



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGION IX
CALIFORNIA

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August 9, 2024

Dr. Lamont Jackson
Superintendent
San Diego Unified School District
San Diego, California 92103

By email only to ljackson@sandi.net

Re: **San Diego Unified School District - OCR Case Number 09-20-5001**

Dear Superintendent Jackson:

This letter notifies you of the resolution of the compliance review conducted by the U.S. Department of Education (the Department), Office for Civil Rights (OCR) of the San Diego Unified School District (the District) to evaluate its responses to complaints and reports of sexual assault, including student-to-student and employee-to-student misconduct, during school years (SYs) 2017-2018, 2018-2019, and 2019-2020 (the Review Period). This compliance review examined whether the District responded to such complaints and reports in a manner compliant with Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681-1688, and its implementing regulations at 34 C.F.R. Part 106. This examination included evaluating whether the District provided prompt and equitable grievance procedures and responses to notice of sexual harassment under 34 C.F.R. §§ 106.31 and 106.8(b), and whether the District fulfilled its obligation to have a Title IX coordinator who coordinated its efforts to comply with Title IX during investigations of sexual harassment complaints under 34 C.F.R. § 106.8(a). In addition, because OCR identified concerns regarding the District's satisfaction of its obligations not to discriminate on the basis of disability as required by Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulations at 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulations at 28 C.F.R. Part 35, this review addressed the concerns OCR identified consistent with Article III of OCR's [Case Processing Manual](#) (CPM) dated July 18, 2022.

OCR enforces Title IX and its implementing regulations at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any education program or activity operated by a recipient of federal financial assistance. OCR also enforces Section 504, 29 U.S.C. § 794, and its implementing regulations at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability under any program or activity receiving federal financial assistance. OCR also enforces Title II, 42 U.S.C. §§ 12131-12134, and its implementing regulations at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. As a public entity and a recipient of federal financial assistance from the Department, the District must comply with Section 504, Title II, Title IX, and their implementing regulations.

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

To conduct this compliance review, OCR reviewed extensive documentation that the District provided, including its policies and procedures, its notices of nondiscrimination on the basis of sex, and documentation of 253 complaints and reports alleging conduct that could constitute student-to-student or employee-to-student sexual harassment. Additionally, OCR interviewed District employees, including the Title IX Coordinator, Area Superintendents, District Police, and an investigator and administrator of the Quality Assurance Office (QAO). During the course of OCR's review, the District renamed the QAO to be the Office of Investigations, Compliance, and Accountability. In this letter, OCR refers to the office as QAO because that was its name during the Review Period.

I. SUMMARY OF OCR'S FINDINGS AND COMPLIANCE CONCERNS

After careful review of witness and documentary evidence, OCR found the following violations of Title IX and its applicable regulatory requirements during the Review Period:

1. The District generally failed to fulfill its regulatory obligation to provide an equitable response to allegations of sex discrimination regarding sexual harassment, including sexual assault;
2. The District systematically failed to coordinate its response to sexual harassment, including sexual assault, through its designated Title IX Coordinator; and
3. The District failed to adopt prompt and equitable grievance procedures for complaints of sexual harassment.

OCR also identified compliance concerns about the adequacy of the District's training regarding Title IX for responsible employees and of the District's recordkeeping regarding reports and complaints of sexual harassment during the Review Period. In addition, OCR has an ongoing concern that the District's current recordkeeping may not comply with the requirements of the Title IX regulations that took effect on August 14, 2020 ([the 2020 Title IX Regulations](#)).

Additionally, OCR's file review reflects compliance concerns regarding the District's fulfillment of its obligations under Section 504 and Title II to evaluate students when the District had reason to suspect that they may need special education or related services, and to reevaluate students with disabilities prior to any significant change in their placement or to determine whether all areas of a student's need for services were being addressed.

The District voluntarily entered into a Resolution Agreement (the Agreement), which, when fully implemented, will resolve the violations and compliance concerns identified in this letter of findings. Below OCR summarizes its methodology for this compliance review, the applicable legal standards, OCR's findings, analysis, conclusions, and the terms of the Agreement.

II. METHODOLOGY

OCR's compliance review examined the District's responses to notice of incidents of sexual harassment, including sexual assault, during SYs 2017-2018, 2018-2019, and 2019-2020, under the Title IX regulations in effect during those three school years by interviewing employees about those responses as well as analyzing District records of reported incidents and its responses

to them. The District is the second largest school district in California with over 100,000 students and 175 schools, including 22 high schools, 24 middle schools, 13 alternative/atypical schools, and 117 elementary and K-8 schools. The District serves a large geographic area comprised of the city of San Diego (the City) and neighboring communities.

During the Review Period, the District had one Title IX Coordinator responsible for coordinating its responses to sexual harassment in all 175 schools and other settings in the District. The District employs over 13,000 staff members and seven Area Superintendents who oversee clusters of District schools. Five Area Superintendents are each responsible for a cluster of elementary, K-8, and specialized settings. One Area Superintendent oversees all middle schools, and another oversees all high schools. Each Area Superintendent is responsible for all issues that arise in their supervision area, including sexual harassment, and all report to the District's Deputy Superintendent.

To conduct this compliance review, OCR requested and analyzed information from the District regarding all reports and complaints of sexual harassment involving students and employees at all schools for SY 2017-2018 through SY 2019-2020. While not every report of sexual harassment results in a complaint, and not every complainant is the reporting party, OCR requested complaints and reports of sexual harassment because both trigger the District's Title IX obligation to respond. OCR also evaluated the District's implementation of its Title IX grievance procedures, including its provision of interim measures and remedies to harassed students during the Review Period, to determine if the District provided prompt and equitable responses to sexual harassment complaints. OCR also reviewed the District's current published sexual harassment procedures to see if they complied with the 2020 Title IX Regulations.

In the District's data response to OCR, the District produced files for 253 reported student-to-student and employee-to-student incidents of alleged sexual harassment, including sexual assault, during the Review Period: 98 files from elementary schools, including three complaints filed under District's Uniform Complaint Procedures (the UCP complaints) and nine employee-to-student allegations; 15 files from K-8 schools; 79 files from middle schools, including one employee-to-student allegation; 68 files from high schools, including four employee-to-student allegations; and three files from special education schools. The District also provided records for seven sexual assault cases that were in litigation at the time the District produced them to OCR: three high school cases (two employee-to-student and one student-to-student); three student-to-student elementary cases; and one student-to-student case from [redacted content] program. The District provided Title IX-related records for only one of these cases in litigation.

OCR reviewed every file, record, and report the District provided to evaluate if its responses to notice of alleged sexual harassment during the Review Period complied with Title IX.

