



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

REGION IX  
CALIFORNIA

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June 8, 2023

**VIA ELECTRONIC MAIL**

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Superintendent, Val Verde Unified School District  
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Re: **Val Verde Unified School District**  
OCR Case No. 09-15-5001

Dear Superintendent McCormick:

This letter notifies you of the resolution of the U.S. Department of Education, Office for Civil Rights' (OCR) compliance review of the Val Verde Unified School District's response to complaints and reports of sexual harassment, including sexual violence. This compliance review, opened on September 21, 2015, examined whether the District responded to such complaints and reports, regarding allegations against employees as well as students, as required by Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681-1688, and its implementing regulation at 34 C.F.R. Part 106. This examination included evaluating whether the District provided prompt and equitable grievance procedures and responses to possible sexual harassment under 34 C.F.R. §§ 106.31 and 106.8(b); 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); and whether the District adequately disseminated notice of its Title IX duty not to discriminate based on sex under 34 C.F.R. § 106.9.

To conduct this compliance review, OCR reviewed extensive information provided by the District, including its policies, procedures, and notices regarding sexual harassment, as well as documentation of complaints and reports of conduct that could constitute student-involved or employee-involved sexual harassment of students.<sup>1</sup> OCR also conducted a week-long onsite visit to six schools in September 2017. As explained further below, these six "Selected Schools" received approximately half of the reported incidents of sexual harassment district-wide during school years (SY) 2015-16 and 2016-17. OCR also interviewed 136 witnesses, including employees at the Selected Schools, 50 students, 24 parents,<sup>2</sup> and several District-level administrators, including the District's Title IX coordinator. OCR also reviewed the District's

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<sup>1</sup> This letter refers to complaints and reports regarding allegations that students perpetrated sexual harassment as "student-involved" and to complaints and reports regarding allegations that employees perpetrated sexual harassment as "employee-involved."

<sup>2</sup> Every reference to "parents" in this letter is inclusive of guardians.

current policies and procedures (as of SY 2022-23) regarding sexual harassment and interviewed the Title IX coordinator about their implementation.

## **I. Summary of Findings**

After a careful review of the documentary and witness evidence, OCR found nine Title IX violations and two compliance concerns. First, OCR found a systemic failure by the District to coordinate its response to sexual assault and harassment incidents through its designated Title IX coordinator. OCR found no participation by the Title IX coordinator in the District's responses to any of the 41 documented incidents at the Selected Schools that were the focus of this review, and that these schools notified the Title IX coordinator of only five of these incidents. OCR's interview with the current Title IX coordinator during SY 2022-23 revealed that this violation is ongoing. Second, OCR found a District failure to take required steps responsive to possible Title IX violations of which the District became aware in more than a third of the files OCR reviewed for the 41 incidents. Third, OCR found that the District failed to investigate a complaint that a student sexually assaulted another student on school grounds. Fourth, for several files, OCR did not find evidence that the District provided adequate notice of investigation outcomes to targeted students and their parents. Fifth, OCR found that the District failed to offer or implement interim measures to support targeted students during its investigations of some of the 41 incidents.

Sixth, OCR determined that the District's Title IX grievance procedures and policies were inequitable in some respects for complainants and respondents. Seventh, OCR found that the District had not fulfilled its Title IX duty to publish prompt and equitable grievance procedures for complaints of sexual harassment. The District was relying on the state Uniform Complaint Procedures (UCP) for such complaints, but its Title IX grievance procedures did not refer to the UCP, contained information that conflicted with the UCP, and the District's current Title IX procedures for sexual harassment include requirements beyond those in the UCP. Eighth, OCR found that some of the District's notices of nondiscrimination did not identify the Title IX coordinator and other notices provided conflicting information about who the Title IX coordinator was, in violation of the District's obligation to provide the school community with notice of the Title IX coordinator and how to file complaints with the coordinator.

In addition to the eight violations noted above regarding the District's practices that predate the Department's amended Title IX regulation regarding sexual harassment, OCR identified a ninth violation and two other compliance concerns based on the District's current Title IX practices under the Department's amended Title IX regulation regarding sexual harassment, which became effective on August 14, 2020. OCR found that the District is not complying with the regulation's requirement, at 34 C.F.R. § 106.44(a), to explain to complainants the process for filing a formal Title IX complaint of sexual harassment whenever a District employee has actual notice of sexual harassment or allegations thereof. OCR also has a concern that the District's continued use of the student discipline data system to track incidents of sexual harassment may not comply with the record-keeping requirements in 34 C.F.R. § 106.45(b)(10). Finally, OCR is concerned that the current Title IX coordinator is not familiar with the requirements of the amended 2020 Title IX regulation, including its definition of sexual harassment, or the District's revised sexual harassment policies, when the regulation, at 34 C.F.R. § 106.45(b)(1)(iii), requires the District to train the Title IX coordinator on this definition and other regulatory requirements.

The District voluntarily entered into a Resolution Agreement (Agreement), which, when fully implemented, will resolve the nine Title IX violations and two compliance concerns. Below OCR summarizes the methodology for this compliance review, the applicable legal standards, the facts OCR found, its legal analysis and conclusions, and the terms of the Agreement.

## **II. Methodology**

OCR focused its compliance review on the District's response to notice of sexual harassment of students during SY 2015-16 and SY 2016-17 under the Title IX regulations in effect during those school years. Because the Department amended its Title IX regulation on August 14, 2020,<sup>3</sup> OCR also reviewed the District's current sexual harassment procedures to determine if the District had updated them, and OCR interviewed the current Title IX coordinator about their implementation.

The District is in southern California and enrolled 19,872 students in SY 2015-16 and 22,246 students in SY 2016-17. The District had thirteen elementary schools, six middle schools, and five high schools. OCR focused this compliance review on the six Selected Schools because OCR's analysis of sexual harassment incidents over four years, from SY 2013-14 through SY 2016-17, showed that approximately half of the documented incidents were concentrated at these six schools, with the remainder distributed among the remaining eighteen schools. OCR therefore decided to focus its review on the six schools where the most incidents were concentrated. Those six schools included: one elementary school (ES 1), two middle schools (MS 1 and MS 2), and all three comprehensive high schools (HS 1, HS 2, and HS 3). All Selected Schools reported incidents ranging from sexually explicit comments or name-calling to unwanted sexual touching.

