XXXX to XXXX. The new English teacher’s recollection is supported by documentation provided by the District detailing the many days, XXXX, in which the Complainant (and other female students)

did not have an English teacher.<sup>5</sup> Likewise, the Complainant recalled that “[f]rom XXXX until XXXX girls had no English instruction; boys had regular classes.” Although the Superintendent told OCR that the new English teacher was the girls’ teacher and the Principal told OCR that the new English teacher was “designated” to teach the girls even if not initially, documentation of teacher attendance, the recollection of the Complainant, and the recollection of the new English teacher herself all strongly suggest that there was at least a one-month period, from the start of XXXX to sometime in XXXX in which female students were not receiving English instruction. During the same period, the boys consistently had an English teacher. The new English teacher was absent for XXXX days from XXXX through XXXX, but otherwise was at the School teaching the boys.<sup>6</sup> As a result, OCR finds that the female students were treated less favorably than male students in assignment of available English instruction.

The District’s presented reason for the girls not having an English teacher in XXXX was the overall staff shortage. However, this reason was an excuse for unlawful discrimination. Once the new English teacher asked the administration who was teaching the female students, she was assigned to teach the female students, demonstrating that it was possible for her to provide instruction to both the male and female students. OCR finds sufficient evidence to conclude that the District unlawfully discriminated against the girls by not providing an English teacher during XXXX. OCR determines under CPM 303(b) that the District failed to comply with Title IX.<sup>7</sup>

**CATE Instruction (Allegation 4).** The girls’ CATE classes were severely limited while they were confined to the one quad. Teachers and administrators told OCR that when the girls were confined to the quad, some CATE instructors would travel to the girls’ space during CATE periods but they were unable to provide instruction because they did not have access to the necessary supplies, which were located in the CATE classrooms. For example, the welding instructor would travel to the girls’ classroom, but the girls could not weld because all of the welding supplies were in the welding room. The graphic communications teacher told OCR that the welding teacher became increasingly frustrated over the course of the semester about his inability to teach welding to the girls. Some teachers showed movies, some brought paperwork, and others brought coloring books. At the same time, the boys had access to the CATE classrooms and thus were able to receive full CATE instruction in all assigned CATE courses.

The District confined the girls to the one quad in an effort to increase student safety and prevent disruptions. OCR recognizes safety is an important goal for all school districts, and is especially

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<sup>5</sup> The District gave OCR a spreadsheet with the Complainant’s class attendance during XXXX, along with teacher absences for those classes. XXXX 4 SENTENCES REDACTED XXXX.

<sup>6</sup> Although three English teachers were listed by the District as teaching at the School during the XXXX school year, OCR learned through interviews that only the two teachers already described were employed at the School during XXXX. The third teacher stopped teaching at the School XXXX.

<sup>7</sup> In addition to the gap in English instruction for the female students, OCR is concerned about English instruction for the girls later in the XXXX school year, when an associate teacher may have been instructing the girls without oversight from a credentialed teacher. As mentioned above, the School added an associate teacher to the staff in XXXX. The associate teacher told OCR that she started teaching the girls English when she started at the School in XXXX. The associate teachers are not certified teachers, but rather serve in a paraprofessional support role when in the classroom with a certified teacher. School policy typically limits the use of associate teachers to cover classrooms in the absence of a certified teacher to a week, but this policy was suspended during the XXXX school year due to a teacher shortage. The content area teachers are generally tasked with overseeing the instruction provided by the associate teachers. In this case, it is unclear whether this collaboration took place between the new English teacher and the associate teacher; neither teacher mentioned any such collaboration.

important for districts such as this one that serve the specialized population of youth that have been adjudicated delinquent. However, even considering the separation to be legitimate, the District has an obligation to allocate its resources in a non-discriminatory manner, which includes providing the girls with the same educational opportunity as the boys. Here, due to their confinement, the girls effectively did not receive CATE instruction in at least one course, while the boys did. OCR finds a violation of Title IX under Section 303(b) of the CPM for the failure to provide the girls effective CATE instruction during XXXX.

