Tufts Reaffirms Commitment to Title IX Compliance

Tufts University is surprised and disappointed that the Department of Education’s Office for Civil Rights has declared the University to be out of compliance with Title IX. Tufts University is deeply committed to the safety and well-being of our students, faculty and staff. We have in place and fully support policies and procedures that comply with Title IX, are consistent with the significant guidance documents issued by the department, and effectively serve our students, faculty and staff. We believe the department’s recently announced finding has no basis in law and we have requested to speak with OCR’s Washington Office to discuss this unexpected and troubling announcement. This situation in no way lessens our commitment to moving forward with steps to enhance our policies and procedures. We have already taken many of those steps. We look forward to working with OCR to resolve this issue.

Additional Information:

For nearly four years, Tufts has worked cooperatively with the Department of Education’s Office for Civil Rights (OCR) to resolve the department’s investigation of one student’s complaint regarding sexual misconduct that was filed with OCR in 2010. Throughout this lengthy investigation, the University cooperated fully with OCR. We complied with every request for access to information and personnel and worked collaboratively with OCR to seek resolution of the complaint.

Tufts also conducted its own internal review of the University’s response to the incident underlying the complaint. Based on our own review, we acknowledge that more could have been done to address the student complainant’s concerns at that time. We have since taken steps to remedy that situation. More broadly, we have also revised our policies, procedures and the structure of our response to ensure that we respond to sexual misconduct complaints in a prompt and equitable manner that complies with Title IX and applicable regulations.

On April 17, 2014, Tufts signed a Voluntary Resolution Agreement with OCR that outlined the numerous actions that Tufts has taken since 2010 to achieve these goals. A listing of significant steps taken by the University is appended. (http://oee.tufts.edu/sexualmisconduct/files/Summary-of-Actions-Taken-to-Address-Sexual-Misconduct-at-Tufts.pdf) The Agreement also outlined additional actions Tufts agreed to take to further enhance the effectiveness of its Title IX responses. Many of these actions incorporate evolving guidance received from the department over the past few years, including the April 4, 2011 Dear Colleague Letter.

At no time before we signed the April 17 Voluntary Resolution Agreement did OCR indicate that it found the University’s current policies out of compliance with Title IX. Instead, OCR consistently affirmed our progress and current compliance with the law. It was not until April 22 – after we signed the Voluntary Resolution Agreement – that OCR informed us of its serious and, we believe, unsubstantiated finding. Given the extensive collaborative efforts to reach that Agreement, we are disappointed by the department’s course of action. Our repeated requests to speak with OCR in Washington about this new finding have been unsuccessful.

Under these circumstances, on April 26, we regretfully revoked our signature from the Voluntary Resolution Agreement. We could not, in good faith, allow our community to believe that we were not in compliance with such an important law. Revocation of the agreement in no way diminishes our commitment to moving forward with the steps included in that agreement or to continuing to enhance our policies and procedures. Indeed, many of those steps have already been taken. We look forward to working with OCR to resolve this disagreement and to implementing all of the elements in the Voluntary Resolution Agreement. We have stated that commitment in all our communications with OCR and we reaffirm it now. Our goal is a campus culture in which every member of our community is respected, supported and safe. Sexual misconduct has absolutely no place at Tufts University.

http://oee.tufts.edu/sexualmisconduct/tufts-reaffirms-commitment-to-title-ix-compliance/
Palo Alto Unified School District

25 Churchill Avenue - Palo Alto, CA 94306
Phone (650) 329-3709 - Fax (650) 326-7463

Policies and Activities Promoting Social-Emotional Health, Awareness, and Acceptance of Students, and Proactive and Remedial Steps to Address and Prevent Sexual Discrimination/Harassment and Related Bullying at District, School, Classroom, and Individual Levels.

District Level
1. Board Policies and Administrative Regulations - addressing discrimination, including sexual harassment
2. Parent Notification of District Policies
3. Title IX - public notices posted, Compliance Officer available by phone and in person
4. California Healthy Kids Survey – data on school climate, school connectedness, harassment, youth resiliency, grades 5, 7, 9, 11, administered every other year, last administration 2013-14
5. Staff Training: e.g. Creating Safe Schools - bullying intervention and prevention: students with disabilities; bi-annual Sexual Harassment Training
6. District-wide Activities – e.g. Unity Week and Unity Day, events that promote inclusion and acceptance
7. District-wide Communications - Board and Superintendent/District website e.g. Launch of Stepping Up for Safe and Welcoming Schools Initiative
8. Summary Documents - Discrimination Policy and Complaint Procedure/Staff Guidance Memorandum and Nondiscrimination Notice
9. Investigate Complaints/Concerns and Encourage Reporting of Concerns/UCP BP/AR 1312.3
10. District Climate Committee / Safe and Welcoming Schools Initiative
11. Palo Alto Reality Check Survey (PARCS) - measures student behaviors, attitudes, and perceptions concerning bullying and substance use and abuse (middle school)
12. UCP Training for principals, assistant principals, school staffs
13. Developmental Assets – in partnership with Project Cornerstone
14. Developmental Assets Survey – survey of students every five years for understanding of youth's acquisition of 41 developmental assets and areas in need of additional attention
15. Adolescent Counseling Services (ACS) – on school sites throughout school year and 3 session community referrals
16. LGBTQ Committee – committee of parents, staff, community working to increase awareness of issues around AB1266; make schools safe and welcoming for all
17. Partnership with Palo Alto Police Department – School Resource Officers (SROs)
18. QPR Program (Question, Persuade, Refer) – suicide prevention training
19. Proposed Trainings for 2014-15 – e.g. Campus Outreach Services, training for parents, students, staff on sexual harassment, sexual assault, and respectful relationships
20. Project Safety Net – community partnership focused on outreach activities for suicide prevention
22. Continuity of Care – coordinated monthly meetings of contracted mental health providers for identification of student needs
23. Student Services Fair – annual District event for parents on available resources for social-emotional and academic support

School and Classroom Level (Paly and Gunn)
24. Parent Handbooks – includes related policies and regulations, resources and contact persons
25. Student Handbooks – same as above, discussed in classes first full week of school, Gunn and Paly
26. School Climate Committees with TOSA support – Gunn and Paly
27. School Climate Surveys – CHKS, alumni, developmental assets, strategic plan
28. School-level Trainings/Encourage Reporting – e.g. Staff training: Creating Safe Schools, UCP Training
29. Investigate Complaints/review activities and responsive actions
30. Disciplinary Procedures – conduct policies and regulations, progressive discipline and education
31. School-level Communications – including principal letters, e.g. 8/15/13 letter on efforts to end student streaking; 1/22/14 blogpost encouraging attention of school community to White House report "Rape and Sexual Assault: A Renewed Call to Action"
32. Student Journalism – related articles, e.g. "You Can't Tell Me I Wasn't Raped" Verde Magazine April 2013; "Streiking should be halted due to federal investigation" The Campanile (Paly), April 25, 2014; "Ask fm is a burden on teenagers' emotional security" The Oracle (Gunn), November 18, 2013; "Acceptance on campus: How Gunn measures up" The Oracle (Gunn), April 8, 2013
33. Not In Our School (NIOS) - activities week, lesson plans in classrooms on inclusion, acceptance, and harassment prevention http://gunn.pausd.org/not-our-schools-kristy-todd?destination=node/1491 (Gunn NIOS page/curriculum); http://libguides.pausd.org/nios (Paly NIOS curriculum guide)
34. Day of Silence (DOS) - national youth movement bringing attention to the silence faced by lesbian, gay, bisexual and transgender people and their allies (Gunn)
35. Student Clubs – https://sites.google.com/site/pahsasb/clubs (Paly club list) https://docs.google.com/spreadsheet/ccc?key=0Ak6ir4-H37vG4xc2JzdUNZaWhHOHRldGt2Y0ITTGc&usp=sharing&gid=0 (Gunn club list)
36. Reach Out, Care, and Know (ROCK) – student-run peer advisory group/student support group to listen and share experiences (Gunn)
37. Student Leadership – Associated Student Body (ASB) activities (Paly and Gunn)
38. Student Senate – a day for feedback from students, including about experiences and school climate (Gunn)
39. Student Performances – related themes, e.g. "The Vagina Monologues" May 2013 (Paly); February 2014 (Gunn)
40. Assemblies – related themes, e.g. May 21, 2013, with Eve Ensler, author of "The Vagina Monologues" (Paly); April 19, 2012, screening of "Miss Representation" with Jennifer Siebel Newsom, Director, and representatives of YWCA, About Face and Girls For a Change (Gunn)
41. School-wide Curriculum - Living Skills classes (including QPR) with units on individuality, health, substance abuse, sexuality, media literacy, and life lessons, including Teen Talk Curriculum on sexuality education and presentations from attorneys on sex-related misconduct, including date rape, accomplice liability and cyber-crimes (including cyberbullying); Teacher Advisory classes, school-wide lessons on bullying/harassment prevention and digital citizenship
42. Counseling Services – Advisories for students in grades 9-12 (Paly), guidance counseling, ACS on-site during school year and 3-session community referrals, ASAT Program through ACS (Paly and Gunn)
43. Individual Advisory - lessons regarding mental health awareness and anti-bullying/anti-discrimination for each grade level (Paly)
44. Advisory Periods - 6 for grade 9, 4 for grades 10-12, specifically designed for TAs to meet individually with struggling students or students of concern (Paly)
45. Digital Citizenship curriculum (Gunn and Paly)
46. "What Would You Do?" – What is harassment? School-wide curriculum for grades 9-12 encouraging reporting and upstander behavior (Paly and Gunn)
47. 18-Year-old Presentation and Discussion – police involvement for discussion of California Bar Association Pamphlet on When You Turn 18
48. Camp Everytown – annual development of leadership skills with a focus on breaking down stereotypes and promoting inclusion (Paly and Gunn)
49. Common Ground – similar to Camp Everytown for incoming 9th graders, make friends, connect to school (Paly and Gunn)
50. Summer Bridge Program – includes unit on harassment prevention (Paly and Gunn)
51. Link Crew (Paly) and Titan Ambassadors (Gunn) – peer monitoring and support, student connectedness
52. Freshman Orientation Program (Paly) and Titan 101 (Gunn) – orientation to high school, including social and emotional issues and navigation of resources
53. Freshman orientation program (Paly) – orientation to high school, including social and emotional issues and navigation of resources
54. Alliance Groups – creating a safe school for all students, joint social activities (Paly and Gunn)
55. Service Day - applying messages of NIOS and making social change (Paly and Gunn)
56. Challenge Success (CS) – partnership with Stanford, CS Team’s focus to promote environment that examines the social and emotional well-being of students while maintaining high academic standards (Paly and Gunn)
57. TEAM (Together Everyone Achieves More) - 100 freshmen share core academic classes, develop supportive relationships with peers and teachers (Paly)
58. Small Learning Community (SLC) – 28 freshmen in integrated curriculum, explore place in history and the local and global communities, make connections at school (Gunn)
59. Friday Night “Camp Everytown” – on-site at Gunn
60. Anonymous Bullying/Harassment Reporting Form – on school and District websites
61. Sources of Strength – partnership with Stanford, wellness program/research study to help all students become more resilient (Gunn)

**Individual Student Level**
- Encourage reporting of concerns, problems
- Investigations
- Parent contacts
- SRO involvement as appropriate
- Interim protective measures/remedial and proactive steps/responsive actions and referrals
- Counseling/education
- Disciplinary consequences
- Follow-up communications and monitoring
Palo Alto Unified School District

Strategic Plan
Adopted: May 28, 2013
## Personal Development & Support

**Goal:** Support the social-emotional needs of students and celebrate personal growth across multiple dimensions, while ensuring a positive, safe, and healthy environment.