III. LEGAL STANDARDS

In conducting this compliance review and evaluating the District's compliance with Title IX, OCR applied the Title IX regulations in effect during the Review Period from SY 2017-2018 through SY 2019-2020. Citations in this first section below are to these prior Title IX regulations. Citations in the next section are to the Section 504 and Title II regulations that the District appears not to have complied with when responding to sexual harassment involving

students with disabilities both as respondents and complainants. The legal standards discussed below were in effect during the three school years subject to this compliance review.

A. Title IX Standards

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

Sexual harassment is a form of sex discrimination prohibited by Title IX. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, such as sexual assault or acts of sexual violence. Sexual harassment can create a hostile educational environment based on sex when the harassment is sufficiently serious to deny or limit the individual's ability to participate in or benefit from the recipient's education program or activity.

In determining whether sexual harassment exists and has created a hostile environment based on sex for students, OCR looks at the totality of the circumstances, and considers a variety of factors, including (1) whether the conduct was unwelcome to the student(s); (2) the degree to which the conduct affected one or more students' education; (3) the type, frequency, and duration of the conduct; (4) the identity of and relationship between the alleged harasser(s) and the subject(s) of the harassment; (5) the number of individuals involved; (6) the age and sex of the alleged harasser(s) and the subject(s) of the harassment; (7) the size of the school, location of the incidents, and the context in which they occurred; (8) other incidents at the school; and (9) whether there were also incidents of gender-based but non-sexual harassment. OCR examines the conduct from an objective perspective and a subjective perspective.

When a recipient's employee sexually harasses a student outside of their job responsibilities, OCR evaluates if the harassment created a hostile environment for the student, using the factors discussed above. When an employee engages in sexual harassment in the context of carrying out their day-to-day job responsibilities related to providing aids, benefits, or services to students, and that harassment denies or limits a student's ability to participate in or benefit from the school's program on the basis of sex, the recipient is deemed responsible for the harassment and remedying its effects. This type of sexual harassment includes "quid pro quo" harassment, which occurs if a teacher or other employee conditions an educational decision or benefit on the student's submission to unwelcome sexual conduct. Whether the student resists and suffers the threatened harm or submits and avoids the threatened harm, the employee's harassment is attributed to the recipient and OCR deems the District to have treated the student differently on the basis of sex. OCR considers the following factors in determining whether an employee has

engaged in harassment in the context of the employee's provision of aids, benefits, or services to students: (1) the type and degree of responsibility given to the employee, including both formal and informal authority, to provide aids, benefits, or services to students, to direct and control student conduct, or to discipline students generally; (2) the degree of influence the employee has over the particular student involved, including the circumstances in which the harassment took place; (3) where and when the harassment occurred; (4) the age and educational level of the student involved; and (5) as applicable, whether, in light of the student's age and educational level and the way the school is run, it would be reasonable to believe that the employee was in a position of responsibility over the student, even if the employee was not.

If a recipient's investigation or other appropriate steps to determine what occurred identify employee-to-student sexual harassment or student-to-student sexual harassment that creates a hostile environment, the recipient is responsible for taking prompt and effective action to stop the harassment and prevent its recurrence. A recipient also may be responsible for remedying the effects of the harassment on the student or employee who was harassed.

B. Section 504 and Title II Standards

The Department's Section 504 regulations, at 34 C.F.R. § 104.33, require public school districts to provide a free appropriate public education (FAPE) to all students with disabilities in their jurisdictions. An appropriate education is defined as regular or special education and related aids and services that are designed to meet the individual needs of students with disabilities as adequately as the needs of students without disabilities are met, and that are developed in accordance with the procedural requirements of §§ 104.34-104.36 pertaining to educational setting, evaluation and placement, and due process protections. Implementation of an individualized education program (IEP) developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting these FAPE requirements. *Id.* § 104.33(b)(2). As a general rule, because Title II provides no less protection than Section 504, violations of Section 504 also constitute violations of Title II. 28 C.F.R. § 35.103.

Section 104.35(a) of the Section 504 regulations requires school districts to conduct an evaluation of any student who needs or is believed to need special education or related aids and services because of disability before taking any action with respect to the student's initial placement and before any subsequent significant change in placement. In this regard, school districts must ensure that all students who may have a disability and need services under IDEA or Section 504 are timely located, identified, and evaluated for special education and disability-related services. Under Section 104.35(b) of the Section 504 regulations, tests and other evaluation materials must be administered by trained personnel, must be reliable, and must be valid for the purpose for which they are being used. Under Section 104.35(c), placement decisions (i.e., decisions about whether any special services will be provided to the student and, if so, what those services are and where they will be provided) must be made by a group of persons knowledgeable about the student, the evaluation data, and the placement options. Placement decisions must be based on information from a variety of sources, with information from all sources being carefully considered and documented. *Id.* School districts also must establish procedures for the periodic reevaluation of students who have been provided special education and/or related services. *Id.* § 104.35(d). A reevaluation procedure consistent with the IDEA is one means of meeting this requirement. *Id.*

Section 104.36 requires school districts to provide procedural safeguards for parents and guardians of students with disabilities with respect to any action regarding the identification, evaluation, or placement of the student. Taken together, these Section 504 regulations prohibit a school district from taking disciplinary action that results in a significant change in the placement of a student who has or is believed to have a disability without evaluating (or reevaluating) the student and affording due process procedures. OCR interprets the Title II regulations, at 28 C.F.R. §§ 35.103(a) and 35.130(b)(1)(ii) and (iii), to require districts to act consistent with the Section 504 regulations when disciplining students with disabilities.

The exclusion of a student with a disability from a program for more than 10 consecutive days, or for a total of more than 10 cumulative days in a school year under circumstances that show a pattern of exclusion, constitutes a significant change in placement. Where such a change is occurring through the disciplinary process, school districts must evaluate whether the misconduct was caused by or was a manifestation of the student's disability. If so, the school district may not take the disciplinary action and should first determine whether the student's current placement is appropriate. If the misconduct is not found to be a manifestation of the student's disability, the disciplinary action may be administered in the same manner as for students without disabilities.

IV. INVESTIGATIVE FINDINGS, LEGAL ANALYSIS, AND CONCLUSIONS

OCR's violation findings and concerns discussed below are based on the District's policies and procedures in effect during the Review Period; interviews with District-level administrators and employees; a careful review of the District's records relating to reports of sexual harassment, including sexual assault, during the Review Period; and publicly available information.