**Other Instruction (Allegation 7).** As with the CATE and English instruction analyzed above, OCR considered the provision of educational services to female and male students in the context of the staff shortage, which impacted teacher availability for all students. There is insufficient evidence to conclude that the girls received less science, social studies, or math instruction than the boys. The one science teacher at the School during that time period told OCR that she was able to teach the girls during their confinement. There was no social studies teacher for male or female students. The Principal told OCR that the School’s one math teacher at that time was also able to work with the girls, and a security staff person who worked with the girls at that time reported maybe seeing the math teacher then. Although a CATE instructor told OCR that she would teach the girls math when their math teacher did not show up, OCR received no indication that the math teacher was absent more frequently in girls’ classes than in boys’ classes.

*Denial of access to the computerized education system for female students (Allegation 6)*

The Complainant alleged that when the girls were confined to the one quad, they did not have access to the computerized education program, PLATO.<sup>8</sup>

PLATO is a computer-based educational tool that was introduced at the School for the XXXX school year. Some staff reported that the girls had the same access to PLATO as the boys. The School administrators told OCR that the girls had access to computers and PLATO in their quad, although use was restricted for any student that used the computers inappropriately. Some teachers reported to OCR that the girls did have access to the computers. An associate teacher told OCR that the girls had access to one or two computers when they were confined to their own room, although she did not believe they used them for PLATO.

Written documentation provided by the District confirmed that the girls accessed PLATO while confined to the single quad. The District gave OCR a report entitled “Learner Daily Usage by Learner” that appears to list, by student, the number of days a student logged into PLATO within a range of dates. The report did not provide specific log-in dates. The report for XXXX, through XXXX, lists XXXX unique female users and XXXX unique male users, with several girls logging on more than 30 days within that time period, indicating that the log-ins were not restricted to the period in XXXX when they were no longer confined to the one quad.<sup>9</sup>

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<sup>8</sup> The current female students did not report any issues with access to PLATO.

<sup>9</sup> OCR does not have total enrollment numbers for that time period, but the number of unique users listed in the report may reflect the total number of male and female students at the School during that time. The girls only stay for XXXX weeks on average, so they would have quite a bit of turnover within this XXXX period.

Because OCR does not know whether there were any girls who were at the School for the entire XXXX period, OCR cannot draw any further conclusions from the information provided beyond the stated conclusion that there

However, several teachers reported to OCR that the girls did not have access to the computers during XXXX. One instructor told OCR that the computers were removed from the girls' quad after a couple of girls misused them by accessing Facebook. The teacher did not believe computers were removed from boys' classrooms. Another teacher told OCR that there were computers in the girls' one quad during XXXX, but they were not functioning and the administration told her the girls were not allowed to access anything. The boys had access to the computers in the teacher's classroom in the boys' part of the building, including for a period of time after she reported that the boys were using the computers to access inappropriate content.

Based upon the testimony of several teachers, OCR is concerned that the girls may have been unable to use the computers and PLATO during part of their confinement, while the boys had access throughout XXXX. The District has indicated that it would like to resolve this concern under Section 302 of the Case Processing Manual (CPM). OCR is resolving its concern regarding female students not having access to computers/PLATO under Section 302.

Present Period (Approximately June 2015 Through the Present)

*The girls traveled by pod rather than by grade level (Additional concern)*

For the XXXX school year, the girls traveled by pod from class to class, with girls of all different grade levels attending class together. At the same time, the boys traveled in groups separated by grade level, with two grade levels per group. OCR spoke with the current female students about the effects of traveling from class to class as a group. There was a general consensus that grouping them was not an effective means of providing instruction, as they were each at different grade levels and the teacher could only work with one student at a time and would get confused switching between different grade levels. One student reported that it resulted in them each doing the same thing over and over again. They questioned why they could not take classes with the male students, who were differentiated by grade level. They felt that they were being punished for the actions of the girls attending the School during XXXX.