<table>
<thead>
<tr>
<th>Initiative</th>
<th>Actions</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>B1</strong></td>
<td>Identify key social, emotional, behavioral, and physical needs of students, provide support for these needs across sites, and monitor student development</td>
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<td></td>
<td>Focus extracurricular offerings around key developmental assets such as empowerment, support, positive identity, and social competencies</td>
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<td></td>
<td>Promote key developmental assets via orientations, advisory lessons and school wide programs (e.g., Project Cornerstone)</td>
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<tr>
<td><strong>B2</strong></td>
<td>Ensure school environments are safe and welcoming for all students, through: student education; mentoring relationships; research-based programs; training for staff, volunteers, and substitutes; and avenues for students to access support</td>
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<td></td>
<td>Develop and formalize policies, procedures and practices that support student safety and well-being</td>
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<td></td>
<td>Identify ways to more effectively leverage current partnerships with community and parent stakeholder groups to increase overall campus safety and positive culture</td>
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<tr>
<td><strong>B3</strong></td>
<td>Implement a common guidance curriculum and evaluate its effectiveness to improve the quality and consistency of services with respect to academic advising, social-emotional support, and post-secondary planning</td>
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<td></td>
<td>Improve awareness of and access to counseling support for a diversity of post-secondary pathways, while still preparing all students for a 4-year college experience</td>
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</tbody>
</table>

Should you need special accommodations to participate in the meeting, please contact the Superintendent's Office at 650.329.3737 or kruegsegger@pausd.org. Community members wishing to address the Board are allotted THREE minutes per speaker. Should more than 20 people wish to address any one topic, the Board may elect to allot a shorter time per speaker. Materials presented at the Board meeting will be copied and provided to Board members after the meeting.

Additional instructions are listed on the back page of this agenda.

### OPEN SESSION / REPORTS

A. Call to Order

### ACTION / DISCUSSION / INFORMATION ITEMS

A. High School Single Plans for Student Achievement (SPSAs)  

   Presentations by staff at Gunn and Palo Alto high schools will connect measurable school goals for the 2013-2014 school year to the District Strategic Plan and the following Western Association of Schools and Colleges (WASC) accreditation report topics:

   - Overall School Improvement and Excellence
   - Instructional Practices to Ensure Student Success
   - College and Career Readiness
   - Academic and Socio-Emotional Support for All Students

1. Palo Alto High School (20 minutes of presentation, 40 minutes for discussion)
2. Gunn High School (20 minutes of presentation, 40 minutes for Discussion)

### ADJOURN
The Single Plan for Student Achievement

2013-14

Palo Alto High School
School Name

43 69641 0000000
CDS Code

The Single Plan for Student Achievement (SPSA) is a plan of actions to raise the academic performance of all students to the level of performance goals established under the California Academic Performance Index. California Education Code sections 41507, 41572, and 64001 and the federal No Child Left Behind Act (NCLB) require each school to consolidate all school plans for programs funded through the School and Library Improvement Block Grant, the Pupil Retention Block Grant, the Consolidated Application, and NCLB Program Improvement into the Single Plan for Student Achievement.

For additional information on school programs and how you may become involved locally, please contact the following person:

Contact Person: Kim Diorio
Position: Principal
Telephone Number: (650) 329-3701
Address: 50 Embarcadero Rd.
Palo Alto, CA 94301
E-mail Address: kdiorio@pausd.org

Palo Alto Unified School District

The District Governing Board approved this revision of the School Plan on January 28, 2014.
B: Personal Development and Support

Support the social-emotional needs of students and celebrate personal growth across multiple dimensions, while ensuring a positive, safe, and healthy environment.

B2.1: Ensure school environments are safe and welcoming for all students through: student education; mentoring relationships; research-based programs; training for staff, volunteers, and substitutes; and avenues for students to access support.

Measureable Goal (school selects goal/s to be accomplished by June 2014):

This goal encompasses our WASC school goal of support for ALL students.

Efforts to ensure our school environment is safe and welcoming for all students will result in a decrease in unexcused absences, improved interventions and prevention of bullying/harassment incidents, and a consistent message that every person on campus feels "capable, connected and that they count." School climate will be a continued discussion at Ed Council meetings.

Measuring Effectiveness – How will we measure our progress toward our goal? (What incremental measures will you review throughout the year?)

Responses on the California Healthy Kids Survey on questions involving school climate, bullying/harassment, engagement and student-adult relationships, and responses on our spring WASC parent, teacher and student survey data.
<table>
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<tr>
<th>Strategies/Actions to Reach this goal:</th>
<th>Who is responsible for facilitation of this strategy/action item?</th>
<th>Monitoring Implementation: What data/evidence will we collect to ensure that this strategy/action is being implemented?</th>
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<tbody>
<tr>
<td>Refinements to current attendance procedures, including implementation of Saturday School.</td>
<td>Admin Team, Ed Council</td>
<td>New attendance procedure adopted October 1st. First Saturday School October 12th. Attendance procedures are now aligned with Gunn. Piloting sending text/email alerts to parents at lunch time when students miss morning classes, in addition to evening phone calls.</td>
</tr>
<tr>
<td>Hiring School Climate TOSA for 2nd semester to monitor our efforts on bullying and harassment</td>
<td>Admin Team</td>
<td>Position posted in November 2013 for January start. Job description similar to Gunn high school's school climate TOSA.</td>
</tr>
<tr>
<td>All staff trained on code red and emergency preparedness drill</td>
<td>Admin Team, Staff</td>
<td>Training took place on August 14th, Student drill conducted on August 19th, third day of school.</td>
</tr>
<tr>
<td>All staff trained on mandated bullying/disability based harassment training, QPR suicide prevention, and epi-pen/diabetes training.</td>
<td>Admin Team, Director of Special Education, District Nurse</td>
<td>Training took place on August 14th. Multiple make-up sessions held throughout first quarter 2013 for classified staff.</td>
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<tr>
<td>Formation of site-based school climate committee</td>
<td>Admin Team, Ed Council, School Climate TOSA</td>
<td>The committee will develop an anonymous reporting procedure for bullying and/or harassment, promote and organize school events that reinforce positive behaviors and create a culture of care.</td>
</tr>
<tr>
<td>Ed Council will analyze quarterly attendance data and discuss improvement ideas for 2014-2015</td>
<td>Admin Team, Ed Council</td>
<td>Ed Council notes will be shared with teachers and district office staff.</td>
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<tr>
<td>Training for members of Ed Council in creating and leading cultures of inquiry (data item analysis and having conversations with staff around data)</td>
<td>Admin Team, Ed Council</td>
<td>At our January 15th Ed Council retreat, the Data Team trained their colleagues on developing a culture of collaborative inquiry. Using many of the concepts in the book, Got Data? Now What? By Laura Lipton and Bruce Wellman, 2012 by Solution Tree Press, Ed Council spent the day analyzing struggling students from first semester. The data team will conduct similar training with Focus Group leaders in February.</td>
</tr>
<tr>
<td>Ed Council updated and trained on district's Rtl efforts (Response to Intervention)</td>
<td>Admin Team, Coordinator of Student Services</td>
<td>In November 2013, Judy Argumedo and Paly Rtl coaches spoke to members of Ed Council regarding their efforts, including training, processes, and consultation services.</td>
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<tr>
<td>Rtl coaches will work with teachers on supporting Tier 1 intervention services in the classroom to support struggling students</td>
<td>Instructional Supervisors, Rtl coaches, Teachers</td>
<td>During department and collaboration times, Rtl coaches will conduct training for teachers and/or meet individually with teachers within their own departments to work on instructional strategies to better support struggling students. Rtl coaches will use data to pinpoint learning difficulties and develop action plan for addressing teacher concerns.</td>
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<tr>
<td>Camp Everytown</td>
<td>Admin Team, Students, School Climate TOSA</td>
<td>In November 2013, 43 students and 10 staff members attended Camp Everytown, including the Principal, newly hired Assistant Principal, and our School Resource Officer. Paly is sending another group of students to Camp Everytown in March 2014. Our School Climate TOSA will be spearheading this second opportunity.</td>
</tr>
<tr>
<td>NIOS week (Not In Our Schools Week) and activities</td>
<td>Admin Team, School Climate TOSA, Students, ASB</td>
<td>Teacher developed curriculum and staff professional development. ASB developed &quot;You Matter&quot; posters.</td>
</tr>
<tr>
<td>Unity Day</td>
<td>Admin Team, Students, ASB, Unity Club, Random Acts of Kindness Club</td>
<td>ASB, Unity Club and other student groups, along with PTSA sponsored event in October 2013.</td>
</tr>
<tr>
<td>ASB hosted digital speeches and online voting for elections in an effort to increase voter turnout</td>
<td>Admin Team, Students</td>
<td>ASB is focused on improving on campus-advertising in order to reach ALL students (particularly those without Internet access at home).</td>
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<tr>
<td>Student-led activities</td>
<td>Admin Team, Director of Student Activities, ASB, Students</td>
<td>Student activities including Spirit Week, Cookies N Cocoa, Food for Thoughts, Winter Sports Rally, school dances/Prom, Val Grams (Valentine’s day gifts), TedX, Club Day, Field Day, Powderpuff Football, Link Crew, Month O’Music on the quad.</td>
</tr>
<tr>
<td>California Association of Directors of Activities Conference (CADA)</td>
<td>Admin Team, Director of Student Activities, ASB, Students</td>
<td>Professional learning conference for Director of Student Activities to learn best practices and support leadership students.</td>
</tr>
<tr>
<td>Professional Development for teachers offered at the Santa Clara County Office of Education regarding bullying</td>
<td>Admin Team, Teachers</td>
<td>10 teachers attended this event in October 2013.</td>
</tr>
<tr>
<td>Revision of the academic honesty/integrity policy</td>
<td>Admin Team, School Climate TOSA, Ed Council, Site Council</td>
<td>Under the direction of the School Climate TOSA, the Academic Honesty policy will be refined and updated by May 2014 with input from Site Council and approval by Ed Council.</td>
</tr>
<tr>
<td>Advisory lessons by grade level to address bullying and sexual harassment, including digital citizenship lesson</td>
<td>Admin Team, Guidance Department</td>
<td>During NIOS week, participation in lessons through Advisory developed by Guidance Department.</td>
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<tr>
<td>Math teachers available for extra help</td>
<td>Math Instructional Supervisor, Math Teachers</td>
<td>All Math teachers are available to help ANY students during their prep periods.</td>
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<td>Math peer tutors (creating a culture of students helping students)</td>
<td>Students, Math Teachers</td>
<td>Senior Calculus students are serving as teacher aides/peer tutors in Alg 1.1 course, Focus on Success classes and in the Academic Resource Center.</td>
</tr>
<tr>
<td>Additional School Psychologist support (2.0 FTE) has led to improved mental health services and support</td>
<td>School Psychologist</td>
<td>Further training and development of a Crisis Response Team (CRT), Mental Health Roundtable, improved partnership with Stanford School-Based Mental Health Team and implementation of Suicide Toolkit, greater participation with...</td>
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<td>Special education study hall</td>
<td>Special Education Teachers</td>
<td>Project Safety Net and HEARD Alliance. Stanford Child Psychiatry provides weekly consultation services for specifically identified.</td>
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<tr>
<td>Safety Care training</td>
<td>PAUSD Lead Behavioral Specialist, Crisis Response Team Members, Admin Team, Campus Supervisors</td>
<td>Strategies for de-escalating students as well as how to safely restrain a student in the event of a physical altercation that requires physical intervention.</td>
</tr>
<tr>
<td>Science peer tutors (creating a culture of students helping students)</td>
<td>Students, Science Teachers</td>
<td>Science Department is creating a peer tutoring program within their department.</td>
</tr>
<tr>
<td>Living Skills curricular enhancements that support improving school climate and culture, including QPR training for all Living Skills students and all staff</td>
<td>Living Skills Teachers</td>
<td>Ongoing student discussions about issues that impact school climate, such as staggering, cheating, examination of &quot;rape culture,&quot; bullying/hazing, the role of &quot;traditions&quot; in our school. Lessons on gender and relationships are designed to extend the lessons learned at Camp Everytown during the gender empowerment activity through deeper examinations of the media and societal messages we receive about being masculine/feminine. Restructured our Wellness Unit to have greater focus on mental health needs. Work collaboratively with Stanford Adolescent Psychiatry department to incorporate new mental health curriculum, Break Free From Depression. Partnership with Carrie LeRoy, an attorney working in conjunction with Legal Advocates of Children and Youth (LACY) on presentations geared for teenagers regarding the legal ramifications of assaultive behavior such as sexual assault and/or cyberbullying. Partnership with PAMF health educator, Becky Beacom, on ways in which perceptions can shape decision making and behaviors around drug use, sexual activity, and social stigmatization.</td>
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<tr>
<td>EL Coordinator focusing on attendance</td>
<td>EL Coordinator</td>
<td>Case manages EL students, provides CELDT testing and supports Guidance and Admin teams by providing</td>
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<tr>
<td>Black Scholars United and Latinos Unidos</td>
<td>Outreach Specialist</td>
<td>Counseling and guidance interventions for students with truancy issues.</td>
</tr>
<tr>
<td>Futures Program fully integrated on campus</td>
<td>Special Education Teachers</td>
<td>Formation of student clubs to celebrate and support diversity on our campus.</td>
</tr>
<tr>
<td>Brown bag lunches</td>
<td>Guidance Department, Teachers</td>
<td>Now meeting once a month (as opposed to four times per year) counselors meet with teachers by grade level to discuss students that are of concern to teachers</td>
</tr>
<tr>
<td>Increasing empathy</td>
<td>School Climate TOSA, Admin Team, Ed Council, Teachers, students and parents</td>
<td>During 2nd semester, teachers will shadow students, parents will shadow teachers and data will be gathered regarding the shadowing experience.</td>
</tr>
<tr>
<td>Improved communication</td>
<td>Admin Team</td>
<td>Principal’s Update, including blog, photos and links to social media that promote student and staff accomplishments (<a href="http://palyprincipal.ning.com/">http://palyprincipal.ning.com/</a>). Improved website and quarterly letters to Paly community from the Principal (in English and Spanish).</td>
</tr>
</tbody>
</table>
The Single Plan for Student Achievement