As explained below with illustrative examples from District files and interviews, OCR found in this review that the District more often than not did not fulfill its Title IX regulatory requirement to equitably respond to allegations of sexual harassment during the Review Period. These failures led to serial perpetration of harassment with insufficient District response, leaving District students vulnerable to the sex discrimination in school that Title IX forbids. In addition, the District's failure to evaluate whether conduct violates Title IX in many cases abdicated the District's Title IX obligation. In those instances when the District did evaluate whether conduct constituted sexual harassment, repeated District failures to ensure equal access to education for involved students during and following District evaluation likewise failed to fulfill the District's Title IX obligations. And the District's frequent failure to ensure that all parties to Title IX investigations received notice of outcomes treated the parties inequitably in violation of Title IX.

During the course of this investigation, OCR learned in file reviews that the District received notice regarding students with disabilities who were alleged perpetrators as well as targeted students, and that District files included information about escalating disability-based behaviors that caused sexual harassment and about students with disabilities who repeatedly perpetrated, or were victims of, sexual harassment. These case files included no information showing the District's fulfillment of its Section 504 and Title II obligations to (1) evaluate students whose behaviors indicated a reason to suspect a disability, (2) reevaluate students with disabilities when it has notice that their existing supports and accommodations may not be effective to serve their

disability-based needs, or (3) evaluate the impact on students' receipt of a FAPE when students with disabilities have been subjected to harassment. Based on these files, OCR identified a concern that the District appeared not to be fulfilling its Section 504 and Title II obligations in these instances.

In this letter, OCR uses the terms "sexual harassment" to include "sexual assault" and other forms of sexual harassment to describe the specific conduct alleged in the reported incidents. In the Sections that follow, the term "Title IX Report" refers to a document created by the Title IX Coordinator that contains basic data on each report or complaint and notes from conversations with school administrators tasked with the investigations. The term "Title IX Letter" refers to the Sexual Harassment Investigation and Outcome Notification letter sent from the schools (often signed by a vice principal) to the complainant and respondent's parent(s) and copied to the Title IX Coordinator. OCR also uses the term "parents" throughout this letter to refer to parents, guardians, and other education rights holders.

A. Failure to Respond Equitably to Allegations of Sexual Harassment

OCR found that the District generally, throughout the Review Period, failed to fulfill its Title IX regulatory requirement to respond equitably to allegations of sexual harassment, including sexual assault. Most significantly, as examples described in this Section illustrate, the District failed to take steps designed to prevent recurrence of serial harassment and remedy their effects; failed to evaluate whether allegations of sexual harassment, including sexual assault, violated Title IX and caused discrimination on the basis of sex for affected students; failed to redress effects of sexual harassment that it confirmed to ensure that targeted students' equal access to education was not limited or denied based on sex; and failed to provide notice of outcomes of investigations on an equitable basis to all parties.

1. The District's Flawed Responses to Potential or Confirmed Serial Harassment

In multiple instances, the District's records showed that the District did not respond to escalating behaviors in a way that was reasonably calculated to keep sexually harassing conduct from continuing or to prevent serial harassment. For a number of complaints of student-to-student sexual harassment, the District's files included incidents in which a respondent student (and sometimes a complainant student) had been involved in previous incidents of sexual harassment. Incidents #40, #110, #86, #111b, #37, #157, #111, and #158 are examples of the District responding inequitably by failing to take steps reasonably designed to prevent the recurrence of sexual harassment.

a. Incident #40 (High School)

In [redacted content], a parent complained that [redacted content]-grade male student put his hands on [redacted content] of her [redacted content]-grade daughter during [redacted content] and then forced her to [redacted content]. In an interview with the school, the respondent student denied forcing [redacted content] on the female student and stated that she had [redacted content]. The Title IX Report stated that video surveillance from the campus supported the female student's account of what occurred at the school but could not substantiate her allegations

regarding the off-campus assault. The Title IX Report indicated that the respondent student had previously been reported to have engaged in dating violence and had engaged in multiple disciplinary incidents that resulted in his being [redacted content]. The Title IX Letter to the male student's parent stated that if the District [redacted content], a counselor would check in with him regarding supports he may need and that a Student Study Team (SST) meeting would be conducted to discuss assessments.

The Title IX Letter to the targeted student's parent stated that school administrators met with her and her parent to discuss interventions, including checking in with her, and a possible referral for outside therapy "provided certain qualifications [were] met, a no-contact order, and contact information for behavioral health services." Despite the male student's alleged involvement in previous dating violence and the female student's sexual assault allegation, the District's documentation did not identify steps reasonably calculated to prevent further recurrence of the male student's harassing conduct.

b. Incident # 110 (High School)

Records for an incident from [redacted content] reflect that a [redacted content] reported witnessing [redacted content]-grade student place his hand on [redacted content]-grade male student's [redacted content], over his clothes, while he was sleeping [redacted content]. The Title IX Report stated that both the respondent student and the targeted student received special education services, and that the respondent student had been involved in sexual misconduct for [redacted content] years, including [redacted content], and that the behavior was escalating. The District created a safety plan for the targeted student and sent Title IX Letters to both students. The District gave the respondent student a [redacted content] and [redacted content].

Other than disciplining the respondent student, the District's records do not show other actions taken to prevent a recurrence of the respondent student's sexual harassment, notwithstanding the District recognition that the harassing behavior had been "escalating," and the records show that the discipline proved ineffective at stopping it. A month later, in [redacted content], another incident occurred involving [redacted content]. The District restricted the respondent student to [redacted content], but he did not comply with the restriction. In addition to failing to take steps reasonably designed to prevent further harassment, the District provided no information indicating whether it offered and provided interim measures or remedies to the targeted students. In [redacted content], the Title IX Coordinator logged in her records that the respondent student transferred to [redacted content].

c. Incident #86 (Middle School)

In [redacted content], [redacted content]-grade student, who had previously threatened to rape a student, reportedly put his hand between the buttocks of [redacted content]-grade male student and [redacted content] of [redacted content]-grade male student. The notes in the file stated that the respondent student's discipline record indicated prior discipline incidents, but there was no explanation or notation regarding what conduct led to these discipline records, nor any further information regarding the threat of rape or how the District responded to it. The District was unable to provide OCR with any evidence of steps the District took to prevent recurrence of the harassment or to provide remedies to the targets of the harassment as appropriate.

d. Incident #111b (Middle School)

In [redacted content], a student reported that on separate occasions [redacted content]-grade male student [redacted content]. The Title IX Report indicated that the respondent student received [redacted content] and the school [redacted content] because he was a repeat offender, yet the District's Title IX records did not include any information about his past behaviors. The Title IX Letters to both students' parents stated that a safety plan would be put in place if the respondent student [redacted content]. However, the District's records did not include information regarding whether the respondent student [redacted content] and, if so, what the safety plan entailed and whether the school implemented it. The records also included no evidence that the District determined if the respondent sexually harassed the targeted student, and if so, what remedies were appropriate for the targeted student.