A teacher also reported issues with the grouping. She told OCR that the prep work for the girls' classes was more difficult than the prep work for the boys' classes because there were multiple grade levels in one class. When discussing a period of time before the XXXX school year when all students (including male students) traveled by dorm instead of grade level, the teacher identified having students of various grade levels as a challenge. She explained that the justification for having various grade levels in one class – that students could work on PLATO with some teacher assistance – was not appropriate because the students at the School were not self-pacing (and required more direct teacher supervision). She further added that it has been a huge help to at least have the middle school boys separated from the high school boys.

OCR finds that the girls were treated differently than the boys after XXXX. The girls had to travel as a sex-defined group, while the boys traveled by grade level. There is also some

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were some girls who logged on at some point during the girls' confinement to the quad. For example, OCR cannot determine whether within the period of time the girls spent in the quad, there was a shorter period of time that the girls did not have access to computers/PLATO.

evidence to indicate that the educational services received by the girls were inferior to those received by the boys as a result. The female students present during the OCR onsite in XXXX reported that grouping girls by gender rather than by grade level led to less effective educational instruction for the girls, and a teacher described encountering difficulties created by the grouping. The District has indicated that it would like to resolve this allegation under Section 302 of the CPM. OCR is resolving its concern regarding female students traveling by sex instead of grade level under Section 302.

*Fewer vocational and life skills classes for female students (Allegation 4)*

The Complainant alleged that the girls do not have the same access to vocational programming as boys. She specifically alleged that the girls could attend welding, matting/framing, and ROTC, but were denied enrollment in culinary arts and parenting. In addition, she alleged that the girls requested the School to start offering nursing and cosmetology, but this request was denied.

School administrators described to OCR the three factors they considered in assigning students to CATE classes during the XXXX school year, which girls and boys attended separately. First, when students entered the facility, they all listed their top three choices for CATE classes. Second, because the group of girls was so much smaller than the group of boys (XXXX), the School would reserve between XXXX CATE courses each semester to make available to the girls. These classes, along with the rest of the School's CATE offerings, were always available to the boys. The Principal said the administrators would pick the girls' offerings based on ease of travel from class to class, although he added that he did not offer automotive classes for the girls because he did not believe they would be interested in automotive classes. This assumption was contradicted by the girls' interest forms, in which at least nine girls during the XXXX and XXXX school years expressed an interest in automotive classes. Third, administrators would look at students' transcripts to see which CATE credits they had already earned. After looking at current credits, student interest, and availability, the administrators would assign students to classes.

The girls confirmed with OCR that they traveled as a group to their CATE classes during the XXXX school year and the boys attended CATE classes based on individual interest. The girls told OCR that the School had "majority rules" for the girls' CATE classes, so they were all placed in the same classes, out of the subset of XXXX to XXXX classes chosen by the administration based on a majority interest. For instance, if XXXX girls vote for the cooking CATE course, all XXXX students take cooking. ROTC and music were the only classes where the girls had a choice between one or the other. The two classes were scheduled for the same period, and the girls could choose either ROTC or music. They reported that the boys were placed in CATE classes of their choice. At the time of the focus group, the XXXX girls were enrolled in parenting, ROTC/music (XXXX in ROTC and XXXX in music), work keys, and gym.<sup>10</sup>

OCR finds sufficient evidence to conclude that the female students were treated differently than male students for the XXXX school year because they did not have access to the same range of

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<sup>10</sup> One teacher told OCR that at the time of the interviews, the girls were restricted to culinary arts and music, but this was contradicted by the girls themselves.

CATE classes. The decision by the administration to limit the offerings for the girls led to the Complainant's specific allegation that girls could not attend culinary arts or parenting – at any given time, a subset of the full CATE offerings were unavailable to the girls, and that subset seems to have included culinary arts and parenting when the Complainant was at the School. In contrast, at the time of OCR's onsite, parenting was one of a limited selection of courses available to the girls. The girls chose from this shorter list of options, and were being grouped by "majority rules" rather than by individual interest, as the boys were grouped.