OCR reviewed all of the documented incidents at each Selected School and identified the most serious incidents that took place during SY 2015-16 and SY 2016-17, as well as repeated and similar incidents that could have constituted a pattern of sexually harassing behavior during the same years, collectively the "Selected Student-Involved Incidents." In total, OCR reviewed available documentation regarding 38 Selected Student-Involved Incidents of sexual harassment and, at HS 1, two Selected Employee-Involved Incidents of sexual harassment, for a total of 40<sup>4</sup> "Selected Incidents" of reported sexual harassment of students at the six Selected Schools.

OCR determined that the 38 Selected Student-Involved Incidents involved allegations of the following types of sexual harassment: rape; unwanted touching of private areas; extensive sexual cyber-bullying; exposure of private areas; inappropriate sexualized "games" such as "pantsing" (pulling a student's pants down); filming or sharing footage of sexual acts or naked student images at school; obscene sexual gestures; and repeated inappropriate conduct of a sexual nature and/or obscene language and threats. The two Selected Employee-Involved Incidents involved allegations that teachers made inappropriate comments and inappropriately touched students.

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<sup>3</sup> The 2020 amendments to the Title IX regulation can be viewed [here](https://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html), and more information about them and related resources are available on OCR's website at <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/index.html> and [https://www2.ed.gov/about/offices/list/ocr/docs/tix\\_dis.html](https://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html)

<sup>4</sup> As noted below, OCR investigated a total of 41 incidents because OCR identified an incident during interviews.

In addition to reviewing files for the 40 Selected Incidents of reported sexual harassment, OCR inquired about them during interviews of District administrators, school administrators and staff, parents, and students. Through these interviews, OCR identified and investigated a 41<sup>st</sup> incident, alleging employee-involved sexual harassment during SY 2016-17 at HS 2. OCR also interviewed the current Title IX coordinator to assess if the compliance issues OCR identified in the review period were continuing.

### **III. Legal Standards**

In conducting this compliance review and evaluating the District's compliance with Title IX, OCR applied the Title IX regulation in effect during SY 2015-16 and SY 2016-17, the time-period specified in this review. Citations in this section are to this regulation, and the legal standards discussed below were in effect during the school years subject to this compliance review.

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

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

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

When evaluating the extent of a recipient's responsibilities if an employee sexually harassed a student, OCR considers if the employee engaged in sexual harassment in the context of carrying out their day-to-day job responsibilities for providing aid, benefits, or services to students that denies or limits a student's ability to participate in or benefit from the school's program on the basis of sex. 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 student has been treated differently on the basis of sex. The following factors are considered in determining whether an employee has engaged in harassment in the context of the employee's provision of aid, benefits, or services to students: 1) the type and degree of responsibility given to the employee, including both formal and informal authority, to provide aid, 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. When an employee sexually harasses a student outside of their daily job responsibilities, OCR evaluates if the harassment created a hostile environment for the student, using the factors discussed above with respect to hostile environment harassment.

Under the Title IX regulation in effect for the time period reviewed in this investigation, when the recipient has actual or constructive notice of sexual harassment, it must take appropriate steps to investigate or otherwise determine what occurred, and it may be appropriate for a recipient to take interim measures prior to or during the investigation of a complaint. Interim measures are individualized services offered as appropriate to either or both the reporting and responding parties involved in an alleged incident of sexual misconduct. Interim measures include counseling, extensions of time or other course-related adjustments, modifications of work or class schedules, campus escort services, restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar accommodations.

If a recipient's investigation or other appropriate steps to determine what occurred identify employee-involved sexual harassment or student-involved sexual harassment that creates a hostile environment, recipients are 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.

#### **IV. Facts**

Section IV of this letter summarizes the facts OCR found regarding the District's sexual harassment policies and procedures during the compliance review period, the District's responses to reports and complaints of sexual harassment in SY 2015-16 and SY 2016-17, the District's designation of a Title IX coordinator in those two school years, and the information the District provided to students, parents, and employees about the Title IX coordinator and how to file a complaint of sexual harassment with the District in those two school years. The end of Section IV includes information OCR obtained about the District's current Title IX grievance procedures, Title IX coordinator, and coordination practices as of SY 2022-23.

### **A. The District's Policies and Procedures**

As noted in the legal standards above, Title IX requires the District to publish procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any actions prohibited by Title IX and its implementing regulation, which include complaints of sexual harassment. During SY 2015-2016 and SY 2016-2017, the District published the UCP on its web site, which was its designated complaint procedure to address discrimination complaints, including allegations of sexual harassment. The District provided a summary description of the UCP on its website in a section entitled "Our District" and in an annual notification provided to parents of District students.

The UCP provided for the following procedures for both parties (the complainant and the respondent): interim measures as necessary to support the parties during the pendency of an investigation of a complaint filed under the UCP; completion of an investigation within 60 days; the option of voluntary mediation of a complaint between the parties; notice to all parties of the right to end the informal mediation process at any time; a preponderance of the evidence evidentiary standard for evaluating whether a respondent engaged in sexual harassment; notice to the parties of the determination of whether sexual harassment occurred; and implementation of corrective actions if the UCP process found that the respondent sexually harassed a student.

The UCP, however, afforded the following rights to only complainants in these investigations, not respondents: the opportunity to meet with the District's compliance officer at the outset of the investigation to present evidence; notice of an extension of the timeline to complete the investigation; a written report of the District's investigation from the compliance officer; an opportunity to challenge the report; a copy of the District's final decision regarding the complaint; and the opportunity to appeal the decision.

In addition to the UCP, the District had published other policies that addressed sexual harassment, including sexual harassment against employees. Under the policies as written, it was unclear whether the UCP applied to complaints against employees, and if so, how to reconcile the UCP with separate procedures for sexual harassment complaints against employees. A separate sexual harassment policy also included timeframes that conflicted with the UCP for how quickly an investigation needed to be completed.

The Title IX regulations also required the District to designate a Title IX coordinator to coordinate its compliance with Title IX and to publish the name and contact information for this coordinator so that students, parents, and employees would know how to file a complaint with the coordinator. The District told OCR that the Director of Risk Management was the District's Title IX Coordinator, which was consistent with the District's AR 5145.7 policy on sexual harassment. The Annual Notification sent to parents during SY 2015-16 and 2016-17, however, contained conflicting information regarding the identity of the District's Title IX coordinator. Specifically, one section of that notification stated that the Title IX coordinator was the Director of Pupil Services for students and the Director of Personnel Services for employees, and the notification did not provide an office address for either individual. The information in the notification also conflicted with what the Title IX coordinator and the Assistant Superintendent of Human

Resources (the HR Assistant Superintendent) told OCR. They reported that the District designated the HR Assistant Superintendent to address reports of sexual harassment of students by employees.