e. Incident #37 (Middle School)

In [redacted content], a teacher reported that [redacted content]-grade student touched [redacted content] female students' breasts while hugging them from behind. The Title IX Coordinator's notes for this incident indicated that the student has a "history of sexual harassment type incidents on campus," including making inappropriate comments to a female student and convincing another student to [redacted content]. Later, in [redacted content], an individual reported that the same [redacted content]-grade male student grabbed a male student's penis on the [redacted content]. The Title IX Coordinator's notes indicate that "this has been a series of ongoing challenges with [the student] with multiple recent documented incidents of sexual harassment." One of the Title IX Letters indicated that the District was conducting an ongoing investigation, had disciplined the student, and may [redacted content]. However, there was no documentation in the file regarding the specific disciplinary actions taken, the results of the [redacted content], or whether the District took any other actions/steps, beyond disciplining the respondent student, to prevent a recurrence of harassment including retaliatory harassment, or to provide remedies to targeted students as appropriate. Additionally, the District provided no documents showing that it implemented interim measures to the targeted students as a result of these ongoing incidents.

2. The District's Failure to Evaluate Allegations of Sexual Harassment Consistent with Title IX

OCR found that the District did not even evaluate multiple reports of sexual harassment of which it had notice, particularly in instances when individuals reported the sexual harassment to the District Police or accused employees and third-party adults of sexually harassing students. During the Review Period, sexual harassment reports could be made to school personnel (e.g., teachers, counselors, and administrators), the QAO, the District Police, Human Resources (HR), or the Title IX Office, but District policies did not make clear which of these entities should evaluate the reports under Title IX, and as a result, the District failed to do so in many instances, as discussed below.

Although the District allowed reports of sexual harassment to the QAO and District Police, OCR found that the District's Title IX grievance procedures in effect during SY 2017-2018 through

SY 2019-2020 did not address the role or involvement of the QAO or District Police in investigating such reports. An Area Superintendent told OCR that she believed that QAO “usually” investigated reports and complaints of sexual harassment, while school administrators conducted initial interviews and initial fact finding. However, OCR found that in only 14 of the 253 incident reports that OCR reviewed was the QAO involved either in the initial inquiry or further investigation into an allegation of sexual harassment, including sexual assault. A QAO employee responsible for investigating reports of sexual harassment told OCR that District investigators “can’t touch [witnesses]” until District Police have completed their investigations, which “could be three, five, or six months later.” She was not aware of any policy or protocol for coordinating the District or City Police involvement in sexual harassment investigations.

OCR found that in a majority of cases, District personnel contacted the District Police and that District Police had varying levels of involvement in subsequent investigations, regardless of whether individuals reported alleged sexual harassment to the QAO or to a school. For elementary school student-to-student sexual harassment cases, the vast majority of records reviewed by OCR show that school administrators contacted the District Police, who were involved in at least an initial inquiry, regardless of the severity of the alleged conduct. If the alleged conduct might violate criminal statutes, the City’s Police Department might conduct its own investigation. A District Police [redacted content] told OCR that school administrators frequently contacted District Police, who then spoke with the reporting student to gather sufficient information to brief the law enforcement supervisor. The District Police [redacted content] told OCR that he understood that District Police were not supposed to interview students but that school administrators brought in District Police to conduct such interviews because it is difficult for “civilians” to “gather facts.” In at least 21 of the 253 incidents OCR reviewed, the District Police conducted interviews of students.

OCR found that school administrators deferred analysis of whether conduct constituted sexual harassment to District Police in multiple instances, but the QAO and the District Police did not conduct inquiries into these reports that were designed to determine whether discriminatory harassment had occurred and created a hostile educational environment under Title IX. As a result of both practices, the District failed to comply with its Title IX obligation when responding to notice of sexual harassment. OCR further found that the District abdicated its Title IX responsibility to determine whether conduct constituted sexual harassment when it relied on District Police determinations based on criminal legal standards instead of standards under Title IX. In such instances, the District could not determine whether students reporting sexual harassment experienced sex discrimination in its schools under Title IX, and, if so, what steps the District should take to remedy the discrimination and prevent its recurrence.

Incidents #103 (employee-to-student harassment), #111 (student-to-student harassment), and #93 (third-party harassment of a student) as well as incident #NA (employee-to-student harassment) demonstrate the District’s failure to take immediate steps to investigate or otherwise determine what occurred when receiving notice of sexual misconduct.

a. Incident #103 (High School)

In [redacted content], the District received three anonymous online reports that a female teacher engaged in an inappropriate sexual relationship with [redacted content]-grade male student. The

District contacted the District Police, HR, and Child Protective Services (CPS), but the school did not inform the Title IX Coordinator for ten days. Though the teacher admitted in her interview with the principal that the student had [redacted content] on multiple occasions, and that the student had [redacted content], the Title IX Letter to the student's parent does not state whether the teacher sexually harassed the student. The case file includes HR documentation, including information showing that the teacher [redacted content]. However, the case file included no indication that the District conducted an investigation into whether the teacher sexually harassed the student or offered the targeted student interim measures.

b. Incident #111 (Elementary School)

In [redacted content], the District reported alleged sexual harassment to District Police, who interviewed [redacted content]-grade student because a student accused him of taking another [redacted content]-grade student's hands and putting them on his genitals above his clothes more than [redacted content] times. According to the Title IX Report, during the interview the respondent student reported to the District Police officer that [redacted content]. The respondent's [redacted content]. Based on the District's records, the District filed a report with CPS but did not take any investigative steps to determine if the respondent sexually harassed students at the school. Outside of the District Police officer, District staff did not interview the complainant, the respondent student, or the targeted student. The District did not include interview notes from the school or District Police in the records provided to OCR. Nor did the District include any documentation of whether its Title IX Coordinator or other staff took steps to prevent recurrence of harassment, or determined if remedies for the targeted student were appropriate.

c. Incident #93 (High School)

In [redacted content], two students reported that a [redacted content]-year-old female classmate and a [redacted content]-year-old third-party on-campus [redacted content] texted sexually explicit photos to each other. The District involved both CPS and the District Police. According to the Title IX Letter that the school principal sent to the targeted student's parent, the District removed the respondent from the campus and offered additional supports, such as a referral to a social worker and ongoing check-ins with a counselor. OCR found that the principal's Title IX Letter and District records did not reflect that the District took sufficient investigative steps to determine what occurred and whether the [redacted content] sexually harassed the targeted student or any other students. The District's records included no witness statements, interview notes, investigative or other report or documents from HR or any other District office. Further, there was no record of follow-up with the reporting students or any determinations as to whether the reporting students or any other students experienced a hostile environment and whether remedies for the targeted student or any other students were appropriate. There also was no indication that the school, HR, or any other District entity involved the Title IX Coordinator in the handling of this incident.