The District provided that its legitimate non-discriminatory reason for offering fewer choices for the girls was because there were fewer girls. OCR recognizes this as a legitimate reason.<sup>11</sup> The offerings for girls are proportionate to girls' enrollment in the School. At the time of OCR's site visit, girls were enrolled in XXXX out of the School's XXXX CATE offerings, or 31%, while making up approximately 5% of the student population (XXXX out of XXXX). However, one of the two criteria the District used to determine what to offer to the girls – eliminating choices in which the District believed the girls would not be interested – is not a legitimate way to narrow the girls' course offerings because it is based directly upon gender stereotypes. OCR determines under CPM 303(b) that use of the criterion violates Title IX.

OCR is also concerned about the District's decision to assign the girls to CATE courses as a group rather than based on personal preference. The District agreed to resolve this concern under Section 302 of the CPM.

#### Issues that Spanned the Entire Time Period (Spring 2015 Through the Present)

##### *Removal of female students from the School during classroom disruptions (Allegation 1)*

The Complainant alleged that when there were XXXX at the School, only the female students were removed and sent back to their dormitory without educational services. OCR was unable to review written records detailing student removals from school. Several staff members mentioned the existence of log books that contained times that students arrived at and departed from the School, but the District did not provide documentation of student removals to OCR despite a request for it. OCR's analysis is therefore based on its interviews with District staff.

Several staff members asserted that the girls were removed from the School as a group due to XXXX and the boys were not. The Security Coordinator for the School explained that the School had a staff shortage of security staff who worked with the female students, so there may have been times when due to staffing, if one girl was to be removed from the school setting for XXXX reasons, all the girls had to be removed from the school setting, as there were not enough security staff to cover two groups of girls. District staff did not clearly recollect how often this happened, but none reported it happening more often than every six to eight weeks.

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<sup>11</sup> This is analogous to the test used by OCR in determining whether a District's athletics offerings comply with Title IX. If a District can show that interscholastic level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments, the District is complying with Title IX with respect to interscholastic level participation opportunities.

However, several other staff members told OCR that the girls were not removed as a group. For example, a security staff person assigned to the girls reported that they made every effort to keep the students in school, so if there was an issue, only the students directly involved were removed from the School. In OCR's focus group with all of the female students currently at the School, the girls did not report any problems with mass removals for XXXX. In addition, the Office of Juvenile and Family Relations (OJFR) Coordinator, who is responsible for investigating student grievances, told OCR that her office XXXX. XXXX 3 SENTENCES REDACTED XXXX.

Because of the directly conflicting reports from District staff and the District's failure to date to provide written documentation of student removals, OCR is unable to conclude whether the female students were treated differently than male students by being removed as a group during XXXX. However, OCR is concerned about the staff member reports that female students were removed from class en masse. It is possible that staffing issues led to different treatment for female students, because there were no occasions reported when male students were removed from school based on XXXX of individual male students except for situations where all students were removed from the School. The District has indicated that it would like to resolve this concern under Section 302 of the CPM.

*Delays in transportation of female students to the School (Allegation 2)*

The Complainant, via counsel, alleged that the female students would miss classroom instruction because of the time it took to bus them from the girls' dorm to the School in the mornings and because of the time it took to bus them back to their dorm for lunch. Counsel reported that the male students did not face similar delays.

The District provided that all students were transported by bus or van from their dorms to the School for morning classes, bussed back to their dorms for lunch, returned by bus to the School for afternoon classes, then bussed back to their dorms at the end of the school day. As part of the efforts explained above to maintain safety and order at the School, all movement was staggered so as to limit interaction between boys and girls.