## **B. The District's Response to Notice of Sexual Harassment**

Section IV.B below discusses how the District responded to reports and complaints of sexual harassment at the Selected Schools. This section includes salient examples where OCR identified Title IX violations or a compliance concern based on the information obtained in this review.

### **1. Reported Incidents at HS 1**

OCR reviewed five reports of student-involved sexual harassment and two reports of employee-involved sexual harassment at HS 1. OCR received no evidence that the Title IX coordinator was involved in responding to any of the seven incidents, although he received notice of Incident 1, as described below. Below we discuss four of these seven incidents that illustrate the types of violations OCR found. Incident 1 involved the District's failure to investigate a report that a male student raped a female student on campus during a night-time [redacted content] game. Incident 2 involved a report of a male student telling a female student more than once that he was going to rape her and constitutes an example where OCR did not find evidence that the District took action to support the threatened student (e.g., offering a class schedule change or safety plan). Similarly, the District's handling of employee-involved harassment in Incidents 3 and 4 are examples where OCR found no evidence that the District offered or implemented interim measures or adequate remedies to support the affected students.

#### **a. Incident 1**

In [redacted content] 2016, a female student reported being raped by a male student on a [redacted content] night in an unsupervised classroom area on campus during a [redacted content] game. The same evening of the alleged rape, the targeted student's parents contacted local law enforcement to report the incident. Local law enforcement notified the District's Chief Security Officer (Chief). That same evening, the Principal, the Chief, and an Assistant Principal walked the law enforcement investigator through the campus and showed her where the incident was alleged to have occurred.

The Chief reported to OCR that he later notified District-level administrators, including the Assistant Superintendent of Educational Services, of the incident and believed that the information was forwarded to the Title IX coordinator. The Title IX coordinator recalled learning about the incident from the Chief the day after the [redacted content] game. Local law enforcement arrested the respondent student at school on [redacted content] morning following the [redacted content] night incident, and the District disenrolled him during his period of incarceration.

With regard to the District's response to notice of the incident, the Title IX coordinator, the Assistant Superintendent of Educational Services, and the Principal all stated that the District did not conduct an investigation and did not make a determination regarding whether the targeted student was subjected to sexual harassment, or whether the incident impacted other students. The Title IX coordinator stated to OCR that because the incident occurred after school hours and

because it involved criminal activity, the District would not investigate the incident. He also reported that he did not monitor the timing, nature, or outcome of the law enforcement investigation. Because the District did not conduct its own investigation, it did not provide any notice of the outcome to the targeted student or her parents.

The Principal did meet with the targeted student's parents several times during SY 2016-17 and communicated with them via email about the student's needs. Soon after the incident, in response to a request from the targeted student's parents, the Principal worked with the family to identify options for the student to continue her education because she did not want to return to HS 1 at that time. The targeted student subsequently enrolled in the District's home/hospital study program at her and her parents' request. According to the Principal, the targeted student's counselor also contacted the student a few times during SY 2016-17 to offer counseling services as a follow up. The Title IX coordinator stated to OCR that he was aware that the targeted student was placed on home/hospital study but was not aware if she received any other supports from the District.

In [redacted content] 2017, the targeted student's father informed the Principal that the student had been harassed by some of the respondent student's male relatives in retaliation for her having reported the rape. The Principal informed the HS 1 School Resource Officer (SRO) of this allegation. The SRO spoke with the two male relatives – one was a student at HS 1 and another was a student at a different school – and warned both not to contact the targeted student. There was no report of continued retaliation by these male students.

OCR found that the District did take some steps to protect the targeted student from the respondent student. For example, in [redacted content] 2017, the Principal and the targeted student's father exchanged a series of emails to ensure that the targeted student did not have to attend school with the respondent in [redacted content] 2017 or SY 2017-18. The father notified the Principal that the respondent [redacted content], was [redacted content], and was subject to a restraining order. The Principal provided a copy of the order to the SRO and the District Student Services Department, told the father that the respondent was not enrolled in the District, and notified school administrators about the father's update. When the respondent tried to reenroll in HS 1 in [redacted content] 2017, the District suspended him [redacted content] with a recommendation for expulsion based on the [redacted content] 2016 rape and placed him on independent study pending the expulsion process. The respondent then submitted to the District a statement alleging that the [redacted content] 2016 incident was consensual. Because the District never conducted its own investigation of the incident, it did not obtain a statement from the targeted student during the suspension and expulsion process or when she returned to HS 1.

In [redacted content] 2017, the targeted student's father notified the Principal that his daughter would be reenrolling at HS 1 and that a female student, Student A, had threatened the targeted student when the respondent student had been arrested. The Principal subsequently met with the targeted student and her parents about her returning to HS 1 for SY 2017-18. At this meeting, the targeted student reported that Student A was no longer bothering her; they discussed what the targeted student should do if any student harassed her in the future. The Principal stated that she informally checked in with the targeted student when she saw the student on campus. The Principal also offered the student counseling, which she declined. The District also reached out to the family and offered the services of a District therapist, which the family declined. In addition,



HS 1 personnel reported to OCR that the school increased security on campus during games and had general communications with students about making good choices and being aware of their surroundings. These communications were not focused on sexual violence. According to the Principal and Assistant Principal, they received no notice of ongoing harassment or retaliation against the targeted student after she returned to HS 1.

### **b. Incident 2**

The student disciplinary record for Incident 2, which occurred in [redacted content] 2016, stated that a male student admitted to telling a female student multiple times that he was going to rape her even after she told him to stop. The record stated that the school contacted the parents, directed the respondent student not to speak to the targeted student, and notified teachers in both of the students' shared classes that the students should be placed on opposite ends of the room. Though the disciplinary notes stated that a report of sexual harassment had been made, there was no documentation that the school informed the targeted student or her parents whether it determined that sexual harassment had occurred, and the school suspended the respondent student for one day for harassing, threatening, or intimidating a pupil witness, not sexual harassment. The suspension occurred within three days of the report. Apart from the disciplinary record, the District provided no further documentation of this incident, and witnesses OCR interviewed did not recall it. The facts OCR obtained did not reflect that HS 1 considered a class schedule change for either student, a safety plan for the targeted student, or other action to remedy the effect of the conduct on the targeted student.