2013-14

Henry M. Gunn High School

School Name

43-69641-4332904

CDS Code

The Single Plan for Student Achievement (SPSA) is a plan of actions to raise the academic performance of all students to the level of performance goals established under the California Academic Performance Index. California Education Code sections 41507, 41572, and 64001 and the federal No Child Left Behind Act (NCLB) require each school to consolidate all school plans for programs funded through the School and Library Improvement Block Grant, the Pupil Retention Block Grant, the Consolidated Application, and NCLB Program Improvement into the Single Plan for Student Achievement.

For additional information on school programs and how you may become involved locally, please contact the following person:

Contact Person: Katya Villalobos
Position: Principal
Telephone Number: (650) 354-8200
Address: 780 Arastradero Road
Palo Alto, CA 94306
E-mail Address: kvillalobos@pausd.org

Palo Alto Unified School District

The District Governing Board approved this revision of the School Plan on
B: Personal Development and Support

Support the social-emotional needs of students and celebrate personal growth across multiple dimensions, while ensuring a positive, safe, and healthy environment.

B2.1: Ensure school environments are safe and welcoming for all students through: student education; mentoring relationships; research-based programs; training for staff, volunteers, and substitutes; and avenues for students to access support.

Measureable Goal (school selects goal/s to be accomplished by June 2014):

Our WASC goal, excellence with growth, to maintain academic excellence and a sense of community during a period of growth, encompasses Gunn's work around social-emotional health and academic achievement. Gunn has been working on various strategies and programs which continue to add to our school's welcoming environment.

Measuring Effectiveness – How will we measure our progress toward our goal? (What incremental measures will you review throughout the year?)

Currently we are using two measures to analyze student's perception of school safety and "connectedness" to school, California Healthy Kids Survey (October, 2013) and the SOS survey. The Sources of Strength survey will be re-administered in late spring 2014.

In alignment with the Developmental Assets, Gunn implemented Sources of Strength (SOS program goals and description are included later in the report) for the 2011-12 school year. The effectiveness of SOS is measured by students completing two surveys (pre and post), in October and April. The October "pre-survey" affirms previous surveys and data points around student connectedness, strong connection to adults on campus, and positive coping and help-seeking behavior. Below is a summary of the "areas of strength" and "areas in need of strengthening".

Student Connections with Adults—Area of Strength

- Most Gunn students are connected to one or more adults at school. Across grades 9-12
- 74-89% of 9-12 graders report that there is an adult at school they trust.
- More 12 graders named 'trusted adults' at school (85%) than 9 graders (59%), suggesting that increasing student-adult ties in lower graders may increase protection.
- Students report strong family support and communication.
- 85% of students reported that there is an adult in their family who they could tell if they were in trouble; 88% feel supported and care for by family.

Resources for Positive Coping and Help Seeking—Area of Strength

- Most students are strong in one or more protective resources. Across grades 9-12.
- 95% have caring, positive friends; 94% are involved in positive activities; 92% can get medical care
- 77% of students went to an adult in the past year because they were upset, sad, stressed or angry
- Overcoming codes of silence about suicide: 90% of students say they would tell an adult if they knew that a friend was suicidal; 80% say they would tell an adult even if the friend asked them to keep it a secret.
- 79% of students view adults as capable of helping students in crisis; 87% report their school has people who can help students going through hard times.

Areas in Need of Strengthening

- Help Seeking Norms: 52% of students say they would talk to a counselor or adult at school if they needed help; 63% report that their friends would want them to seek help. Perceived norms may reduce some students' willingness to seek help for themselves or others.
- Bullying: Although few students report frequent bullying, approximately one in seven (15%) report being bullied a few times or once a month and 23% being bullied online.
<table>
<thead>
<tr>
<th>Strategies/Actions to Reach this goal:</th>
<th>Who is responsible for facilitation of this strategy/action item?</th>
<th>Monitoring Implementation: What data/evidence will we collect to ensure that this strategy/action is being implemented?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Continue refining Titan 101</td>
<td>Trinity Klein, Daisy Renazco, and Counseling/Guidance department</td>
<td>Exit tickets for feedback used after every session</td>
</tr>
<tr>
<td>Counseling/Guidance weekly update</td>
<td>Tom Jacoubowsky &amp; Counseling/Guidance department</td>
<td>Completed on a weekly basis</td>
</tr>
<tr>
<td>Counseling/Guidance website revisions</td>
<td>Tom Jacoubowsky &amp; Counseling/Guidance department</td>
<td>Redesigned to include additional materials and is updated weekly, including a calendar</td>
</tr>
<tr>
<td>Grade level assemblies</td>
<td>Tom Jacoubowsky &amp; Counseling/Guidance department</td>
<td>Senior assemblies on college and career (October, 2013), Sophomore PLAN &amp; ROCK/SOS assemblies, and Junior PSAT assembly</td>
</tr>
<tr>
<td>Continue “Focal Student” work: ongoing framework for improving student achievement and connectedness</td>
<td>PD Coordinator and Instructional Council</td>
<td>Develop systematic approaches to supporting struggling students: Student Success Conversations.</td>
</tr>
<tr>
<td>QPR (Question, Persuade, Refer) suicide prevention training for staff</td>
<td>Gunn Administrative Team</td>
<td>Completed August 13, 2013</td>
</tr>
<tr>
<td>Recruit a School Climate TOSA</td>
<td>Alice McCraley and Gunn Admin Team</td>
<td>Under Ms. McCraley’s direction, a “Welcoming School Climate Committee” was created to examine current support structures related to school climate; develops protocol and methods to gather input from stakeholders about what is/is not welcoming at Gunn; makes recommendations to the leadership group.</td>
</tr>
<tr>
<td>Not In Our School Week and activities</td>
<td>NIOS Committee, chaired by Todd Summers, Kristy Blackburn, and Daisy Renazco</td>
<td>Teacher-developed curriculum and staff professional development; &quot;Camp Everytown&quot; Friday Nights (November, 2013)</td>
</tr>
<tr>
<td>ROCK and Sources of Strength (SOS)</td>
<td>Teacher Advisor, Paul Dunlap and student leaders</td>
<td>Sophomore assembly presented by student leaders, student leaders part of Student Executive Council</td>
</tr>
<tr>
<td>Diversity Commissioners (students)</td>
<td>Lisa Hall, Director of Student Activities and NIOS</td>
<td>MLK Assembly and Unity Day</td>
</tr>
<tr>
<td>Camp Everytown</td>
<td>Trinity Klein and Gunn Administrative Team</td>
<td>Eighty students and 16 staff members attended (completed October, 2013).</td>
</tr>
<tr>
<td>Unity Day</td>
<td>NIOS and Diversity Commissioners (students)</td>
<td>Completed October, 2013 student led activities.</td>
</tr>
<tr>
<td>Student Activities and Student Executive Council</td>
<td>Lisa Hall, Director of Student Activities and Student Executive Council</td>
<td>Student-led and designed activities including, Homecoming, &quot;cookies and cram&quot;, &quot;birthday grams&quot;, Spring Fling, Opening Assembly, school dances, etc.</td>
</tr>
<tr>
<td>Digital Citizenship Lesson</td>
<td>NIOS Committee</td>
<td>In an effort to learn more about potential cyber-bullying in our community of students, and about the safety of our students when they engage in activities online, Gunn took part in a study conducted by McGill University about cyber-bullying during January 2013. The major findings from the study indicate a need to discuss ethical ways to interact with one another online. Complete October, 2013</td>
</tr>
<tr>
<td>Strategies/Actions to Reach this goal:</td>
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<td>Monitoring Implementation: What data/evidence will we collect to ensure that this strategy/action is being implemented?</td>
</tr>
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<td>---------------------------------------------------------------</td>
<td>--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Challenge Success Committee</td>
<td>Trinity Klein and Challenge Success Committee (parents, students, and teachers)</td>
<td>The CS committee attended the fall conference in October and brought back ideas to staff. The staff participated in a student homework activity.</td>
</tr>
<tr>
<td>Madeline Levine Presentation, author and Stanford professor</td>
<td>Trinity Klein and Challenge Success Committee (parents, students, and teachers)</td>
<td>The presentation will be on January 29 and she will focus on “redefining success.”</td>
</tr>
<tr>
<td>Youth Speaks Out</td>
<td>Deanna Messinger, Jordan King, Mark Gleason--Visual Arts, and Catherine Chiu-Art Therapist</td>
<td>Create a public, high quality, gallery venue where all student’s artistic work is exhibited, regardless of skill level or ability. Work will be chosen from one teacher-selected class and all work will be exhibited. However, artwork displayed needs to be within the gallery’s guidelines of what is “acceptable” for the general public (determined by the PA Art Center 2014-15), offering students the opportunity to have responsibility toward their viewers.</td>
</tr>
<tr>
<td>Facilities</td>
<td>Mark Gleason, Todd Summers, Sandra Lewis, Bill Liberatore, Kristy Blackburn, and Lisa Hall</td>
<td>Continued meetings with architects and planning groups to monitor and ensure proper teaching facilities in new proposed building.</td>
</tr>
<tr>
<td>Teacher collaboration</td>
<td>Mark Gleason, Todd Summers, Sandra Lewis, Jim Shelby, and Kristen Lo</td>
<td>Teachers and students collaborate throughout the year on publicity (programs &amp; posters) on all music, choir, and theater performances.</td>
</tr>
<tr>
<td>Performing Arts department collaboration</td>
<td>Todd Summers, Sandra Lewis, Bill Liberatore, Jim Shelby, and Kristen Lo</td>
<td>Teachers collaborate throughout the year on productions, for example, the Choir Musical, which includes over 250 students and thirty-plus staff members.</td>
</tr>
<tr>
<td>Martin Luther King all-school assembly</td>
<td>Student Diversity Commissioners, Student Executive Council, and Lisa Hall, Director of Student Activities</td>
<td>Students were presented a film highlighting Dr. Martin Luther King and civil rights participants, emphasizing the power of non-violence and people coming together for positive change.</td>
</tr>
<tr>
<td>QPR (Question, Persuade, Refer) suicide prevention training for students</td>
<td>Lynne Navarro, Living Skills teacher and Social Studies Instructional Supervisor, Joanna Hubenthal, teacher and additional support from Linda Lenoir, District Nurse</td>
<td>All students in Living Skills during the school year will receive training in QPR (Question, Persuade, Refer). The purpose of the training is to empower students, learn tools to talk to individuals in distress, provide a safe environment to ask questions, and share and reiterate resources within the school and greater community.</td>
</tr>
<tr>
<td>Study Hall</td>
<td>Trinity Klein and Instructional Council</td>
<td></td>
</tr>
</tbody>
</table>