At least four District staff members, including the Principal, told OCR that there were more transportation and scheduling issues for the girls than for the boys, resulting in lost instructional time. Reported issues included the female students arriving last at the building, leaving first for lunch, returning last from lunch, and leaving first at the end of the day; as well as being "held" somewhere in the School building waiting to be walked to their classroom while the boys moved into their classrooms. Two teachers estimated that the girls lost at least an hour of instruction a day as compared to the boys due to movement issues during both the XXXX and XXXX school years. One reported sometimes driving to the girls' dormitory to take work to them because they were missing so much instruction during the XXXX school year; another who taught a class scheduled during the time taken up by transportation delays reported going days without seeing the girls during the XXXX school year. One teacher became so concerned with the amount of instruction lost that she began keeping a record of when the girls left for and returned from lunch. The female students told OCR in XXXX that they usually arrived at the School at the same time as the boys, but they usually left for lunch first and left the School about XXXX minutes before the end of the school day. They told OCR that they used to be taken out of school

so early that they only spent XXXX minutes in math class, but they spoke with the administration and the boys are now released early so that they can finish math.

However, two staff members did not report that transportation issues adversely affected the girls. An associate teacher reported that the boys were more affected by transportation delays than the girls. Another teacher also did not report that the girls were more negatively affected than the boys by transportation delays.

A large majority of the staff interviewed by OCR and the female students in residence in XXXX confirmed that the girls missed instructional time as compared to the boys due to transportation issues, which presents a *prima facie* case of different treatment.<sup>12</sup> OCR recognizes that the District's presented reason for staggering arrivals, safety, is an important goal. The District has given OCR no explanation for why the schedule was designed in such a way that it was always the female students receiving less instruction. However, OCR finds it unlikely that staggering arrival and departure in such a way that the School was providing female students with an hour less per day of instruction than male students was necessary to ensure safety or that there were not other equally effective ways to ensure safety without shortchanging the girls. For example, the girls could have been scheduled to always arrive first at the School and leave first, equalizing the time missed by the boys and girls.

The District has indicated that it would like to resolve this concern under Section 302 of the CPM. OCR is resolving its concern regarding the girls missing on average an hour of instruction every day due to transportation and scheduling issues under Section 302.

*Delayed access to GED testing for the female students (allegation 8)*

The Complainant alleged that the boys got to take the GED more quickly than the girls, with the girls waiting weeks or months to sit for the GED. She said that the girls were told this was because there were not enough correctional staff members assigned to the girls for one to accompany a girl to the GED classroom when the other girls remained elsewhere.

The GED coordinator for the School told OCR that limited staffing did make it very difficult for female students to take the GED. She confirmed that during the XXXX school year, often girls were not able to come sit for the GED because there was not staff to transport them. She would set up testing sessions for female students at the same time male students were testing, and the female students would not appear because they could not find a female security staff person to satisfy the School's requirement that when the girls and boys are in the same room, a female security staff person must be present. To counteract this for the XXXX school year, the GED coordinator set up female-only testing sessions and contacted the social worker to help make sure there was adequate staff. Despite the inability of girls at times to get to the GED testing, the GED Coordinator forwarded to OCR testing dates for four female students who successfully took the GED between XXXX and XXXX. She reported that two additional female students were scheduled to take the GED practice tests on XXXX, but they did not come to take it and she did not know why.

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<sup>12</sup> As explained in the previous section, the District did not provide OCR with written logs reporting the times that students entered and exited the school building, so our analysis includes staff interviews only.

From the GED coordinator’s statement, there is sufficient evidence for OCR to conclude that during the XXXX school year, female students did not have the same access to the GED as male students due to staffing issues. However, the coordinator reports that she altered the testing schedule for the XXXX school year to make sure that female students could sit for the GED. OCR finds that the District has addressed the violation and no further action is needed.

**Failure to respond appropriately to internal grievances filed regarding discrimination based on sex (Allegation 9)**

The Complainant alleged that she lodged several internal grievances with the “allegation officer” and was told that the grievances would be taken up the chain of command, but nothing changed. OCR reviewed the District’s grievance policies, grievance practices, and treatment of the girls’ allegations during the XXXX school year.