### **c. Incident 3**

Incident 3 concerned sexually harassing conduct by a high school teacher (Teacher 1) toward students. On [redacted content] 2015, a former Principal at HS 1 notified the then-current HR Assistant Superintendent, who was the Human Resources Director during SY 2015-16, that several students had reported what they felt were inappropriate comments, touching, and overall feelings of discomfort when in the presence of the Teacher 1. The HR Assistant Superintendent placed the Teacher 1 on paid administrative leave during the investigation of these reports.

The District's investigation involved the following steps. On [redacted content] 2015, the HR Assistant Superintendent interviewed the reporting students and other students who were in a class with Teacher 1. On [redacted content] 2015, the HR Assistant Superintendent interviewed another teacher who worked with the Teacher 1 in the same program. After winter break, the HR Assistant Superintendent interviewed Teacher 1 on [redacted content] 2016, wrote a Summary of Investigation memorandum dated [redacted content] 2016, and then issued a Notice of Unprofessional Conduct (Notice) to Teacher 1.

The Notice included the following determinations. Teacher 1 had exhibited conduct that fell short of established standards, including the following behaviors: downloading photographs of women [redacted content] onto his classroom computer to which students had access; touching and giving gifts to female students; commenting on the physical appearance of female students, both collectively and individually; telling female students that he loved them; leaning in to whisper to female students; looking at the chest rather than the eyes of female students; leering at female

students, [redacted content]; intentionally placing female students in front of his view [redacted content]; once ordering a female student to [redacted content]; and awarding grades or other credit to female students differently than male students. Teacher 1's conduct violated [redacted content]<sup>5</sup> and several District policies, including those prohibiting discrimination, intimidation, or harassment, including sexual harassment, of a student by an employee. Teacher 1's conduct had adversely impacted students and compromised a safe and effective academic environment. Students reported that Teacher 1's conduct made them uncomfortable, embarrassed them, or "creeped them out." Many students were not comfortable in Teacher 1's presence, were offended by his words and actions, and believed that he was biased and showed favoritism to certain students.

The Notice included the following directives. Teacher 1 must cease the identified behaviors, must not violate District policies or reasonable supervisory directives, and must not retaliate in any manner against anyone who filed a complaint about him or participated in the investigation. Teacher 1 also must attend and actively participate in any relevant skills building seminars and programs. Teacher 1 must implement these directives immediately and correct his conduct within 45 days while school or District administrators closely monitored his conduct.

The HR Assistant Superintendent told OCR that he provided notice of the outcome of the investigation to parents of the reporting students by phone. He told them that the investigation was complete, the District took necessary action, and they should let the District know if there were any other future incidents. The HR Assistant Superintendent did not tell them whether he had determined that Teacher 1 had engaged in sexual harassment and did not specify any disciplinary action the District had imposed. The HR Assistant Superintendent told OCR that the only interim measure he implemented was to place Teacher 1 on leave during the investigation. The HR Assistant Superintendent did not remember the District putting in place any interim or long-term remedies for the students who reported being offended by Teacher 1's words and actions, uncomfortable in his presence, and concerned about bias and favoritism in SY 2015-16. The HR Assistant Superintendent noted to OCR that the District generally offered students counseling in these types of incidents.

During its September 2017 site visit, OCR was able to interview three of Teacher 1's then-current students. Each stated that none of the teachers in the program in which Teacher 1 worked had ever said or done anything that made them feel uncomfortable. OCR found that the District received no subsequent complaints of sexual harassment against Teacher 1 and that Teacher 1 is no longer employed by a school district.

#### **d. Incident 4**

Incident 4 concerned reported conduct by a different male teacher toward female students (Teacher 2). In [redacted content] 2017 a female student (Student B) reported to another teacher that Teacher 2 had been hugging her at school and making comments such as "beauty" and "gorgeous" regarding photos of female students on his personal social media account. The teacher who received the report notified the Assistant Principal, who told the Principal; the Principal then

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<sup>5</sup> The limited information received by OCR indicated that the [redacted content]. OCR did not have information to indicate whether or not any of the conduct the teacher [redacted content] was sexual in nature.

contacted the HR Assistant Superintendent. The HR Assistant Superintendent placed Teacher 2 on paid administrative leave during the investigation from [redacted content] 2017 to [redacted content] 2017.

The HR Assistant Superintendent investigated the reported conduct by speaking with Student B and two other female students who were in Teacher 2's class, Student C and Student D. He obtained written witness statements from each of them on [redacted content] 2017. Student C reported that the teacher constantly touches his female students, always touches Student B on her lower back, and commented to another student about her "[redacted content]." Student D reported that the teacher pressured her for a hug when they were alone in the classroom at one point and touched her bottom as he hugged her. She reported being so scared that she left the class without a pass. Despite notice of the sexually inappropriate touching and comments by Teacher 1, the HR Superintendent did not identify any interim measures for Students B, C, or D or other affected female students while the investigation continued. As part of the investigation, the HR Assistant Superintendent also spoke with Teacher 2 and looked at his emails, computer, and social media.

On [redacted content] 2017, the HR Assistant Superintendent issued a written Notice to Teacher 2 that included the following determinations and directives. Teacher 2 had engaged in unprofessional conduct, including: hugging female students in ways that made them uncomfortable, including touching their lower backs and buttocks; touching a female student on her thigh while alone with her in the classroom; texting a female student after school; and commenting on the physical appearance of his female students, both collectively and individually. Teacher 2's conduct violated several District policies, including those prohibiting sexual harassment of a student by an employee, and stated that his conduct had adversely impacted students and compromised a safe and effective academic environment. As with Incident 2, the Notice directed Teacher 2 to cease those behaviors, attend relevant skills building seminars and programs, and correct his conduct within a 45-day period or face further discipline.

The HR Assistant Superintendent told OCR that he provided notice of the outcome of the investigation to Student B and her parents over the phone. He told them that the investigation was complete, the District took necessary action, and they should let the District know if there were any other future incidents. The HR Assistant Superintendent told OCR that he did not tell Student B and her parents whether he had determined that the respondent teacher had engaged in sexual harassment and did not specify any disciplinary action the District had imposed.