The Single Plan for Student Achievement for Henry M. Gunn High School
May 20, 2013

Ms. Gayle Sakowski, Acting Chief Attorney
Mr. Zachary Pelchat, Team Leader
Ms. Mary Beth McLeod, Team Leader
Office for Civil Rights
U.S. Department of Education
50 Beale Street, Suite 7200
San Francisco, CA 94105

Dear Ms. Sakowski, Mr. Pelchat and Ms. McLeod:

The Palo Alto Unified School District appreciates the opportunity Ms. Sakowski and attorneys Laura Welp and Shilpa Ram provided last Wednesday, May 15, for two of our District Board Members to ask questions concerning OCR’s process and standards for investigation of individual student matters.

Unfortunately, information provided and additional developments with OCR last week cause the District great concern. We fear that OCR’s process and communications are contradicting its role as neutral fact-finder in individual student matters and beginning to impede the District's proactive efforts to make our schools safe and welcoming places for all. Please allow me to summarize the District’s concerns that come from our recent experience in Matters 09-13-1195 and 09-11-1337 and related communications:

- OCR uses an intake standard that assumes every complaint allegation to be true and opens an investigation if any allegation would violate a civil right OCR enforces. In our community, there is a fundamental public misunderstanding of what it means for OCR to investigate a matter, as shown by the attached article: “Another civil-rights complaint filed against Palo Alto district: Feds launch third investigation in last two months.” This misperception damages credibility of our District and dedicated staff members. Last Thursday, I attended a presentation in the District from OCR attorneys providing an overview of OCR practices. Notably, the OCR attorneys did not inform the public of the low threshold for opening an investigation or attempt to alter public misperception, despite recent articles in the local press. Facts of cases discussed were egregious in nature and could feed the perception that an investigation indicates serious wrongdoing.

- OCR's investigations proceed toward staff interviews, and potentially even student interviews, with little or no prior review of the factual record or evaluation of the level of evidence needed for a determination. In Matter 09-13-1195, the District provided nearly 1500 pages of documentary evidence on 16 items of information requested by OCR. The District’s evidence details support for
the student and shows the District's efforts to address, responsibly and appropriately, the complainant's concerns and maintain a safe school environment at all times. Yet, OCR investigators informed the District of an intent to interview fifth grade students and staff members. Following District objections, OCR investigators determined student interviews were not necessary but investigators intend to proceed with staff interviews. This indicates a presumption to disrupt the educational environment and staff time, even when a complaint appears to lack merit and there is an ample factual record for a determination.

- OCR's investigative attorneys are proceeding toward interviews of staff members and students without adequate protections for participants' rights and the production of verifiable and timely information. In Matter 09-11-1337, OCR proceeded toward interviews of children based on assumption of consent, unless parents opted out. The District does not believe this provides adequate notice or protection and that affirmative consent of parents for the interview of minor children should be obtained. OCR has not been recording its interviews in the District but relies on an interviewing attorney's written notes of statements made to provide a record. Although OCR's attorneys stated that it is rare for staff members to be quoted in OCR's investigation reports, OCR's report in Matter 09-11-1337 contains multiple quoted statements from OCR's interviews. The District does not believe OCR's reliance on an interviewing attorney's written notes provides adequate protection or timely or verifiable information for participants and the District. The District requests that all future OCR interviews be recorded, with participants allowed the right to consent to such recordings, and transcripts produced so that timely and verifiable information is provided. Both individual consent for the interviewing of students and the recording of interviews are consistent with standards in OCR's Case Processing Manual.

- It appears that OCR's investigating attorneys are not carefully or timely reviewing documents provided. Certainly, as referenced above, the District's April 24th production of documents in response to OCR's items of inquiry in Matter 09-13-1195 required significant staff time. Yet, when we met last week to discuss potential resolution, it did not appear that the two staff attorneys had reviewed the documentation provided by the District. The attorneys did not reference any District actions in the matter in resolution discussions. The attorneys contradicted one another on whether they had completed a "first look" at the documents.

- OCR's investigative attorneys do not appear to be seeking information from both sides of complicated student interactions. At the resolution meeting in Matter 09-13-1195, the investigative attorneys indicated that they did not have a plan for interviewing or seeking information from the parent of the alleged bully. The District emphasized that this would be an important and necessary part of a full inquiry in a matter where there is not factual information to support allegations made.

- OCR's investigative attorneys are attempting to direct District policies without any basis for doing so. In Matter 09-13-1195, OCR's attorneys came to the resolution session unprepared to discuss the allegations and detailed documentation showing the District's responsive efforts in the individual student matter and instead proposed overarching initiatives involving creation of a task force, training for all elementary school teachers and administrators, and an informational program for all students. It was unclear and unjustified how the facts of the individual student matter warranted these proposals. Although these proposals may in fact reflect policy initiatives already underway in the District, it is the province of the Board, in consultation with the District community, to set policy. This is not an appropriate role for OCR's investigative attorneys.
• At the same time as OCR’s investigative attorneys are attempting to direct District policies without an adequate basis, they are excluding the District’s Board Members from participation in those very discussions. Last week, Ms. Sakowski indicated that OCR would refuse to attend the resolution discussion if two District Board Members would attend. The District explained that the two Board Members were well informed of the facts of the individual matter and wanted to be part of considering any potential agreement that would ultimately be considered by the full Board. Although Ms. Sakowski acknowledged the Board’s role in approving an agreement, she persisted in her refusal to allow two Board Members to participate and proposed the separate meeting to discuss standards and procedures. Given the nature of the investigative attorneys’ policy-oriented proposals in the individual matter, this refusal is especially perplexing and disrespectful of our community-elected Board Members’ role in guiding District schools.

• As a policy matter, OCR appears to be having the District navigate complicated provisions of federal and state laws on harassment and bullying prevention and complaint investigation when OCR itself has not yet determined a position. As part of the Resolution Agreement in Matter 09-11-1337, the District developed a proposed Board Policy and Administrative Regulation taking account of federal and state requirements. The proposed policy and procedures were submitted to OCR on March 26. OCR informed the District last week that it was unlikely the District would have OCR’s feedback in time to bring the policy and procedures to the District’s Board on May 28. This impedes the District’s ability to have these policies and procedures reviewed and adopted by the Board and communicated to staff for the start of the 2013-14 school year. The District intends to begin the 2013-14 school year strongly as we move forward to ensure that our schools and classrooms are safe, welcoming and respectful for all students.

• OCR is not abiding by its own stated timeline for completing an investigation. OCR’s investigation in Matter 09-11-1337 far exceeded OCR’s 180-day period for completion of investigation of a complaint. The complaint was filed in early September 2011. The District responded to the document request promptly, and OCR investigators conducted student interviews in October 2011. OCR contacted the District in April 2012 regarding the need for a resolution, and sent the District a draft Resolution Agreement on April 6, 2012. The District responded promptly, and met with OCR via teleconference regarding possible revisions to the agreement. The District gave its suggested revisions to OCR in May 2012. For the next several months, the District did not hear from OCR. Then the investigator asked for further documents of events, such as IEP meetings, that occurred long after the complaint was filed, and at a different school. She apologized for delays, stating it was “challenging to get a hold of the family.” By the time OCR had worked out the terms of the agreement, without further input from the District, the timelines the District had proposed had long passed, as had the time for training prior to the new school year. The final agreement was presented to the District in November 2012, 14 months after the complaint was filed. Such long delays in processing and completion of a complaint investigation compromise the District’s ability to process and review OCR’s determinations. The District is faced with a disruptive investigation without well-documented information, such as transcripts of interviews, or a timely conclusion. This impedes the District’s ability to evaluate OCR’s determinations and move forward.

• OCR is not complying with stated protections of the District in OCR’s process. OCR’s investigative attorneys stated that their investigation in Matter 09-11-1337 included, consistent with standard practice, a lengthy telephone conference in which OCR’s attorneys reviewed each of their anticipated findings with the District’s representative prior to issuance of a Letter of Findings. The District’s legal counsel, the District representative in Matter 09-11-1337, has no record of a
telephone conversation with OCR's attorneys that included detailed review or discussion of OCR's anticipated findings. While there was one telephone conversation in early April 2012, it did not include a discussion of the findings in detail, nor was it followed up in writing. Rather, it included general statements, and a statement that the Resolution Agreement would be forthcoming. Notably, this was over eight months before the findings were actually released. When this conversation provides an important procedural protection for the District, it is important that such a conversation be well-documented and enable thorough District review.

- It is unclear what right of appeal the District has to OCR's determinations. Ms. Sakowski stated that OCR would be willing to review inconsistencies and unsupported determinations that the District found in Matter 09-11-1337. This was the first the District learned of the right to request reconsideration in this matter. The District would appreciate knowing what its appeal rights are for OCR investigations and determinations. Moreover, it is difficult to appeal or argue findings when they are not presented in writing until well over a year after the start of the investigation, and nearly two years after the incidents occurred that are the subject of the complaint.