The incidents above illustrate that the District often relied on investigative bodies such as the District Police, HR, or CPS to investigate reports of sexual misconduct. This reliance on other entities who are not investigating whether discriminatory sexual harassment occurred under Title

IX resulted in the District failing to determine if sexual harassment occurred and created a hostile environment for affected students in violation of Title IX.

3. The District's Failure to Ensure Equal Access to Education

Even when the District did evaluate reports and complaints of sexual harassment, OCR found that the District failed to take steps necessary to ensure equal access to education for the harassed students in multiple instances. Although the District provided schools with a template Title IX letter that included options of interim measures to offer students, the District lacked documentation showing that it considered if harassed students needed such interim measures to preserve their equal access to school, or that it implemented such measures when they were necessary to ensure such access. Incidents # 21 and #11 directly below are examples of this violation, as are multiple other incidents discussed in this letter, including Incidents #53, #103, and #111.

a. Incident #21 (Middle School)

In [redacted content], [redacted content]-grade male student reportedly grabbed a female student's bottom. The Title IX Coordinator's notes indicate that the respondent student had serious behavior issues and received special education, and that the Title IX Coordinator advised school staff that "he needs a consequence, and there needs to be remedies put in place to make him stop."

In [redacted content], the same male student reportedly chased a [redacted content] student and touched [redacted content] buttocks and touched a [redacted content] student's [redacted content]. The Title IX Coordinator's notes from the [redacted content] incident indicate that the male student had multiple prior incidents where he "slaps people on the butt," and that as part of his special education services, "one of the interventions is that he have [redacted content]. The problem is that he [redacted content]." The Title IX Coordinator's notes further stated that "nobody really is thinking it is a big deal because he is special ed." The District produced no evidence that it took steps to prevent further harassment by the respondent student or to remedy the effects of his harassment on other students.

b. Incident #100 (High School)

In [redacted content], a teacher witnessed [redacted content]-grade student put his finger in [redacted content]-grade female student's [redacted content] in the hallway. Both students had [redacted content] disabilities. The Title IX Report and Letters stated that a teacher witnessed the incident but did not report it immediately because she "did not know how to process this." The Title IX Letter indicated that the Title IX Office learned of the incident five days later by reviewing the District Police log and then contacted school staff and District Police. The District Police informed the Title IX Office that they interviewed the teacher witness twice and attempted to speak with the female student, but she could not articulate what happened [redacted content].

The Title IX Letter further stated that the respondent student could not answer questions related to the incident, but that the investigation supported the allegation that his hand was in the female student's pants, not that his finger was [redacted content]. The District Police forwarded their

investigation to the City Police. While the police considered the incident, the District did not determine whether the female student needed interim measures (e.g., counseling or other supports), nor did it offer her remedies later to redress the sexual harassment confirmed by the District Police's investigation. In addition, the school did not send the Title IX Coordinator copies of its signed Title IX Letters to the parties despite the Title IX Coordinator's two written reminders to do so.

4. The District's Failure to Provide Equitable Notice of Outcomes of Investigations

The District's failure to provide notice to the parties of the outcome of investigations of sexual harassment complaints violates the Title IX regulations requiring equitable grievance procedures for complaints of sex discrimination, including sexual harassment. *See* 34 C.F.R. §§ 106.9(a), 106.8(b). OCR notes that the UCP did not require notifying both parties of the investigative outcome, which likely explains in part why OCR found several instances in which the District failed to notify one or more party of the outcome of sexual harassment investigations.

Incidents #53, #157, and #89 below constitute examples of the District's failure to provide a notice of outcome to the parties that complied with Title IX, as does Incident #158 above.

a. Incident # 53 (Elementary School)

In [redacted content], a parent complained to the school that her [redacted content]-year-old daughter told her that her teacher had [redacted content] and the parent noticed [redacted content]. The District placed the teacher on administrative leave, and the school principal spoke with the accused teacher and classroom staff. The District sent the parent a Title IX Letter stating that the District was unable to complete a full investigation or to substantiate the allegation because the parent would not return the District's calls and that it referred the matter to HR. The District's records and its communication to the parent, however, did not reflect that it followed its discrimination grievance procedure, the UCP, when addressing her complaint alleging employee-to-student sexual harassment. Specifically, the District did not explain the investigative process or the evidence it obtained. The District's records did not show that the District took steps to ensure equal access to its education program, that it notified the respondent teacher of the alleged sexual misconduct that could constitute sexual harassment, or that it provided the respondent teacher a notice of the outcome of any investigation it conducted.

Even if the District had used the UCP for employee-to-student sexual harassment complaints like Incident #53, OCR found that the UCP did not comply with the Title IX requirement to provide a prompt and equitable grievance procedure because, as noted above and in Section IV.C below, the UCP provided notice of the investigative outcome only to complainants, not to respondents.

b. Incident #157 (Elementary School)

In [redacted content], the parent of [redacted content]-grade student complained that [redacted content]-grade male student threatened to bloody the [redacted content]-grader's face and forced [redacted content]. District Police interviewed the targeted student at the school. The District did not interview the respondent student for nearly a month because City Police told them to wait

until they conducted an investigation. In the interim, the targeted student's parent reported that he was exhibiting escalating and concerning behaviors such as [redacted content]. The District did not offer the targeted student interim measures, such as counseling, because the school administrator said that she did not know about Title IX requirements and believed that counseling could only be provided to students with IEP plans.

The Title IX Coordinator eventually assisted the school principal with the interview of the respondent student. Other than the interview of the respondent student, the District took no other steps to determine whether the respondent student sexually harassed the targeted student and if so, whether this created a hostile environment for the targeted student requiring remedies. The District also did not notify the respondent student or the parent of the investigation outcome or take steps to prevent recurrence of the harassment. The evidence indicated that the harassment continued at a [redacted content] school, because a female student at that school reported that the same respondent student said he would [redacted content] and told other students that they should "rape each other."

c. Incident #89 (High School)

In [redacted content], a parent complained to the Title IX Coordinator that her [redacted content]-grade daughter said that [redacted content]-grade male student touched her leg and stomach, and rubbed her vagina multiple times, [redacted content]. The Title IX Coordinator directed the school principal to conduct an investigation (with the District Police, if she wished) and to protect students, including putting interim measures in place. The Title IX Coordinator also told the principal to inform the parent about the UCP process and the prohibition against retaliation. After the principal failed to respond to the Title IX Coordinator's multiple attempts to determine the outcome of the investigation or to receive copies of Title IX Letters, the Title IX Coordinator closed the file as "no response from administrator" in [redacted content]. There is no record that the administrator provided the parent with information about the UCP process as the Title IX Coordinator requested, investigated the incident, ensured equal access to the education program, or provided the parent with a notice of the outcome of her complaint.