The Principal and the Assistant Principal told OCR that they received no further reports of inappropriate conduct by Teacher 2 toward female students. The Assistant Principal noted that Student B and her parents wanted her to remain in Teacher 2's class after he returned from administrative leave. The Assistant Principal told OCR that he checked in with Student B several times and she told him that everything was fine. Beyond those steps, the HR Assistant Superintendent told OCR that he did not identify any interim or long-term measures to support Student B or the other impacted students during or after the investigation. He did not receive notice of any additional inappropriate conduct or any retaliation by Teacher 2 toward female students after the Notice issued on [redacted content] 2017.

## **2. Reported Incidents at HS 3**

At HS 3, OCR reviewed nine reports of conduct that could constitute student-involved sexual harassment. OCR received no evidence that the Title IX coordinator participated in responding to any of these reports, although HS 3 notified his office of Incident 5. Incidents 5 and 6 below constitute salient examples of the District's failure to provide adequate notice of the outcome of the investigation to targeted students and their parents.

### **a. Incident 5**

Incident 5 involved a male student sharing with other students videos of him and his girlfriend (a female student at the school) having sex, including in the [redacted content], and sharing sexually explicit photos of the girlfriend. HS 3 became aware of this conduct on [redacted content] 2016.

An Assistant Principal told OCR that the female student initially reported that other students at HS 3 had seen the videos and photos, but there was conflicting information about whether the female student was aware of the video and had shared it. He investigated the same day by searching the male student's phone, with his permission, and interviewing and obtaining statements from the male and female student and witnesses who were friends of both students. The Assistant Principal contacted both sets of parents, and another Assistant Principal and the SRO met with them and told them they could pursue criminal charges. The Assistant Principal documented the video and photos and erased them from the phone. The female student spoke with a school psychologist.

HS 3 suspended both students for at least five days and recommended expulsion for engaging in obscenity, habitual profanity, or vulgarity. An Assistant Principal said that they did not determine that sexual harassment had occurred or code it as such because the sexual conduct had been consensual. There was no indication that the Assistant Principal determined whether distribution of the videos and photos was consensual and, if not, constituted sexual harassment.

### **b. Incident 6**

Incident 6 occurred on [redacted content] 2015, when a female student reported to the Principal that a male student had fondled her breast while riding on the school bus. The disciplinary record stated that the respondent student had committed or attempted sexual assault/battery and that he received counseling about his conduct the same day. An Assistant Principal told OCR that HS 3 had held IEP meetings and implemented gradual interventions for the respondent student over time, but she could not recall the specific response to this incident. OCR received no information indicating that the school informed the targeted student or her parents of a determination that sexual harassment had occurred or offered the targeted student support to address the impact of the respondent student's conduct.

## **3. Reported Incidents at HS 2**

At HS 2, OCR reviewed four reports of student-involved conduct and one report of employee-involved conduct that could constitute sexual harassment. OCR received no evidence that the Title IX coordinator participated in responding to any of the student-involved reports or that the HR

Assistant Superintendent was involved in responding to Incident 7, even though it involved an employee. Incidents 7 and 8 below are examples of the District's failures to notify the students whether the conduct constituted sexual harassment or to offer supports to the students.

**a. Incident 7**

During a student interview, OCR learned of Incident 7, which the District had not reported to OCR. Toward the end of SY 2016-17, a female student, who was wearing [redacted content], reported that a male Security Guard (Security Guard 1) told her "you know, strippers wear those" and took her to the office for a dress code violation. The targeted student reported that Security Guard 1 then told her, in front of the SRO, that "I'm pretty sure if he [the SRO] saw you walking down the street, he'd pick you up."

The targeted student told her mother about this incident, and her mother called the Assistant Principal. At a meeting with Security Guard 1, the targeted student, her father, a female Security Guard (Security Guard 2), and the Assistant Principal, the Assistant Principal told Security Guard 1 to say he was sorry, which he did. The targeted student said that no one informed her about anything else happening to Security Guard 1, but the Assistant Principal told him not to talk to her anymore and he stayed away from her. The District did not tell her whether HS 2 determined that sexual harassment had occurred, offer her a formal complaint process, or offer her any support to address the impact of Security Guard 1's conduct. When OCR asked if Security Guard 1 received any training, counseling, or discipline for his comments, the Assistant Principal said that he had not thought that was necessary.

**b. Incident 8**

Incident 8 involved a report by a female student on [redacted content] 2017, that a male student was continuing to touch and sexually harass her and that it made her uncomfortable and fearful. The targeted student reported this conduct to a teacher who made a disciplinary referral. An Administrative Designee handled the investigation using the student discipline process.

The male student received two hours of on-campus intervention as a consequence. The Administrative Designee told OCR that the respondent student was participating in a special day class, and that his disability was considered in determining the appropriate consequence. The Administrative Designee said that they offered the female student a referral to the school psychologist, put in place a stay away order, and gave her direction about who she could report to if it happened again. He said that they monitored the respondent student and notified teachers about the stay away order. The Administrative Designee also stated that they had IEP meetings for the respondent student and reassessed him. The District subsequently moved him to a specialized special education program at HS 3.

The targeted student informed OCR that she had reported the respondent student grabbing her on [redacted content] 2017, and that the teacher saw what happened, told the respondent student to get away from her, and asked if she was okay. She said that the teacher spoke to her after class, again asked if she was okay, and told the respondent student that he had to stay after class. The targeted student said that the Administrative Designee asked her a few questions, but she never

heard anything else after that. She stated that nobody told her or gave her anything in writing that said that sexual harassment did or did not happen. The targeted student did not know if the respondent student got into trouble, but she never saw him after that. She stated that no one checked in with her after the investigation to see how things were going and no one talked to her about filing a formal complaint. (This letter uses “formal complaint” to refer to the written complaint process under the District’s UCP.) The targeted student told OCR that she felt okay about HS 2’s response to the incident.

#### **4. Reported Incidents at MS 2**

OCR reviewed eight reports of student-involved conduct at MS 2 that could constitute notice of sexual harassment. OCR received no evidence that the Title IX coordinator participated in responding to any of these reports. Two of the salient incidents are discussed below. Incident 9, where a male student exposed his genitals to other students, is an example of the District’s failure to provide any notice of the outcome to affected students. Incident 10, which involved a male student touching a female student’s bottom, is an example of the District’s failure to take all necessary steps to prevent further harassment.