The District shares OCR's mission to ensure that the District provides its educational programs with complete respect and protection for the civil rights of all. The District respects and appreciates OCR's authority to act as a neutral fact-finder in review and investigation of individual student matters and to provide technical assistance. Unfortunately, recent interactions and communications with OCR do not provide the District confidence that OCR's standards and processes are evaluating complaints for merit before proceeding with very disruptive investigations. Moreover, OCR is acting as if it is unaware of public misperceptions of OCR's activity in the District and as if OCR investigative attorneys have authority to set policy for the District without basis in the facts of individual matters and without respect for the documented efforts of District staff and the policy-making role of the District's Board. Although the District seeks to continue to collaborate with OCR in moving the District's efforts forward to ensure that its schools and classrooms are welcoming and respectful places for all, the District is very concerned from recent communications that OCR is not operating fairly with the District or with appropriate attention to OCR's limited role as a neutral fact-finder and provider of technical assistance.

Thank you for your immediate attention to these concerns.

Sincerely,

[Signature]

Kevin Skelly, Ph.D.
Superintendent

Attachment

cc: Arthur Zeldman, Regional Director, OCR
    Members, PAUSD Board of Education
    Holly Wade, Ph.D., Director of Special Education
    Lenore Silverman, Chad J. Graff, Fagen Friedman & Fulford
    Francisco M. Negron Jr., NSBA
    Vernon M. Billy, CSBA
Another civil-rights complaint filed against Palo Alto district

Feds launch third investigation in last two months

Already dealing with two new active investigations into whether it violated the civil rights of a Duveneck Elementary School student and a middle school student, the Palo Alto Unified School District was notified Friday that a third case has been opened by the federal Department of Education’s Office for Civil Rights.

The latest case involves a special education middle school student who is alleging discrimination based on disability.

The district released the [www.paloaltoonline.com notification letter] from the Office for Civil Rights (OCR) yesterday.

The letter does not contain details, but a copy of the complaint submitted by the parent to OCR obtained by the Weekly alleges that the district failed to provide the student with educational services equal to those afforded mainstream students, did not ensure a safe and secure school environment and did not properly carry out the student’s Individualized Education Plan (IEP).

“This has been an ongoing issue that I have been trying to work through the school channels since the beginning of the school year,” the complaint states.

The complaint also says the family has been working with both an educational advocate and an attorney to try to resolve the issues with the district prior to filing the OCR complaint.

In an April 28 email to Superintendent Kevin Skelly and the school board, obtained by the Weekly, the mother of the student made a final plea for a resolution.

“[T]his process has dragged on all year, is now relatively time-critical, and I am beyond frustrated,” the email said.

The mother said that in addition to not receiving appropriate education services, her child has been the subject of ongoing bullying.

She outlined a series of specific steps she was seeking, including remedial services to help her child catch up between now and the start of school in the fall.

“I am hoping that you and/or the board are as interested as I am in reaching an acceptable solution and moving forward constructively without further legal assistance/intervention. Perhaps you have other options we have not yet explored?” the email concluded.

Skelly responded the next day “I wanted to let you know that I spoke to Holly [Wade, director of special education for the school district] at length about this issue. My sense is that we can work through these issues. Everyone I speak with has very nice things to say about your [child].”

The mother replied fifteen minutes later: “That’s great. [Omitted] IS a wonderful kid. [Omitted] deserves to feel safe and to get the same education offered other kids [omitted] intelligence in this district. How are we going to make this right for [omitted]? I put forth my position very clearly. What is your proposal? Incidents continue daily. I am VERY tired of advocating and ready to turn it over to professionals.”

According to the mother, there was no further response from Skelly and none from the board, and no substantive proposed resolution from other district staff.

The Office for Civil Rights is the arm of the federal Department of Education that protects the civil rights of children in public schools receiving federal funds.

It responds to complaints of discrimination, including discrimination based on gender, race, disability, sexual preference and nationality.
As long as complaints are filed in a timely manner and pertain to federal civil rights laws enforced by the Office for Civil Rights, an investigation will be conducted to determine if any violations of law occurred. According to the OCR's letter to the district, "opening allegations for investigation in no way implies that OCR has made a determination with regard to their merits."

Under Office for Civil Rights policies, if an investigation concludes the district was out of compliance with civil rights laws, the district has an opportunity to resolve the matter by negotiating a resolution agreement prior to formal findings being issued by the government.

The new complaint comes as the district is in the process of carrying out terms of a "resolution agreement" in a bullying case dating back to 2011 involving a special-education middle school student.

In that case, the Office for Civil Rights conducted an extensive investigation, including on-site interviews of more than 30 students, teachers and administrators. It issued findings that the district had violated federal anti-discrimination laws by failing to respond properly and stop the bullying behavior, allowing a hostile environment that interfered with the student's rights to an education.

Skelly entered into the resolution agreement on behalf of the district last December that admitted no violations of law but pledged to undertake trainings, adopt new policies and procedures, modify handbooks and communicate with students, parents and staff as specified in detail by the Office for Civil Rights. He failed to inform the school board or public about the findings and agreement until the Weekly published details about the case provided by the family.

Some of the required trainings have already taken place, and the district is awaiting feedback from the Office for Civil Rights on new draft policies on bullying, discrimination and harassment. The student received a placement in a special school five days after the story was published.

Coincidentally, various school groups are sponsoring a public meeting tonight where a representative from OCR will explain and answer questions on the law and the role of OCR in working with school districts.

The meeting begins at 6:30 p.m. at Ohlone Elementary School, 950 Amanillo Ave.

==B Related stories:==

* [www.paloaltoonline.com New civil-rights complaints filed] (April 16, 2013)
* [www.paloaltoonline.com Feds rebuke district over email to parents] (May 6, 2013)

Find this article at:
August 14, 2013

Via FedEx

U.S. Department of Education
Office of Management
400 Maryland Avenue, SW, LBJ 2W220
Washington, D.C. 20202-4500
ATTN: Appeals Office

Re: Appeal of Partial Denial of FOIA Request Number 13-01836-F

To Whom it May Concern:

On behalf of the Palo Alto Unified School District, on June 14, 2013, this office issued a request for the case file of Office for Civil Rights (OCR) case no. 09-13-1224, pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552. (See Initial Request, attached.) On July 11, 2013, we received a partial denial of our request. (See Partial Denial of Request, attached.) With its response, OCR provided heavily redacted copies of certain documents, citing FOIA exemptions (b)(6) and (b)(7)(C) as the basis for the redactions. However, OCR also withheld other documents without providing legitimate grounds for doing so. The District respectfully disagrees with OCR's determination that the information withheld is subject to one or more FOIA exemptions and hereby appeals that determination.

Of particular concern to the District, there is no mention of the District's specific request for the email correspondence produced by OCR attorneys at the May 23, 2013 interviews at Middle School. As explained in the District's June 14, 2013 request, at the May 23 interview, OCR attorneys presented email correspondence for review by the Middle School principal and assistant principal that did not match the District's stored copies of the same email correspondence of the same dates. The District has an interest in reviewing the email correspondence in OCR's possession that OCR shared with District staff at the May 23 interviews. The Denial of Request did not provide an explanation of why these documents were withheld, leading the District to believe that other documents may also have been withheld without legal justification.

Furthermore, the District disagrees that the heavy redactions were necessary to prevent an unwarranted invasion of personal privacy. While the District understands the need to redact certain information such as the student's name, there are numerous other redactions that are unnecessarily broad. These include, among others, partial redactions such as the interviewee's previous interactions with the student and the complainant's requested remedy, as well as the categorical...
redaction of the entire interview of an unknown individual. The District believes that OCR's application of the FOIA exemptions was not justified in its entirety.

As you know, if a document is otherwise exempt from disclosure under a FOIA exemption, the agency nonetheless has a duty to disclose any "reasonably segregable" information unless the exempt and non-exempt portions are "inextricably intertwined." (Blackwell v. FBI (D.C. Cir. 2010) 680 F.Supp.2d 79, 96; 5 U.S.C. § 552(b).) Though an agency need not commit significant time and resources to separating disjuncted words, phrases, or sentences which taken separately or together have minimal or no information content, it must provide a "detailed justification" and not just "conclusory statements" to demonstrate that it has released all reasonably segregable information. The agency must also show with reasonable specificity why a document cannot be further segregated.

Here, assuming arguendo that some of the requested documents, such as the emails, were properly determined to be exempt from disclosure pursuant to Exemptions (b)(6), and (b)(7)(C), OCR nevertheless had a duty to disclose any reasonably segregable information. OCR's efforts to do so were overbroad and supported only by the conclusory statement that redactions were made to protect against an "unwarranted invasion of personal privacy." The District also believes that the production of records was incomplete. OCR must disclose all requested documents. In the event OCR determines that a portion or portions of any document is/are exempt from disclosure, those portions may be redacted with a detailed justification.

For these reasons, the District appeals the partial withholding of certain records, including email correspondence, and the heavy redaction of others.

Sincerely,

FAGEN FRIEDMAN & FULFROST, LLP

[Signature]
Lenore Silverman

LS: mds

Enclosures: Initial Request, Partial Denial Letter

cc: Kevin Skelly, Ph.D., Superintendent
Scott J. Bowers, Ed.D., Assistant Superintendent
Arthur Zeidman, Regional Director, OCR (via e-mail)
Chad Graff  
Fagen Friedman & Fulford LLP  
70 Washington Street, Suite 205  
Oakland, CA 94607

(In reply, please refer to FOIA Request Number 13-01836-F)

Dear Mr. Graff:

On June 18, 2013, the U.S. Department of Education (Department), San Francisco Office for Civil Rights (OCR), received your request for documents. Specifically you are requesting a copy of the case file OCR case no. 09-13-1224, excluding the District’s data response dated April 24, 2013.

OCR gathered the requisite document from its case files, pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552. Copies of the documents responsive to your request are enclosed. However, for the reasons outlined below, OCR has made redactions in these documents. FOIA mandates Federal agencies to release records, on request, except those records or parts of records that qualify for one or more FOIA exemptions. FOIA provides, in part, that:

(b) this section [of the FOIA, which otherwise mandates release of records responsive to a request] does not apply to matters that are...

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information...

(C) could reasonably be expected to constitute an unwarranted invasion of personal privacy. ... 

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection.

The documents responsive to your request are a part of complaint records compiled by OCR to investigate whether recipients of funds from the Department violated one or more of the laws enforced by OCR.

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

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I have reviewed the documents under the applicable FOIA standards and have determined that certain information contained in the requested documents must be withheld under FOIA exemptions (b)(6) and (b)(7)(C). OCR matched each deletion on the documents with the applicable exemptions. For each document, OCR left as much text as possible, consistent with its obligation to protect against unwarranted invasions of privacy, to allow you to identify the nature of the document and to provide you with any material which could reasonably be segregated from the material which was redacted.

After a review of the records, OCR has determined that the enclosed documents fit the criteria in your request. Although OCR is permitted to charge for duplication of records, the requested documents do not meet the threshold for assessing fees. Therefore, these documents are provided to you at no cost.

This constitutes the Department’s response to your request for records. You have the right to appeal this determination by writing, within 30 days of your receipt of this letter, to:

U.S. Department of Education
Office of Management
400 Maryland Avenue, SW, LBJ 2W220
Washington, DC 20202-4500
ATTN: Appeals Office

Your appeal should be accompanied by a copy of your initial request and this partial denial letter, and should contain any evidence or argument you wish the Department to consider in making an administrative determination on your appeal.