B. Failure to Adequately Coordinate the District's Title IX Compliance

During the Review Period and continuing into the present, the District has designated the same individual to serve as its Title IX Coordinator for the entire District. Her contact information has been published on District and school websites, as well as in District policies and procedures. Based on OCR's review of the District's responses to 253 reported incidents of alleged sexual harassment of students during the Review Period, OCR found that the District failed to meet its regulatory obligation to coordinate its Title IX compliance through its Title IX Coordinator when responding to notice of sexual harassment. As described below, OCR found that the District's different offices that addressed sexual harassment often did so without the coordination or involvement of the Title IX Coordinator throughout the three-year Review Period.

The District has multiple avenues through which to make a complaint or report of sexual harassment. Individuals can make complaints directly to the QAO, District Police, schools, or the Title IX Coordinator. The QAO serves as a "one-stop shop" for triaging complaints that come from the public, including community members, students, and parents. OCR found that

when students or parents made reports of sexual harassment, the QAO, the schools, the District Police, and HR did not always involve or inform the Title IX Coordinator. After initially gathering facts from complainants, the QAO referred complaints to HR or the Title IX Coordinator as the QAO deemed appropriate. The QAO Director told OCR that the QAO reports student-to-student sexual harassment allegations to District Police, the Title IX Coordinator, and the relevant school administrator. However, OCR found that the QAO did not keep the Title IX Coordinator apprised of sexual harassment complaints involving employees referred to HR. Nor did the Area Superintendents whom OCR interviewed. They reported that their staff forwarded allegations of employee-to-student sexual harassment to HR for investigation and response, not to the Title IX Coordinator. OCR further determined that HR did not report to the Title IX Coordinator regarding its handling of sexual harassment complaints involving employees.

Because these offices often did not share records with the Title IX Office, the Title IX Coordinator was often not apprised of the investigations or outcomes of sexual harassment complaints and reports. As a result, the Title IX Coordinator was unable to monitor how the District handled many investigations of complaints and reports to ensure that their resolutions were prompt and equitable as required by the Title IX regulations.

Incidents #NA, #158, and #209 described below are examples of the District deferring responsibility for responding to sexual harassment to District Police, the QAO, or HR without coordinating their response through the Title IX Coordinator to ensure that the District fulfilled its Title IX obligations. Even when the Title IX Coordinator was aware of complaints at certain schools, OCR found several instances demonstrating that the Title IX Coordinator did not coordinate District responses to these incidences. For instance, in situations where the Title IX Coordinator did not receive replies to emails she sent to school administrators and Area Superintendents, she nonetheless closed the Title IX Coordinator's file on the incidents. In other instances, school administrators and Area Superintendents did not follow the Title IX Coordinator's recommendations, often resulting in inequitable District responses to sexual harassment complaints under Title IX as well as an apparent District failure to comply with Section 504 in Incident #109, as discussed at the end of this letter. Incidents #158 and #209 described below also provide salient examples of inadequate coordination between the Title IX Coordinator and the schools.

1. Incident #NA (High School)

In [redacted content], an individual, whom the District's records do not identify, reported that a District employee touched [redacted content]-grade female students and made inappropriate sexualized comments on campus. The school principal contacted CPS and the District Police, who reported the allegations to the City Police, resulting in [redacted content]. There is nothing in the District's records to indicate that the District conducted an investigation of the employee's alleged conduct to determine if it constituted sexual harassment and, if so, whether it created a hostile environment for the students under Title IX. Nor do the records indicate whether the District took any steps to prevent further harassment or remedy the effects of any hostile environment. The District's records include only an administrative letter notifying the employee of an investigation and a transcript from an interview of the employee by school administrators. The District provided OCR with no record showing that the District involved the Title IX

Coordinator in its response to the incident, or that it offered or implemented interim measures for the targeted students.

2. Incident #158 (K-8 School)

In [redacted content], a female [redacted content]-grade student reported that a male [redacted content]-grade student rubbed her vagina outside her clothing and rubbed his penis on her from behind [redacted content]. A second male student, in [redacted content]-grade, admitted that he had rubbed the complainant's vagina twice, [redacted content]. According to the Title IX Report, following interviews with an adult staff person for [redacted content] and student witnesses, the District determined that the staff person had failed to report these incidents of touching and placed the staff person on administrative leave. The Title IX Report stated that school administrators contacted both CPS and the District Police and that the District Police "will not take action because it is [redacted content]."

Based on the information the District provided to OCR, the District did not determine whether the male students' conduct constituted sexual harassment or whether District action was needed to stop the harassment and remedy the effects of any resulting hostile environment. The District provided OCR a draft Title IX Letter, which was dated nine days after the alleged incident and was addressed only to the parents of one respondent. It is labeled "template," is unsigned, and includes incomplete information, such as that the respondent "DID/DID NOT" admit to the accusations. District records do not reflect that it ever sent the letter. The Title IX Coordinator closed the file in [redacted content] after receiving no response from the school to an email asking the school to clarify the status of the report.

3. Incident #209 (Elementary School)

In [redacted content], a [redacted content]-grade student allegedly put his hand and [redacted content] the targeted [redacted content]-grade male student's [redacted content] after a third student encouraged the first student to [redacted content]." The targeted student had an IEP and the Title IX Coordinator sent the school an email recommending that the school convene an IEP meeting for the targeted student. In her email, the Title IX Coordinator also stated that the respondent student may need an SST meeting or a Section 504 meeting. She also advised that they contact CPS and that the targeted student's parent [redacted content]. The Title IX Coordinator, however, did not ensure that the District took steps to investigate what occurred or to determine whether the student sexually harassed other students or whether District actions were needed to stop the harassment and remedy the effects of any resulting hostile environment. Additionally, the school did not respond to the Title IX Coordinator's emails suggesting that the school convene an IEP, SST, and Section 504 meetings for the affected students. After receiving no response, the Title IX Coordinator closed the file at the end of [redacted content].

Overall, OCR found that the Title IX Coordinator did not coordinate the District's response to most reports of sexual harassment during the Review Period. While the Title IX Coordinator could coordinate a response to reports of sexual harassment when they were made directly to her office or when the QAO referred them to her, the majority of reports of sexual harassment involving employees were ones in which the Title IX Coordinator was not involved in the District's response, or ones in which the school employees ignored the Title IX Coordinator's

communications about how to respond to the reports. The District's failure to have the Title IX Coordinator coordinate its response to reports of sexual harassment violates Title IX.