##### **a. Incident 9**

On [redacted content] 2017, a male student pulled down his pants and underwear and exposed his genitals to several students and a teacher/discipline administrator (Teacher 3) at the end of the school day. Teacher 3 called security to remove the respondent student and made a disciplinary referral to the Assistant Principal. The Assistant Principal investigated the conduct through the student discipline process; Teacher 3 stated that the Assistant Principal completed the investigation the morning of the following school day. According to Teacher 3, the Assistant Principal obtained written statements from the respondent student and Teacher 3; he believed that the Assistant Principal also spoke with student witnesses.

MS 2 suspended the respondent student for two days for committing sexual harassment. His disciplinary record noted that he had previously been displaying inappropriate behaviors and making inappropriate comments at school and had received counseling, interventions, and consequences. Teacher 3 believed that the respondent student met with a counselor or psychologist when he returned from suspension. He stated that the conduct did not continue again after that.

The District provided no information to OCR concerning any determination of whether sexual harassment occurred, notice to the targeted students or their parents of such a determination, or consideration or offer of support for the targeted students to address the impact of the respondent student’s conduct.

##### **b. Incident 10**

Incident 10 occurred on [redacted content] 2016, when a female student reported that Student N had extended his arms to hug her and intentionally touched her bottom. The Assistant Principal investigated the report through the student disciplinary process in one day by interviewing and obtaining written statements from Student N, the targeted student, and two other student witnesses.

Student N's disciplinary record noted that he had a history of committing sexual harassment against female students and MS 2 personnel had counseled him, referred him for intervention, and given him disciplinary consequences, but he continued to engage in these acts.<sup>6</sup>

The Assistant Principal suspended Student N for five days and recommended that he [redacted content] for committing sexual harassment; he said MS 2 had tried many interventions but Student N could not or would not change his behavior. The Principal told OCR that she spoke with the Director of Student Services about the recommended [redacted content] and made clear that the Principal needed to protect the targeted students and that she did not want [redacted content]. The Principal stated that through the [redacted content] process the District decided to move Student N to [redacted content].

The Assistant Principal told OCR that he informed the targeted student's parent or guardian of the formal complaint procedures, but they did not file a formal complaint. He did not state that he considered or offered her support to address the impact of the respondent student's conduct. The Assistant Principal stated that he did not receive notice that the targeted student was subjected to retaliation. The Assistant Principal stated that he notified District-level personnel of this incident, but they were not involved in the investigation.

Student N returned to MS 2 during SY 2016-17 and again sexually harassed two other female students and was [redacted content].

## **5. Reported Incidents at MS 1**

OCR reviewed seven reports of student-involved conduct at MS 1 that could constitute notice of sexual harassment. OCR received no evidence that the Title IX coordinator participated in responding to any of these reports, although the school site may have informed him of three of the seven incidents. The incident described below, where a male student touched a female student's breast, illustrates the District's failure to take action to redress the harm to the targeted student and prevent recurrence of the harassment.

### **a. Incident 11**

On [redacted content] 2016, a substitute teacher in a [redacted content] class heard the targeted female student scream and observed her trying to hit the respondent male student. The targeted student reported that the male student had grabbed her breast. The teacher sent the male student

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<sup>6</sup> These incidents included one on [redacted content] 2015, for which Student N was suspended for two days for taking a female student's [redacted content], rubbing it on his private parts, and trying to give it back to her. Documentation provided by the District also included a reference to several previous discipline referrals for Student N from the 2014-15 school year that were not part of OCR's review, which included: a [redacted content] 2014 discipline referral for interacting with a female student inappropriately (Student N received counseling); a [redacted content] 2014 referral for touching a girl's breast (Student N received a three-day suspension); a [redacted content] 2015 referral for inappropriate remarks toward a female student (Student N received counseling); and a [redacted content] 2015 referral where a female student had reported unspecified inappropriate conduct (Student N received counseling). Student N had also received one other relevant discipline referral in the 2015-16 school year for an incident involving hugging another student on [redacted content] 2015, for which Student N received counseling.

to the office, and the Assistant Principal investigated the incident as part of the student disciplinary process.

The Assistant Principal's investigation revealed that the male student had a history of this type of behavior. He cited the male student with a disciplinary violation for sexual harassment and assigned a three-day suspension. The Assistant Principal told OCR that he contacted the students' parents and told the targeted student's parents that they could file a formal complaint, but they declined. He noted that the school changed the male student's placement soon after this incident.

The targeted student said that no one contacted her parents, and no one told her about the right to file a formal complaint of sexual harassment. The targeted student said that the Assistant Principal did not inform her about any decision concerning sexual harassment, although he did tell her that the male student was being suspended. The targeted student also stated that the school offered her no support during or after the investigation, including no offer of counseling and no offer to change the male student's schedule so that he would no longer be in her [redacted content] class. She told OCR that the conduct did not continue.

### **C. The District's Current Title IX Procedures and Practices**

OCR interviewed the District's Title IX coordinator in January 2023 to assess if the violations and compliance concerns that OCR identified during the compliance review period (SY 2015-16 and SY 2016-17) were continuing. The coordinator has served in this role throughout OCR's compliance review and informed OCR that the District had updated its Title IX policies after the Department updated its Title IX regulations to address sexual harassment in August 2020. OCR reviewed those updated policies and determined that the District adopted a new policy in October 2021 (AR 5145.71) to implement the 2020 regulations and that AR 5145.71 provides new grievance procedures for all complaints of sexual harassment under Title IX. OCR reviewed AR 5145.71 and did not identify compliance concerns on the face of the policy.

During the interview, OCR learned that the Coordinator was not familiar with the requirements of the District's revised Title IX policy or the revised Title IX regulation applicable to sexual harassment. For example, the Coordinator was not familiar with the regulation's definition of sexual harassment or how to apply the legal standard to determine what types of conduct would qualify as sexual harassment under Title IX.

OCR also found ongoing issues with the District's UCP and Title IX grievance procedures. During the interview, the Coordinator told OCR that he was responsible for all parent and student complaints under the District's UCP process, and that if a UCP complaint happens to involve a Title IX issue, the UCP investigation would naturally comply with Title IX because all UCP investigations meet Title IX standards. This assumption conflicted with the District's new policies, which provide for a distinct policy (AR 5145.71) specific to Title IX complaints that includes several requirements in addition to the requirements of the UCP procedures.