Legal Standard

The Title IX regulation, at 34 C.F.R. § 106.8(b), requires that districts adopt and publish grievance procedures that provide for the prompt and equitable resolution of student and employee complaints of Title IX violations. OCR examines a number of factors in evaluating whether a district’s grievance procedures are prompt and equitable, including whether the procedures provide for the following: notice of the procedures to students, parents and employees, including where to file complaints; application of the procedures to complaints alleging discrimination by employees, other students, or third parties; adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; designated and reasonably prompt timeframes for major stages of the complaint process; written notice to the parties of the outcome of the complaint; and an assurance that steps will be taken to prevent recurrence of any discrimination and to correct its effects.

Policy

A District written policy in place during the XXXX school year entitled “Juvenile Rights and Responsibilities” provided that:

Juveniles under the supervision of the Department of Juvenile Justice (DJJ) will be protected from discrimination based on age, race, national origin, color, sexual orientation, religion, gender, and disability. All juveniles will have equal access to programs and activities. All juveniles will be treated respectfully, fairly, and impartially. A juvenile who believes that his or her rights set forth in this policy have been violated may seek relief through DJJ’s juvenile grievance process. All juveniles will receive a copy of these rights and responsibilities at admission. A copy of these rights and responsibilities will be posted in areas prominent and accessible to juveniles in each living unit.

DJJ’s written Juvenile Grievance Process policy stated that DJJ would “provide a timely and fair resolution of complaints from juveniles under the jurisdiction of DJJ.” The procedural guidelines

stated that the Juvenile Grievance Process would be used to investigate allegations that “a department or facility policy, procedure or rule violates the rights of a juvenile as set forth in [the] Juvenile Rights and Responsibilities, or that such policy or procedure has been unfairly implemented.” The policy further provided that juveniles in residential facilities must be informed of their right to file a grievance at orientation, and grievance forms and collection boxes must be available in common areas accessible to juveniles. The juveniles had the responsibility of completing the grievance forms and placing them in the grievance boxes, but staff were required to provide assistance in completing and submitting the form when a juvenile requests assistance. Office of Juvenile and Family Relations (OJFR) coordinators collected and tracked the forms, investigated the complaint to determine whether it was founded or unfounded, and responded in writing to the juvenile within 30 business days. The Facility Manager was required to submit a plan of action to OFJR for each founded grievance.

The District’s written policy included some of the factors OCR examines in evaluating grievance procedures: notice to students and employees, including where to file complaints; impartial investigation of complaints; designated and reasonably prompt timeframes for major stages of the complaint process; written notice of the outcome of the complaint; and an assurance that steps will be taken to prevent recurrence of any discrimination and to correct its effects. However, the policy did not explicitly state that it applied to complaints of discrimination by employees, other students, or third parties and does not provide for the opportunity to present witnesses and other evidence. In this setting, it is particularly important for students to know that the grievance procedures apply to discrimination by other students or third parties, such as security staff, especially in light of an event at the facility where male student(s) broke into the female dorm allegedly in an attempt to sexually assault the female students.<sup>13</sup> In addition, the ability to present witnesses and other evidence as part of a grievance is an essential due process standard and necessary to ensure a fair or equitable process. The policy should be updated in order to come into compliance with Title IX. OCR finds a violation under CPM 303(b).

OCR is also concerned that staff were not familiar with the District’s written grievance policy. The Inspector General (IG) for DJJ told OCR that OJFR handles most grievances, presumably those covering conditions of confinement, but the IG’s office handles complaints concerning criminal activity and violations of DJJ policy, including claims of discrimination. However, the written policy stated that the OJFR handles complaints of discrimination.

#### Access to filing Grievances and Timeliness of Response

OCR asked District staff and students whether the students had access to the grievance process. The interviews conducted by OCR did not indicate any concerns regarding the students’ access to or knowledge of how to file grievances. Administrators told OCR that there were grievance boxes and forms available for students to use throughout the campus and that the students were informed of the grievance process during their initial intake or orientation. The Superintendent asserted that they receive a good number of complaints, so was sure that students had access to forms and boxes. One staff person believed that no one spoke with incoming students about the grievance process, but the current female students were aware of the fact that to file a grievance, all you have to do is ask for the form.