C. Failure to Adopt Prompt and Equitable Grievance Procedures

OCR found that the District failed to adopt prompt and equitable grievance procedures for complaints of student-to-student and employee-to-student sexual harassment, including sexual assault. During the Review Period, the District had two different procedures for the resolution of sexual harassment complaints: a formal, board-approved Title IX grievance procedure (Board Policy (BP)/Administrative Regulation (AR) 5145.7), which required formal complaints of both student-to-student and employee-to-student sexual harassment to be resolved through the District's UCP (BP/AR 1312.3(a)); and an informal, school-based process not approved by the board (Administrative Circular Number 48) for responding to complaints of student-to-student discrimination and bullying. The UCP required an impartial investigation of complaints, including the opportunity to present witnesses and other evidence; designated reasonably prompt time frames for major stages of the complaint process; and assured complainants that the school would take steps to prevent recurrence of sexual misconduct and remedy its discriminatory effects, as appropriate.

The District designated the Title IX Coordinator as the UCP compliance officer, and the UCP process required the Title IX Coordinator or designee to interview all available witnesses and to collect and review all documents related to the complaint. But OCR found that District staff often failed to promptly inform or involve the Title IX Coordinator, as explained above, or to follow the UCP process for complaints of both student-to-student and employee-to-student sexual harassment. For example, Area Superintendents told OCR that District staff forwarded allegations of employee-to-student sexual harassment to HR for investigation and response rather than the Title IX Coordinator.

Under the Title IX regulations in effect during the Review Period, recipients could facilitate informal resolution of complaints of sexual harassment if the parties voluntarily agreed to this and received a full disclosure of the allegations and their options for formal resolution. The District's Administrative Circular Number 48 stated that "complaints alleging a violation of sex equity in district programs and/or bullying against students shall be resolved informally at the lowest level whenever possible (by the school principal/administrator)." This Circular required school principals or administrators to: explain the investigation and resolution process; advise students and/or parents of their right to file a formal complaint under the District's UCP process; and notify the Title IX Coordinator and other relevant District offices to determine if the allegations required escalation to a formal Title IX process through the District's UCP. Yet, none of the 253 files OCR reviewed indicates if District or school personnel advised parents and students of the right to file a formal complaint through the District's UCP in lieu of participating in the informal resolution process under Administrative Circular Number 48. Instead, the District provided notice of how to file a formal complaint through the UCP in Title IX Letters sent to parents after the conclusion of the informal resolution process. In instances where the District did not issue Title IX Letters to the parties, OCR found no information indicating that the District advised students and parents of the formal Title IX complaint process at all.

During the three school years OCR reviewed, the District resolved only three reports through the formal UCP process. Instead, the District used the informal, school-based process described in Administrative Circular Number 48 in 98.8% of the incidents provided. This Circular does not comply with the basic elements of the prompt and equitable grievance procedures required by the Title IX regulations. For example, it does not ensure an adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; designate reasonably prompt time frames for major stages of the complaint process; or provide assurance that the school will take steps to prevent recurrence of sexual misconduct and remedy its discriminatory effects, as appropriate. OCR also found that the Circular and the UCP treated respondents and complainants inequitably by not offering respondents an opportunity to review evidence presented against them and by providing a notice of outcome and appeal rights only to complainants.

D. Concern about the Adequacy of the District's Title IX Training for Employees

OCR also identified a concern that the District may have failed to provide adequate training to its employees regarding the requirements of Title IX under the regulations in effect during the Review Period, contributing to the District's failure to respond appropriately to notice of sexual harassment.

Every District employee with responsibilities to investigate reports of sexual harassment that OCR interviewed, except for the Title IX Coordinator, indicated that they had not received training on their obligations under Title IX. QAO employees who conduct initial inquiries, and sometimes entire investigations into allegations of Title IX violations, stated that they had not received training on how to conduct Title IX investigations. Similarly, District Police said that they received only superficial training on sexual assault under Title IX despite their involvement in initial fact-finding and response to multiple Title IX complaints and reports of sexual harassment, and despite many school administrators' reliance on District Police to make determinations regarding complaints.

Area Superintendent 1 told OCR that she received no investigative training on how to respond to notice of sexual harassment despite the fact that she understood her role to include supporting school principals to determine appropriate remedies and interim measures such as safety paths or working with parents. Area Superintendent 1 also stated that she and school staff were not required to report to the Title IX Coordinator unless the sexual harassment incident resulted in discipline. In contrast, Area Superintendent 2 stated that she generally supports principals in contacting the Title IX Coordinator with any reports and may work with principals to develop any necessary interim measures. Yet, in instances when the Title IX Coordinator reached out to school staff, they were not consistent in responding to her, as discussed in Sections IV.A-B above.

E. Concern about the Adequacy of the District's Recordkeeping

The regulations implementing Title VI of the Civil Rights Act of 1964 (Title VI), at 34 C.F.R. § 100.6(b), requires recipients to collect, maintain, and provide to OCR such records that will enable OCR to ascertain whether the District is in compliance with the nondiscrimination requirements of Title VI. This requirement is incorporated by reference in the regulations

implementing Title IX, at 34 C.F.R. § 106.81. Since August 14, 2020, the Department's 2020 Title IX Regulations also have required recipients to keep detailed records of reports and formal complaints of sexual harassment, as detailed at 34 C.F.R. § 106.45(b)(10). OCR identified a compliance concern about the District's recordkeeping system during the Review Period and that its recordkeeping since then may have failed to comply with the 2020 Title IX Regulations.

OCR found that every one of the 253 files of student-to-student and employee-to-student reports and complaints of sexual harassment, including sexual assault, that the District provided to OCR during this compliance review was incomplete. The Title IX reports and letters in essentially every file the District provided referenced external documents from various stakeholders, yet the files OCR reviewed consistently lacked relevant documents such as police reports and investigative notes; witness statements, interview notes, and/or other memoranda documenting conferences with parents and/or counseling of students at the school level; disciplinary consequences, referrals for expulsion, and school transfers; or documentation of follow-up steps for students with disabilities. The incomplete records were consistent with witness testimony. All District employees OCR interviewed stated that there was no standard practice for information-sharing across departments for Title IX matters and consultation occurs on an ad-hoc basis.