If you have any other questions regarding the handling of your request, you may telephone Mary Beth McLeod, Team Leader, at (415) 486-5555.

Sincerely,

Arthur Zeidman
Regional Director

Enclosure
June 14, 2013

Mr. Zachary Pelchat, Team Leader
Office for Civil Rights
U.S. Department of Education
50 Beale Street, Suite 7200
San Francisco, CA 94105

Re: Request for Records; Case Number 09-13-1224

Dear Mr. Pelchat:

Pursuant to the Freedom of Information Act, on behalf of the Palo Alto Unified School District we respectfully request a copy of all records in possession of the Office for Civil Rights related to Case Number 09-13-1224. Such records may include, but not be limited to, all records in electronic or written format concerning allegations made by the complainant and any information provided by the complainant concerning the allegations; all records in electronic or written format concerning complainant’s allegations provided by any other individual or organization and any information provided by any other individual or organization concerning complainant’s allegations; all records in electronic or written format created or maintained by OCR in relation to OCR’s initiation of the investigation and/or OCR’s investigation of the allegations, including written or electronic records of all interviews conducted by OCR.

Of course, the District has maintained a copy of documents submitted by the District on April 24, 2013, in response to OCR’s requested information from the District, and we are not requesting a copy of those records. We are requesting a copy of all other records in electronic or written format maintained by OCR in relation to the initiation and conducting of the investigation in Case Number 09-13-1224.

In particular, the District notes that at the interviews conducted by OCR attorneys at Middle School on May 23, 2013, the attorneys presented e-mail correspondence for review by the Middle School Principal and Assistant Principal that was provided to OCR by complainant and that did not match the District’s stored copies of the e-mail correspondence of
June 14, 2013
Page 2

the same dates. The District requests that a copy of this document be included with the provided documents.

Please let us know if any questions or if additional information is needed to respond to any part of this request. Thank you for your consideration.

Sincerely,

FAGEN FRIEDMAN & FULFROST, LLP

Chad Graff

CG: mao

cc: Kevin Skelly, Ph.D., Superintendent
Scott J. Bowers, Ed.D., Assistant Superintendent
August 14, 2013

Via FedEx

U.S. Department of Education
Office of Management
400 Maryland Avenue, SW, LBJ 2W220
Washington, D.C. 20202-4500
ATTN: Appeals Office

Re: Appeal of Denial of FOIA Request Number 13-01901-F

To Whom it May Concern:

On behalf of the Palo Alto Unified School District, on June 14, 2013, this office issued a request for the case file of Office for Civil Rights (OCR) case no. 09-11-1337, pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552. (See Initial Request, attached.) On July 12, 2013, we received a denial of our request. (See Denial of Request, attached.) The Office for Civil Rights determined that "the documents you have requested are investigatory files that must be withheld under FOIA exemption (b)(7)(A)" as well as (b)(5), (b)(6) and (b)(7)(C). The District respectfully disagrees with OCR's determination that the information withheld is subject to one or more FOIA exemptions and hereby appeals that determination.

The District disagrees that the provision of records would interfere with the ongoing activities in this case. On December 14, 2012, the District entered into a voluntary Resolution Agreement (RA) to resolve all issues raised in OCR case no. 09-11-1337. The District has faithfully implemented the Resolution Agreement and is nearing completion. Significantly, the District has completed all items related to the individual student. The only items remaining in the RA are the following:

- III.A. Training and Guidance to Administrators Concerning Responding to Complaints of Discrimination Based on Disability. The District is required to distribute a guidance memorandum or bulletin to all school site administrators and teachers regarding disability-based harassment. However, under paragraphs VI.E. and VI.F., the District is required to obtain OCR approval prior to distributing the memorandum. The District has provided OCR with a draft and is awaiting approval. The District will distribute the
memorandum per the terms of the RA within 30 days of receiving OCR's approval of the draft.

- **III.A. Mandatory training on disability-based harassment.** The District was required to provide mandatory training on disability-based harassment to all school site administrators in the District during the spring of the 2012-13 school year. The District provided this training on May 9, 2013 from 8 to 10 a.m. District site administrators are then required to train teachers at their school sites within the first three months of the school year. This training is scheduled to occur this fall prior to October 31.

- **V.B. Student instruction on disability-based harassment.** The District is required to provide annual age-appropriate instruction regarding disability-based harassment for middle and high school students. This is a three-year activity. The District has completed one year of instruction and will continue to provide instruction in the 2013-14 and 2014-15 school years.

As the RA resolved the matter, there is no ongoing investigation of the underlying case. OCR's only ongoing activity is to monitor implementation of the RA. The District does not believe that disclosure of the records sought would in any way interfere with the District's compliance with its remaining obligations in this case, nor would it interfere with OCR's monitoring of the District's compliance. As there is no pending investigation, the District does not believe OCR's reliance on this exemption is appropriate.

Nevertheless, even if a document is otherwise exempt from disclosure under a FOIA exemption, the agency nonetheless has a duty to disclose any "reasonably segregable" information unless the exempt and non-exempt portions are "inextricably intertwined." (Blackwell v. FBI (D.C. Cir. 2010) 680 F.Supp.2d 79, 96; 5 U.S.C. § 552(b).) Though an agency need not commit significant time and resources to separating disjointed words, phrases, or sentences which taken separately or together have minimal or no information content, it must provide a "detailed justification" and not just "conclusory statements" to demonstrate that it has released all reasonably segregable information. The agency must also show with reasonable specificity why a document cannot be further segregated.

Here, assuming *arguendo* that some of the requested documents were properly determined to be exempt from disclosure pursuant to Exemptions (b)(5), (b)(6), and (b)(7)(A)&(C), OCR nevertheless had a duty to disclose any reasonably segregable information. There is no indication from its determination that OCR took any effort to do so. Rather, it merely offered a conclusory statement that the information could reasonably be expected to hinder the ongoing activities in this case, and was therefore categorically exempt from FOIA. OCR
U.S. Department of Education  
August 14, 2013  
Page 3

must disclose all requested documents. In the event OCR determines that a portion or portions of any document is/are exempt from disclosure, those portions may be redacted.

For these reasons, the District appeals the withholding of the records.

Sincerely,

FAGEN FRIEDMAN & FULFROST, LLP

Lenore Silverman

LS:mds

Enclosures: Initial Request, Denial Letter

cc: Kevin Skelly, Ph.D., Superintendent  
    Scott J. Bowers, Ed.D., Assistant Superintendent  
    Arthur Zeidman, Regional Director, OCR

00258-00136/476925.1
Laurie E. Reynolds  
Fagen Friedman & Fulfrost  
70 Washington Street, Suite 205  
Oakland, CA 94607

(In reply, please refer to FOIA # 13-01901-F.)

Dear Ms. Reynolds:

On June 18, 2013, the U.S. Department of Education (Department), San Francisco Office for Civil Rights (OCR), received your request for documents. Specifically, you are seeking "a copy of all records in possession of the Office for Civil Rights related to Case Number 09-11-1337."

All OCR complaint files are composed of investigatory records compiled to determine whether the educational entity under investigation has violated the statutes and regulations enforced by OCR. The OCR system of records would include the general type of records that you have requested. FOIA mandates Federal agencies to release records, on request, except those records or parts of records which qualify for one or more FOIA exemptions. FOIA provides, in part, that:

(b) this section [of the FOIA, which otherwise mandates release of records responsive to a request] does not apply to matters that are...

(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information...

   (A) could reasonably be expected to interfere with enforcement proceedings.

   (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy.

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Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection.

OCR conducted a search and gathered the requisite documents from the complaint file, pursuant to the FOIA. The responsive case file is currently in the open monitoring phase of the case.

I have reviewed the documents in the case file under the applicable FOIA standards and have determined that the documents you have requested are investigatory files that must be withheld under FOIA exemption (b)(7)(A). Additionally, information contained in the documents is being withheld under exemptions (b)(5), (b)(6) and (b)(7)(C).

The courts have held that FOIA exemption (b)(7)(A) may apply to any records in open cases when release could reasonably be expected to interfere with the ongoing activities in the case. OCR has determined that release of the requested information, at this time, could reasonably be expected to hinder the ongoing activities in the case; therefore, I am denying your request.

Please note that a redacted copy of the complaint has already been provided to the District in response to FOIA 13-00798-F and a courtesy copy of the resolution agreement was sent to the District on February 5, 2013. For courtesy copies of either documents sent by the District to OCR or official correspondence from OCR to the District, please contact the investigator or attorney assigned to the case.

This constitutes the Department's response to your request for records. You have the right to appeal this determination by writing, within 30 days of your receipt of this letter, to:

U.S. Department of Education  
Office of Management  
400 Maryland Avenue, SW, LBJ 2W220  
Washington, DC 20202-4500  
ATTN: Appeals Office

Your appeal should be accompanied by a copy of your initial request and this denial letter, and should contain any evidence or argument you wish the Department to consider in making an administrative determination on your appeal.

If you have any other questions regarding the handling of your request, you may telephone Mary Beth McLeod, FOIA Team Leader, at (415) 486-5555.

Sincerely,

[Signature]

Arthur Zeidman  
Regional Director
June 14, 2013

Mr. James M. Wood, Team Leader
Office for Civil Rights
U.S. Department of Education
50 Beale Street, Suite 7200
San Francisco, CA 94105

Re: Request for Records; Case Number 09-11-1337

Dear Mr. Wood:

Pursuant to the Freedom of Information Act, on behalf of the Palo Alto Unified School District we respectfully request a copy of all records in possession of the Office for Civil Rights related to Case Number 09-11-1337. OCR has completed its investigation of this matter, with a Resolution Agreement signed by the District on December 14, 2012, and a Letter of Findings issued on December 26, 2012.

The District is requesting a copy of OCR’s entire file for Case Number 09-11-1337. Such records may include, but not be limited to, all records in electronic or written format concerning allegations made by the complainant and any information provided by the complainant concerning the allegations; all records in electronic or written format concerning complainant’s allegations provided by any other individual or organization and any information provided by any other individual or organization concerning complainant’s allegations; all records in electronic or written format created or maintained by OCR in relation to OCR’s initiation of the investigation and/or OCR’s investigation of the allegations, including written or electronic records of all interviews conducted by OCR. Such records would also include but not be limited to any written or electronic records of correspondence between investigators; any written or electronic records of conversations between an investigator or investigators and District representative(s); any written or electronic records of conversations between an investigator or investigators and the complainant or complainant’s representatives; any written or electronic records of correspondence between an investigator or investigators and complainant or complainant’s representatives; any written or electronic drafts of a resolution agreement; any written or electronic drafts of a letter of findings; written or electronic records of time spent on

FRESNO  •  INLAND EMPIRE  •  LOS ANGELES  •  OAKLAND  •  SACRAMENTO  •  SAN DIEGO
the investigation by investigators; and any written or electronic notes of OCR team meetings where the case was discussed.

Please let us know if any questions or if additional information is needed to respond to any part of this request. Thank you for your consideration.