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<sup>13</sup> XXXX.

OCR found that the District was not always following its own guidance in responding to grievances in a timely fashion. The IG said the timeline for completion of the investigation was 30 working days, but the investigation may take longer since DJJ employs shift workers. The OJFR Coordinator said that an investigation with full cooperation from staff would take six weeks to complete, but if staff were out or did not cooperate with the investigation, it would take longer. Also, if there were a more serious allegation, it would be elevated to the IG for investigation. OCR is concerned about this failure to complete investigations within the District's timeline. The interview testimony indicated that the District was at the least creating unrealistic expectations for those filing grievances by stating timelines within its guidance and then not completing investigations within those timelines.

#### Girls' XXXX Grievances

OCR was not provided with existing written documentation of complaints filed by female students during the XXXX school year. Normally, OCR would have to review these complaints and DJJ's response in order to make a finding under CPM 303. However, these documents were never provided, despite requests in OCR's XXXX, data request letter; in follow-up e-mails on XXXX, and XXXX; and in an interview on-site on XXXX, with the OJFR coordinator. OCR assumes they will remain unavailable for review and will make a decision based on the information already obtained.

Based on interviews, there is sufficient evidence to conclude that female student(s) both filed written grievances and voiced complaints to a number of District staff members that did not receive an appropriate response. Several staff members who worked directly with the female students told OCR that the girls complained to anyone who would listen about their confinement to the one quad of classrooms and the insufficiency of their educational services. Staff members reported that the female students and staff complained directly to the Principal about the girls' isolation and desire for academic instruction. The OJFR coordinator told OCR that a female student filed a grievance about students being removed from the classroom and the Superintendent was immediately informed about the investigation.

The OJFR coordinator reported receiving grievances from the female students about students being removed from the classroom and about mass punishments, but it does not appear from the District's written policy that the girls would have had a chance to present witnesses and other evidence as part of the investigation. Also, the Principal, the Superintendent, and the IG told OCR that they could not recall any grievances regarding the girls' educational services, despite the OJFR coordinator stating that she informed the Superintendent immediately of the investigation of the student removals and mass punishments. With regards to the confinement to the one quad, the OJFR Coordinator stated that although she was vaguely aware of the situation, it did not raise any red flags because there was also a group of boys being taught in their dorm at that time. The School administrator explained that the group of boys was participating in a grant-funded program to provide family-like services in the dorm. This discrepancy in reported information and insufficiency of the grievance procedures provide sufficient evidence to conclude that the process undertaken violated title IX under CPM 303(b).

## **Conclusion**

On April 20, 2017, the District agreed to implement the enclosed Resolution Agreement (Agreement), which commits the District to take specific steps to address the identified areas of noncompliance. The Agreement entered into by the District is designed to resolve the issues of noncompliance. Under Section 303(b) of OCR's *Case Processing Manual*, a complaint will be considered resolved and the District deemed compliant if the District enters into an agreement that, fully performed, will remedy the identified areas of noncompliance (pursuant to Section 303(b)). OCR will monitor closely the District's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively. OCR may conduct additional visits and may request additional information as necessary to determine whether the District has fulfilled the terms of the Agreement and is in compliance with Title IX with regard to the issues raised. As stated in the Agreement entered into by the District on April 20, 2017, if the District fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings, including to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10) or judicial proceedings, including to enforce the Agreement, OCR shall give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

This concludes OCR's investigation of the complaint. This letter 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. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District 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.

We appreciate the District's cooperation in the resolution of this complaint. If you have any questions regarding this letter, please contact Nicole Dooley, the OCR attorney assigned to this complaint, at (202) 453-5675 or nicole.dooley@ed.gov.

Sincerely,

/s/

Michael Hing

Supervisory Attorney  
Office for Civil Rights  
District of Columbia Office

Enclosure

cc: Dave Duff, Attorney for the District