One Area Superintendent confirmed that, with respect to individual student records, they had no centralized holding place for documentation of interim measures and remedies. This lack of centralized record-keeping and lack of adequate coordination of its Title IX compliance through its Title IX Coordinator (as discussed above in Section IV.B) resulted in instances where the District failed to: provide a notice of outcome to the parties; make investigative information available to the Title IX Office; document whether it provided interim measures; determine whether remedies were appropriate; and include documentation regarding the respondent's past conduct to more effectively address current behavior so as to prevent the recurrence of sexually harassing conduct, particularly with respect to repeat respondents, respondents, and special education students who may need additional supports and interventions through IEP or Section 504 processes.

OCR is concerned that the District's inadequate recordkeeping practices regarding reports and complaints of sexual harassment during the Review Period impaired the Title IX Coordinator's ability to coordinate with schools to ensure the District's Title-IX-compliant responses to notice of sexual harassment. As evident in OCR's discussion of several incidents described above (including incidents # 158, # NA, #111, #103, #93, #53, #157, #40, #110, #86, #111b, #37, #11, and #101), during the Review Period, the District's failure to maintain adequate records hindered its ability to respond promptly and effectively to notice of sexual harassment. Incident #101 below also provides a stark example of how poor recordkeeping precludes recipients from demonstrating to OCR that their response to notice of sexual harassment complied with Title IX.

1. Incident #101 (Middle School)

In [redacted content], [redacted content]-grade student reportedly [redacted content] over the course of a week. The Title IX Coordinator's notes indicated that she learned of this incident from the District Police log and the Title IX Office emailed school administrators to learn more about the incident. In a call later in [redacted content] with the school administrator, the

administrator stated to the Title IX Office that “school police came and said it’s not sexual battery because of intent. It’s ‘simple battery.’” The Title IX Coordinator’s notes indicated that the District should still follow “protocol” but failed to explain what this meant. The District was unable to demonstrate a Title IX-compliant response to OCR because the file the District maintained for this incident did not include any records of the District Police investigation, their report, other documents indicating how District Police responded, or any evidence that the District offered the targeted student interim measures during the police investigation or took steps to determine if sexual harassment had occurred and created a hostile environment under Title IX that would require measures to prevent further harassment and remedy its effects on the alleged victim. The school administrator’s comments to the Title IX Office reflected in the file strongly indicated that the District improperly relied on the criminal legal standards applied by the police without examining the conduct as potential sexual harassment under Title IX.

F. Concern about the District’s Compliance with Section 504 and Title II

Following from the District’s apparent failure to keep adequate records of its Title IX responses to reported sexual harassment, including sexual assault, the records OCR reviewed showed a lack of clarity as to what steps were taken with respect to students with disabilities during its Title IX grievance process. Namely, OCR is concerned that the District may not have adequately complied with its obligations to students with disabilities under Section 504 and Title II when responding to reports and complaints of sexual harassment involving such students. The regulations implementing Section 504, at 34 C.F.R. § 104.35(a), require school districts to evaluate all students who, because of a disability, need or are believed to need special education or related services prior to taking any action with respect to initial placement of a student or any subsequent significant change in placement, including as it relates to student discipline. 34 C.F.R. § 103.5(a). The regulations, at 34 C.F.R. § 104.33 (a) and (b), require that school districts provide a FAPE to students with identified disabilities, and the provision of FAPE includes adherence to the procedural requirements at 34 C.F.R. §§ 104.34, 104.35, and 104.36.

The District’s records provided to OCR in this compliance review indicate that the District may have denied a FAPE in one of three ways to complainant and respondent students involved in Title IX reports who had identified disabilities or whose conduct indicated a reason to suspect a disability. First, the District may have failed to evaluate respondent students believed to need special education or related services. Second, the District appears to have failed to reevaluate respondent students with identified disabilities prior to any significant change in their placement caused by exclusionary discipline for engaging in sexual harassment. Lastly, for harassed students with disabilities, the District may have failed to address any change in the student’s individual needs caused by the harassment. For example, Incidents #40 and #110, above, illustrate a possible failure to timely evaluate students whose behaviors might have indicated a reason to suspect a disability. Further, Incidents #21, #100, and #209, above, illustrate that the District may have denied students a FAPE by failing to reevaluate students prior to changing their school placements, prior to significant exclusionary discipline, or in response to escalating or persistent concerning behaviors. Together, these examples raise concerns about the District’s compliance with Section 504 and Title II.

V. CONCLUSION

OCR applied the Legal Standards set forth above to the evidence gathered in this compliance review and found the violations of Title IX and its implementing regulations and the compliance concerns detailed above, including with respect to Section 504 and Title II. To resolve these violations and compliance concerns OCR identified during this compliance review, the District entered into the attached Agreement, which is aligned with the issues investigated and the evidence obtained by OCR.

The Agreement requires that the District make changes to ensure that the Title IX Coordinator coordinates all of the District's efforts to comply with Title IX moving forward, including but not limited to all of its investigations of sexual harassment involving its students and employees and any steps taken to ensure that students with disabilities involved in Title IX investigations are receiving a FAPE. The Agreement also requires that the District ensure its policies and procedures comply with Title IX; notify its employees, students, and their parents of its Title IX Coordinator and how to file complaints alleging a violation of Title IX; and provide training regarding the District's policies and procedures for staff and students. Additionally, the Agreement requires that training for employees include the District's specific obligations to students with disabilities throughout the Title IX process. The Agreement also requires the District to conduct a climate survey and to implement a revised Title IX record-keeping system to appropriately document and preserve records about sexual harassment as required by the Title IX regulations. Further, the Agreement requires the District to report to OCR detailed information about complaints of sexual harassment it receives during OCR's monitoring of the Agreement. The Agreement also requires the District to review the files for a subset of the reported incidents of employee-to-student and student-to-student sexual harassment from first semester of SY 2019-2020 that OCR identifies for the District's review to determine if further action is needed to provide an equitable resolution of each incident, including with respect to involved students with disabilities.

Based on the commitments made in the Agreement, OCR is closing this compliance review as of the date of this letter. When fully implemented, the Agreement is intended to address the areas of violation and compliance concern identified by OCR. OCR will monitor the implementation of the Agreement until the District is in compliance with the terms of the Agreement and the Title IX statutory and regulatory obligations at issue in this compliance review.

This concludes OCR's compliance review and should not be interpreted to address the District's compliance with any other regulatory provision or to address any issue other than that addressed in this letter. This letter sets forth OCR's determination in this compliance review. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

Please be advised that the District may not harass, coerce, intimidate, discriminate, or otherwise retaliate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file a separate retaliation complaint with OCR.

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

If you have any questions, please contact Maria-Daniel Asturias, Compliance Team Lead Attorney, at (415) 486-5595 or Maria.Asturias@ed.gov.

Sincerely,

/s/

Zachary Pelchat
Regional Director

Enclosure: The Agreement