Sincerely,

FAGEN FRIEDMAN & FULFROST, LLP

Laurie E. Reynolds

LER: mao

cc: Kevin Skelly, Ph.D., Superintendent
    Holly Wade, Ph.D., Director of Special Education

00258.00001459799.1
February 19, 2014

Arthur Zeidman, Regional Director  
United States Department of Education  
Office for Civil Rights  
50 Beale Street, Suite 7200  
San Francisco, CA  94105

RE:  Concerns on Letter of Findings, Case No. 09-11-1337

Dear Mr. Zeidman:

Thank you for the recent opportunity to meet with you, Ms. Sakowski, and Mr. Pelchat to discuss concerns regarding OCR cases in the District. We are committed to ensuring we operate our programs in full compliance with our federal civil rights laws.

One of the items we discussed concerned the investigation process and Letter of Findings that OCR issued in case number #09-11-1337. You asked us to follow up in writing regarding our concerns.

At the outset, let me reiterate that the District is nearing completion of final items in our Resolution Agreement in this case, and we have appreciated the opportunity to work with OCR to implement concrete steps to strengthen our efforts to prevent harassment and bullying and to provide safe and inclusive schools for all students. We do not intend for our concerns below to detract from our preventive and proactive work in any way. Rather, for your review, we present some items from the investigation that may have had unintended and inaccurate consequences.

Investigation Process

Several items in the investigation process cause the District concern regarding the determinations made.

- The timeframe from beginning to end for the investigation was approximately 15 months, and it contained long periods of time where there were no active communications between OCR and the District. At one point, the District waited several months for a reply after proposing revisions to the Resolution Agreement. When the investigating attorney contacted the District’s counsel, she indicated it had been difficult to get hold of the family. This was after the investigatory phase was completed, however, and there was no apparent need to obtain the family’s approval of the Resolution Agreement.
The investigation included group interviews of seventh grade students. These students were nearly six months removed from attending school with the concerned student. District representatives were not allowed to be present during these interviews or allowed to review questions for context or age-appropriateness. Parental consent was requested on an opt-out rather than an opt-in basis. The District has never seen records of the interviews conducted.

OCR issued a Letter of Findings on December 26, 2012, approximately a month after OCR and the District finalized a Resolution Agreement to close the case. Although OCR's investigating attorneys indicated later that conducting a detailed discussion of the findings prior to issuance of a letter is normal practice, the District's counsel did not recall any detailed discussion of the findings with the attorneys.

Substantial information in the case is based on documents provided by the student's family. The District has never had an opportunity to review this information. In a later case, OCR case #09-13-1224, OCR's investigating attorneys discovered a communication from that appeared altered to misrepresent a communication to the District that was never received.

Aspects of the Letter of Findings appear to go beyond the scope of items in OCR's Data Request.

The District has not been able to review OCR's records of the investigation. OCR denied the District's request for records of the investigation under the Freedom of Information Act on July 12, 2013, and has not responded to the District's August 14 appeal of that denial. Without access to those records, the District's ability to review OCR's basis for its findings is limited.

**Letter of Findings**

The Letter of Findings references a game concerning the student that took place in elementary school. School teachers and administrators did not have any knowledge of such a game taking place in middle school and believe that, if such a game was taking place, it would have been brought to their attention, and they would have stopped it. The school counselor was aware the student sometimes recalled memories from school that upset her.

For "Evidence of Peer Harassment" the Letter of Findings draws heavily from statements of students that were apparently conveyed during the group interviews. Reported statements included that students did not report bullying to school staff and described some students' feelings and perceptions of students with disabilities. These do not present evidence of harassment of the individual student. Moreover, these statements are taken from group interviews of seventh grade students that the District was not allowed to observe and that occurred nearly six months after the students attended school with the student.

The District made many attempts to hold meetings with the student's family during the student's year to make adjustments in the student's program. The student's
family was not cooperative in scheduling meetings, including not returning communications to schedule meetings, not attending scheduled meetings, and refusing to meet because a translator was present. These delays disrupted efforts to address concerns regarding the student's program.

- When the family requested a for the student at lunch time, the District offered to conduct an assessment to determine the appropriateness of implementing such a measure and offered during the period of the assessment. The student's family refused both the offer of and permission to do an assessment.

- The former Principal believes she was misquoted in the Letter of Findings when it is reported that "[t]he Principal said that the staff was very 'sophisticated' and 'didn't need a disability awareness' training." Implications of this statement contradict the Principal's perspective on the issue. When asked if the school provided harassment prevention or anti-bullying training to staff, the Principal recalls responding that this training is provided at the beginning of the school year. When asked if the school provided training specifically on harassment based on disability, the Principal recalls responding that a separate training was not provided addressing disability, but that the school stresses the importance of inclusion — protecting everyone — and preventing the mistreatment of anyone. The Principal recalls describing the fully inclusive approach of the school and the weekly meetings of interdisciplinary teams. She also recalls stating that the staff was sophisticated in terms of identifying social-emotional needs of students and that the teaming structure is intended to prevent the exclusion of any student.

- The Letter of Findings states the school did not discipline a student who was involved in a physical incident with the student. In fact, the school suspended the student. The implications in the Letter of Findings that the only action was an agreement of the students "to stay away from each other" and that the District "did not take disciplinary action toward students who engaged in the harassment" are not accurate.

- The Principal also recalls discussing another incident with the OCR investigators that was not included in the report. The student and another student accidentally ran into each other in the hallway. Both students were apologetic. The student realized and stated that should not have been running and the other student involved was concerned for and immediately ran to the office for the health tech. The health tech brought a wheelchair to transport the student to the office. The health tech immediately phoned the student's . It was only after the student's came to school and met with the student separately that the story of the incident changed to one in which the student was allegedly bullied.
Essentially, in several places the Letter of Findings omits discussion of District efforts in addressing the student situation and creates negative implications from information that appears out-of-context to the District and/or that was not available for District review or response. The District's perception is that the investigating attorneys may have misinterpreted some circumstances reviewed and that the Letter of Findings creates some misleading impressions. The District acknowledges that difficult communications between the District and the student's family created challenges in the review process. Certainly, the District staff intended to work carefully to prevent any bullying or harassment of the student and to provide the student an appropriate program at all times.

The District appreciates your consideration of the above. Please review and reconsider the Letter of Findings, and do not hesitate to contact me with any questions.

Sincerely,

Kevin Skelly, Ph.D.
Superintendent

cc: Gayle Sakowski, Acting Chief Attorney, USDOE-OCR
    Zachary Pelchat, Supervisory Attorney, USDOE-OCR
    Chad J. Graff, Fagen Friedman & Fulford
    Board of Education, Palo Alto Unified School District
April 23, 2014

Arthur Zeidman
Regional Director
U.S. Department of Education
Office for Civil Rights
50 Beale Street, Suite 7200
San Francisco, CA 94105

Re: In Reply to Your Letter of April 8, 2014, Regarding OCR Case Nos. 09-13-5901 and 09-14-1271

Dear Mr. Zeidman:

Thank you for your letter of April 8, 2014, requesting group interviews of students at Palo Alto High School and Gunn High School in the above-referenced cases. As described below, the Palo Alto Unified School District is willing to allow for OCR attorneys to interview students without District counsel present as long as OCR and the District can agree on other protective measures for the interviews. Such measures would be consistent with OCR's role as a neutral fact-finder, OCR's Case Processing Manual (CPM), and a fair and transparent investigation.

1. As an initial matter, we do not find that the legal authority you referenced in 34 C.F.R. § 100.6(c) requires the District to provide for OCR to interview students under the District's protection.

In pertinent part, section 100.6(c) provides:

Access to sources of information. Each recipient [e.g. the District] shall permit access by the responsible Department official or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part.

It does not appear that "other sources of information" require the District to provide OCR access to its students. Section 602(b) of OCR's CPM provides:

OCR's Authority to Obtain Information: OCR has the right of access during a recipient's regular business hours to recipient's facilities and to information maintained by the
recipient that is necessary to determine compliance status on those issues under investigation. See 34 C.F.R. section 100.6(c) and 34 C.F.R. section 99.31(a)(3)(iii) [student records]. Generally, this includes access to oral information from a recipient's employees as well as to written or non-written information, such as electronic storage media, microfilming, retrieval systems, and photocopies maintained by the recipient. ....

(Emphasis added.)

Section 602(e) of OCR's CPM provides:

Limitations on Obtaining Information

1. Actions Constituting Denial of Access

A recipient denies access to OCR when it: (i) refuses to permit OCR access to written or unwritten information, such as electronic storage media, microfilm, retrieval systems, photocopies, etc., or to recipient's facilities during the recipient's normal business hours; (ii) refuses to permit OCR access to employees during recipient's regular business hours; (iii) fails to provide information by virtue of the refusal of one of its employees to do so or to provide access to information maintained exclusively by an employee in his/her official capacity; or (iv) refuses to complete applicable OMB-approved compliance and survey forms relevant to an investigation.

None of these provisions defining OCR's authority to obtain information and identifying actions constituting denial of access obligates the District to provide for OCR to interview District students. In fact, the provisions specifically address rights to access and oral information from District employees without extending those rights to oral information from students. We have conducted a thorough review and have not located any judicial authority finding that 34 C.F.R. § 100.6(c) obligates the District to provide OCR access to interview District students. If you have any such authority, please provide it to us.

2. Where OCR's CPM considers the possibility of OCR conducting interviews with minor students, it requires OCR to obtain written consent from a student's parent or guardian. (Section 602(d)(4).)

Section 602(d) provides:

[i]f a recipient [District] refuses to allow minor students to be interviewed without consent even ...[when the questions to be asked are of a general nature, not related to any specific events in which the minor was involved, and there are no records kept to identify the student], written consent must be obtained.
Section 602(d) states further "if consent is denied, OCR will not interview the child." The "information sheet" you included with your letter does not provide for OCR to obtain written consent from a parent or guardian. It describes a group interview process generally and provides for parents to opt-out of the process by returning the form. The dictionary defines consent as "permission, approval, or agreement." The information sheet does not obtain written permission, approval, or agreement. It does not adequately describe questions that would be asked of students as necessary to inform a parent/guardian of the consent requested. It does not indicate whether any adults other than OCR attorneys will be present in the interviews. Typically, parents would presume that District employees will be present at activities involving students and outside agencies and organizations at District schools.

3. **You have not indicated why OCR believes that interviews with groups of students are relevant and necessary for compliance determinations in the respective cases.**

What relevant information is being sought for OCR's determination? In Case No. 09-13-5901, OCR opened a directed investigation not based on any complaint but following the publication of a student-written article "You Can't Tell Me I Wasn't Raped," which OCR described as "information that the High School has not provided a prompt and equitable response to notice of peer sexual harassment, including peer harassment related to sexual assault." The District promptly provided OCR written communications with

so OCR could obtain relevant information on the specific matter at issue. The explained how the District promptly and effectively responded to potential harassment, ensured that continued to benefit from educational program, and took proactive steps to educate all students on issues of sexual misconduct and harassment. In Case No. 09-14-1271, a parent filed a complaint regarding a specific matter involving. In the summary of the complaint received, the parent does not make any allegations involving other students except for a general reference to a staff member's misstatement regarding District enforcement of protective court orders that was promptly clarified for the parent. Your letter does not indicate a request to interview specific students in these matters. We understand your request is to interview groups of student leaders. The information sheet states that OCR will be gathering information about "how the District responds to complaints of sexual harassment against students." It is unlikely,

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1 OCR's Revised Sexual Harassment Guidance on Title IX (January 2001) states that "[i]f OCR is asked to investigate or otherwise resolve incidents of sexual harassment of students, including incidents caused by employees, other students, or third parties, OCR will consider whether – (1) the school has a disseminated policy prohibiting sex discrimination under Title IX and effective grievance procedures; (2) The school appropriately investigated or otherwise responded to allegations of sexual harassment; and (3) the school has taken immediate and effective corrective action responsive to the harassment, including effective actions to end the harassment, prevent its continued...
however, that the students you intend to interview have been the subjects of complaints of sexual harassment against students. It is unclear whether these students would have any actual knowledge of how the District responds to complaints of sexual harassment against students. In addition to the information provided from the above-referenced matters, the District has provided OCR documents and data, including student survey information. There is already agreement that OCR will be conducting interviews with District employees. What is the additional information OCR is seeking through group student interviews that OCR has determined is relevant and necessary for a compliance determination in these matters?