OCR also asked the Title IX coordinator about current training regarding Title IX requirements. The Coordinator stated that he trains school administrators that if a parent has concerns about how a school handled a sexual harassment issue, the administrators should notify the parents about how to file a complaint with the District. The Coordinator also noted that school administrators are



generally responsible for sexual harassment investigations and that he is not generally notified of them or involved. He told OCR that he would provide assistance if a school administrator needed additional support with an investigation, such as when a number of witness interviews were required. He stated that schools would notify him about reported sexual harassment if something turned out to be a “bigger” Title IX issue, but they did not notify him about “day-to-day” incidents involving sexual harassment that happen at each school site. His current low level of involvement in Title IX coordination was consistent with his very limited role with respect to sexual harassment complaints in SY 2015-16 and 2016-17.

The Coordinator explained that if a parent files a sexual harassment complaint with the District, a written response with findings of fact is provided and the report is logged in a case management system. For other incidents, the records are kept in the District’s student information system for discipline incidents. OCR did not find evidence to indicate that the District is keeping records about supportive measures that are provided to targeted students or an explanation of why supportive measures are not provided. OCR also did not find evidence that the District is keeping records documenting how the District’s response to reports of sexual harassment is not deliberately indifferent.

## **V. Analysis and Conclusion**

OCR applied the legal standards set forth above to the evidence gathered during SY 2015-16 and SY 2016-17 and found eight violations of Title IX and its implementing regulations. First, OCR found that the District violated Title IX due to its failure to coordinate its Title IX compliance regarding sexual harassment through its Title IX coordinator. OCR also found four violations based on the District’s inadequate responses to incidents of sexual harassment at the Selected Schools. In addition, OCR found two violations regarding the District’s Title IX grievance procedures and a final violation based on the District’s failure to adequately notify students, parents, and employees of its Title IX coordinator’s name and contact information. In addition, OCR found a ninth violation and two compliance concerns under the 2020 amended Title IX regulation based on the recent interview with the Title IX coordinator. The Analysis below explains the basis for each of these nine violations and OCR’s two compliance concerns.

### **A. Analysis**

First, OCR found that during the time period under review, continuing into the current school year, the District violated its regulatory obligation to coordinate its Title IX compliance through a Title IX coordinator. Though the District had designated a Title IX coordinator during the review period and presently, OCR found that the District failed to meet its Title IX requirements because the Title IX coordinator did not coordinate the District’s efforts to comply with and carry out its responsibilities under Title IX, including by failing to coordinate with schools about their investigations of reports of sexual assault and harassment. The evidence showed that the Title IX coordinator did not participate in the District’s response to any of the 41 incidents at the Selected Schools. The evidence revealed that the District had no system in place to monitor whether schools’ responses complied with Title IX requirements or to identify emergent patterns or systemic problems by school or Districtwide. In fact, during the review period, school administrators failed to correctly code many of the 41 incidents as sexual harassment, which

hindered the District's efforts to appropriately identify incidents as sexual harassment and ensure that the District took the responsive steps required under Title IX.

During the review period, OCR found that the Title IX coordinator was notified in only five of the 41 incidents of sexual assault and harassment reviewed by OCR, and OCR found no evidence that the Title IX coordinator participated in the responses to any of the 41 incidents, even the most serious incidents such as the report of rape at HS 1 discussed above. OCR also found no evidence of the Coordinator's involvement in the response to two incidents at HS 3 (including Incident 5) where students were sharing videos of themselves having sex with other students. Similarly, OCR found no evidence of the Title IX coordinator's involvement regarding Student N at MS 2, even though the District received notice of repeated allegations against the same student for a string of serious incidents including groping and other harassing behavior over two school years, for which behavior he was eventually [redacted content]. OCR notes that the failure of the District to have anyone coordinating the response to incidents involving reports of sexual harassment as Title IX requires may have led to the violations identified below.

OCR found that the role of the Title IX coordinator had not changed as of January 2023. According to OCR's interview with the Coordinator, school administrators generally handle sexual harassment incidents unless a parent is unhappy with a school's response. As a result, the Title IX coordinator is not notified of sexual harassment incidents unless the school administrators need assistance or a parent is unhappy and chooses to escalate the issue to the District level. The District's inadequate coordination of its schools' responses to complaints of sexual harassment leaves its Title IX coordinator without the information needed to identify repeat harassers or patterns of harassment or to address such issues to ensure the District's Title IX compliance.

Second, OCR also found that the District's responses to known incidents of sexual assault or harassment were inadequate because in at least a third (14) of the 41 incidents reviewed, the facts gathered did not indicate that the District took required action to address the effects of the respondent students' conduct on the targeted students where necessary and/or to prevent recurrence of the conduct. For example, after MS 1 received notice of an allegation that a male student had grabbed a female student's breast during [redacted content] class (Incident 11), the female student told OCR that she was not offered any counseling or other support, or any offer to change the respondent's schedule so that he was no longer in her [redacted content] class, and OCR did not find any evidence that the District offered her support.

For another example, with respect to Incident 3 at HS 1, the District's investigation found that a teacher had engaged in inappropriate behaviors with female students, including touching and giving them gifts, commenting on their physical appearance, telling them that he loved them, leering at them, and awarding grades to them differently than male students. However, even after making these findings, the HR Assistant Superintendent could not specifically remember putting in place any long-term remedies for the affected students beyond stating that counseling was usually offered in these types of situations. Second, when HS 1 learned that a student told a female student multiple times that he was going to rape her even after she told him to stop (Incident 2), OCR did not find evidence that the school considered a class schedule change, a safety plan, or other action to protect her or remedy the effect of the harassing conduct on her.

Similarly, the District also failed to put in place a safety plan at MS 2, where Student N was involved in several incidents of sexual harassment during the time period under review, including Incident 10. While the information provided to OCR indicated that the District explored options for increased discipline and other interventions specific to Student N, OCR did not find evidence that the District took steps to prevent further harassment from occurring through, for example, increased monitoring of Student N or coordination with Student N's teachers, or other reasonable steps that could have prevented the repeated incidents. OCR also found that the District did not take adequate steps to address Security Guard 1's comments to the student in Incident 7 at HS 2 because the District did not offer her any support or provide any training or counseling to Security Guard 1 to prevent similar conduct.