4. OCR’s CPM does not address the concept of group interviews.

Section 602(d) states that:

[interviews are an integral part of most investigations. The objective of interviews is to gain an understanding of the records and data relevant to the issues in the case; to obtain information from and assess the credibility of witnesses; and to evaluate recipient defenses.

It is not clear how the intended student group interviews would provide relevant information toward these objectives or address applicable legal standards. Section 602(d) states on Notice that "[p]rior to initiating an interview, OCR should inform the witness" of certain information. (Emphasis added.) It does not contemplate multiple witnesses in an interview. Section 602(d)’s statement on Privacy is to "[i]nterview witnesses under circumstances that assure privacy."

recurrence, and, as appropriate, remedy its effects. ... If the school has taken, or agrees to take, each of these steps, OCR will consider the case against the school resolved and will take no further action...." See also OCR’s DCL of April 4, 2011 (Referencing the standard for administrative enforcement of Title IX: "If a school knows or reasonably should know about student-on-student harassment that creates a hostile environment, Title IX requires the school to take immediate action to eliminate the harassment, prevent its recurrence, and address its effects."); Davis v. Monroe County Bd. of Educ., 526 U.S. 629 (1999)(Establishing that a school district may be liable for student-on-student harassment if the district is deliberately indifferent to known sexual harassment which is severe, pervasive, and objectively offensive); Gebser v. Lago Vista Indep. Sch. Dist., 524 U.S. 274 (1998)(Establishing that a school district will only be liable for damages due to school personnel's sexual harassment of a student if the school district had actual notice of the harassment and responded with deliberate indifference).

2 The District provided the report on the California Healthy Kids Survey conducted at District secondary schools in 2011-12. It includes data on school climate, school connectedness, and harassment at school. The California Healthy Kids Survey was administered at District secondary schools again this school year and a report will be available soon.
Although the information sheet you provided states that "OCR will protect the confidentiality of all student interviews and will not disclose personally identifying information about your child to the District or anyone else," that protection is impossible in a group setting. Students will be able to identify other students in the room and potentially identify students not present who may become the subject of a comment or discussion. The request for group student interviews and information sheet are not consistent with the stated objectives and protections in OCR's CPM for interviews.

5. **The District recognizes that high school students have important insights and opinions on preventing and addressing sexual harassment of students.**

In multiple ways, the District regularly seeks students' input and contributions to preventing harassment and encourages reporting any concerns to school personnel for prompt investigation. Yet, the District is very concerned about a process that provides for unfamiliar investigating attorneys to interview high school students in group settings regarding very sensitive issues of sexual harassment and behavior. Interviewing high school students on the sensitive subject of student sexual harassment is complicated. It is complicated by students' age of middle to late adolescence. For example, Oregon Department of Justice 2012 guidelines for interviewing minors point to issues within teenagers' physical development, language and cognitive development, and social and emotional development that require careful navigation and expertise in interviews on sexual harassment.\(^3\) How would the process be structured to be respectful of students and to provide for valid information? What training do the investigating attorneys have on sound legal processes, age-appropriate techniques, and research-based methods for interviewing adolescents? How will they act as neutral fact-finders and protect against suggestibility, speculation/false memories, peer issues/posturing? Will the investigating attorneys ask about individuals? How will they manage questions and responses in a group setting and respect individual privacy, navigate peer and other social/developmental issues that can damage the quality of information, and obtain reliable and relevant facts?

6. **As you know, the District has expressed concerns about how information was obtained and used from unobserved interviews OCR attorneys conducted with groups of seventh grade students in Case No. 09-11-1337.**

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\(^3\) [www.doi.state.or.us/victims/pdf/oregon_interviewing_guidelines.pdf](http://www.doi.state.or.us/victims/pdf/oregon_interviewing_guidelines.pdf) OREGON INTERVIEWING GUIDELINES, Oregon Department of Justice, Crime Victims; Services Division Child Abuse Multidisciplinary Intervention (CAMI) Program Salem, Oregon (3d ed 2012); See also, for example, John P. Schuman, Nicolas Bala & Kang Lee, *Developmentally Appropriate Questions for Child Witnesses*, 25 QUEEN'S L.J. 251-304 (1999).
Students interviewed in Case No. 09-11-1337 were nearly six months removed from attending school with an individual student who was the subject of a complaint of peer harassment. District representatives were not allowed to be present during these interviews or allowed to review questions for context, age-appropriateness, suggestion, or speculation. OCR did not describe what training the investigating attorneys had for interviewing middle school students. OCR did not obtain written consent from parents but provided a form that allowed parents to opt-out of the interviews. OCR's form did not comply with OCR's CPM requirement that written consent always be obtained when questions may relate to specific events in which the minor(s) were involved. For "Evidence of Peer Harassment" in OCR's Letter of Findings on Case No. 09-11-1337, OCR drew heavily from student statements conveyed during the group interviews. Five of the six items OCR listed as evidence summarize student statements from the group interviews. Three of the six items summarize student statements regarding their involvement with the specific student who was the subject of the complaint. Another item summarizes student statements regarding another identifiable student.

7. Although OCR completed its investigation in Case No. 09-11-1337 and issued its Letter of Findings to the District nearly 16 months ago (December 26, 2012), the District has been unable to obtain the records of OCR's investigation.

The District has completed every item of the voluntary Resolution Agreement in Case No. 09-11-1337 except for instruction to be completed next year as part of a three-year activity. The District requested records of the investigation under the Freedom of Information Act on June 14, 2013. You responded on July 12, 2013, that you determined that the documents requested must be withheld under FOIA exemption (b)(7)(A) as materials that if released may be expected to interfere with ongoing activities in the case. The District timely appealed your determination on August 14, 2013, and described the nearly completed implementation of the Resolution Agreement. Under 5 U.S.C. § 552(a)(6)(A)(ii), your agency was required to make a determination on the District's appeal by September 13, 2013. The District wrote on October 17, 2013, to inquire about the status of its appeal and contacted you and/or other regional officials on January 14, January 22, March 12, and March 28, 2014, about the status of the appeal for the investigation records. Despite your and other commitments to follow up on the District's request, the District has never received a response.\(^4\) On April 7, 2014, we received an e-mail from the FOIA Appeals Coordinator asking if we "wish to pursue your FOIA appeal dated August 14, 2013."\(^4\) On April 8, we responded affirmatively and described the long history of

\(^4\) Simultaneous to the District's request and appeal under FOIA in Case No. 09-11-1337, the District made a request and appeal under FOIA for a record in a related matter where OCR's investigating attorneys discovered that a complainant had apparently altered a communication with the District to misrepresent the communication provided to OCR as evidence. The District has also never received a response to its appeal under FOIA to obtain a copy of that record.
District communications indicating the intent to pursue the appeal. To date, we have not received a response. Per your suggestion, the District Superintendent wrote to you on February 19, 2014, to express the District’s concerns on the investigation process and Letter of Findings in Case No. 09-11-1337 as much as possible without the District having been able to review the investigation records. The District has not yet received a response to that letter. The District’s concerns regarding the request to interview groups of students in the current investigations are magnified by the District’s above experiences and other concerns previously expressed to OCR. OCR has not complied with its own guidelines and CPM requirements on these matters.

8. **The District is committed to full compliance with our civil rights laws and will continue to work cooperatively with OCR to address concerns.**

We believe that OCR’s provision of assistance to the District is consistent with 34 C.F.R. § 100.6(a):

> Cooperation and assistance. The responsible Department official shall to the fullest extent practicable seek the cooperation of recipients [the District] in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

It caused concern at the meeting of March 28, 2014, when an investigating attorney asked, "What gave you the impression that OCR and the District were to work together on these matters?" It also caused concern when OCR attorneys expressed animus toward the District as one that has expressed concerns and objected to parts of OCR’s process. Certainly, the District’s expressions of concern have been intended always to be respectful of OCR’s authority and consistent with full compliance with our civil rights laws. The District appreciates OCR’s role as a neutral fact-finder and provider of technical assistance in furthering that compliance. However, the District believes that there are valid reasons to be concerned for the fairness of OCR’s process. The District operates in an environment with extraordinary amounts of media coverage and negative speculation. This creates a challenging atmosphere for District staff members committed to addressing complicated student matters and maintaining safe and respectful school environments for all.

9. **Both OCR and the District should share the belief that all elements of an investigation process lead to relevant and reliable facts for compliance determinations.**

Toward this end, the District asks you to consider potential protective measures regarding the requested group interviews of students. One measure is proposed as an alternative to the group interviews. As stated at the outset, the District is willing to agree to student interviews without the presence of District counsel as long as OCR and the District can agree on other protective measures. As described above, the most critical of these protections for the District are that
informed written consent be obtained from parents for students' participation, that OCR describe
the anticipated relevance of the student group interviews to the investigations and the nature of
the questions to be asked, and that there is a process for OCR to provide the District timely,
concrete feedback on the information obtained. The District would appreciate your
consideration and response on the following:

- **Upon Parents' Written Consent, Interviews with the**
  Subjects, Respectively, of the Complaint at Gunn High School and of the
  Alleged Peer Harassment at Palo Alto High School

- **Provide Timing for Concrete Feedback to District on Information Obtained** (District
  would respectfully request information on results of any interviews in a 1-2 week
  timeframe so that District may review the information and address any potential concerns
  in preparation for next school year.)

- **Describe Anticipated Relevance of Student Interviews to Investigation and Nature of
  Questions That Will Be Asked**

- **Describe Training and Experience of OCR Attorneys for Interviewing Adolescent
  Students on Sexual Harassment Issues**

- **Informed Written Consent from Parent/Guardian for Student Participation** (This
  requires a substantially different form from the information sheet OCR has presented. It
  would require revision to describe the nature of the questions to be asked and to request a
  parent's written approval for a student's participation.)

- **Recording of Interviews** (OCR's CPM discusses recording of interviews as a possible
  protective measure. The District is concerned about the reliability and lack of context in
  an investigating attorney's written notes taken when conducting an interview, especially
  one conducted in a group setting.)

- **Observation of Interviews by a District Employee** (The presence of a District
  employee would assist the District in understanding the context of the interviews and any
  information relevant to addressing concerns or proactive measures.)

- **Observation of Interviews by an Independent Psychologist** (OCR's CPM indicates
  openness to a provision like this through discussing presence of a parent. This would
  offer insight on age-appropriateness of questions and context of the interview.)
Thank you for your consideration of the District's concerns and the above measures. We would be glad to meet with you soon to discuss if measures can be agreed upon either to find an agreeable alternative to the requested group student interviews or to allow the group student interviews to proceed.

Sincerely,

FAGEN FRIEDMAN & FULFROST, LLP

Chad J. Graff

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