Third, OCR determined that the District failed to comply with Title IX's requirement to take immediate and appropriate action to investigate or otherwise determine what occurred with respect to notice of the student-involved rape (Incident 1) at HS 1. Neither HS 1 nor the District conducted an investigation of this serious incident of on-campus sexual violence when it occurred even though site administrators, the Title IX coordinator, and upper-level District administrators all received actual notice of the incident. The Title IX coordinator stated that he deferred to the law enforcement process because the incident was criminal in nature and took place after school hours, despite the fact that it occurred on school grounds, at a school event, and involved two students. Further, the Title IX coordinator did not monitor the criminal investigation in terms of timeliness or outcome. After the respondent student returned to the District almost [redacted content] later in preparation for an expulsion recommendation, the only investigation the District conducted was limited to obtaining a statement from the respondent. The District did not interview the targeted student or give her an opportunity to provide a written statement about the incident; reached no Title IX determination of whether sexual violence had occurred; and did not notify the targeted student or her parents of any determination under Title IX.

Fourth, OCR found that the District's response to at least four other incidents of sexual harassment violated Title IX by failing to provide adequate notice of the outcome of its investigation to targeted students and their parents or guardians. In response to Incident 5 at HS 3, for example, even though a student had shared explicit videos of him having sex with another student, the evidence did not indicate that the District made any determination about whether sharing the videos constituted sexual harassment or that the District communicated its determination to the involved parties. Instead, the District disciplined both students for engaging in sexual activity on campus without addressing the one student's sharing of the video of the other. In addition, after a student reported that a special education student had fondled her on the bus at HS 3 (Incident 6), OCR received no information indicating that the school informed the targeted student or her parents of the outcome of the investigation.

Similarly, in Incident 8 at HS 2, OCR did not find evidence that the District provided notice of the outcome of the investigation to the targeted student or her parents after a female student reported that she was uncomfortable and fearful because another student was touching her and sexually harassing her. Instead, the targeted student reported to OCR that, after an administrator questioned her about the incident, she never heard anything further about it. At MS 2 OCR also found no evidence of any communication to the impacted students for Incident 9, where a student had pulled down his pants and underwear and exposed himself to the class.

Fifth, OCR also found that the District failed to offer or provide appropriate interim measures to targeted students during the investigation of several reviewed incidents. For example, with respect to the District's responses to the two teachers' sexually inappropriate touching and comments to female students in Incidents 3 and 4 at HS 1, there was no evidence that the District offered or implemented interim measures, as necessary, to support the targeted students during its investigations of the teachers. In those instances, despite the fact that the female students in both incidents had reported serious conduct by teachers and the investigations of that conduct lasted several weeks, the evidence did not indicate that the District offered those students counseling or academic accommodations while the investigations proceeded.

The sixth violation OCR found was based on the District's failure to have prompt and equitable grievance procedures to address complaints of sex discrimination, including sexual harassment. During the time period under review, the District had designated an existing complaint procedure, the UCP, to serve as its Title IX grievance procedures for complaints of sex discrimination, including sexual harassment. OCR found that the UCP was not equitable because the UCP afforded several rights to complainants that were not also provided to respondents. OCR also identified a seventh violation because the District did not fulfill its Title IX duty to publish prompt and equitable grievance procedures for sexual harassment complaints because the District was relying on the UCP for such complaints, but District policies and procedures that someone seeking to file a sexual harassment complaint might have consulted for guidance either did not refer to the UCP or contained information that conflicted with the UCP. OCR's recent interview with the current Title IX coordinator also indicated that the District continues to rely on the UCP to process sexual harassment complaints even though the District's updated Title IX procedures for sexual harassment include requirements beyond those in the UCP.

Lastly, OCR found that some District notices of the Title IX coordinator to parents, guardians, and students did not comply with the regulation because they provided conflicting information regarding the identity of the Title IX coordinator. Specifically, District policy stated that the Director of Risk Management is designated as the employee responsible for coordinating efforts under Title IX, but the annual notification to stakeholders stated that the Title IX coordinator was the Director of Pupil Services for students and the Director of Personnel Services for employees. OCR also found that the District failed to fully list the Title IX coordinator's contact information. The Annual Notification to parents in SY 2015-16 and SY 2016-17 did not provide an office address for either individual identified as the Title IX coordinator.

In addition to the violations OCR identified based on the District's practices during the SY 2015-16 and 2016-17, OCR also identified a ninth violation and two more compliance concerns under the amended 2020 Title IX regulation for sexual harassment based on three current District practices described by the Title IX coordinator during OCR's recent interview. First, the District's present approach of only notifying the parent about the formal Title IX complaint process if they are not satisfied with the school's initial response does not comply with the Title IX regulation, which requires school districts to notify complainants about how to file a formal Title IX complaint of sexual harassment whenever an employee has actual notice of sexual harassment or allegations thereof, regardless of whether the complainant expresses dissatisfaction with the initial response from the school. Second, the District's continued use of the student discipline data system to track incidents of sexual harassment also raises a concern about the District's compliance

with the Title IX record-keeping requirements for sexual harassment complaints in 34 C.F.R. § 106.45(b)(10). For example, the regulation requires the District to keep records that it does not keep in its discipline data system, such as records of informal resolutions of sexual harassment complaints and records documenting how the District's responses to reports of sexual harassment were not deliberately indifferent, including records of the supportive measures it provided to targeted students or an explanation of why supportive measures were not provided. Finally, OCR is concerned that the Title IX coordinator is not familiar with the definition of sexual harassment or other requirements in the amended 2020 Title IX regulations or the District's revised sexual harassment policies, given that the Title IX regulation, at 34 C.F.R. § 106.45(b)(1)(iii), requires that the District train the Title IX coordinator on that definition and other requirements of the 2020 regulation. The Title IX coordinator's lack of familiarity with the definition could lead to ongoing District failures to correctly code incidents of sexual misconduct as sexual harassment covered by Title IX.

## **B. Conclusion**

To resolve the nine violations and two 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. The Agreement also requires that the District review and revise its policies and procedures to ensure compliance with Title IX, and to provide training regarding the revised policies and procedures for staff and students. 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.

Based on the commitments made in the Agreement, OCR is closing the investigation of 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 concerns identified by OCR. OCR will monitor the implementation of Agreement until the District is in compliance with the terms of the Agreement and the statutes and regulations 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, personal information that could reasonably be expected to constitute an unwarranted invasion of privacy if released.

Thank you for the courtesy and cooperation extended by you and your staff during the investigation. If you have any questions regarding this letter, please contact me at (415) 486-5555.

Sincerely,

/s/

Zachary Pelchat  
Regional Director  
OCR, Region IX

Attachment (the Agreement)

cc: Todd M. Robbins, Esq. (Atkinson, Andelson, Loya, Ruud & Romo)