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MEMORANDUM

TO: Title IX Coordinator,
Palo Alto Unified School District

FROM: Maria Asturias & Chad Graff

DATE: June 5, 2015

RE: *Palo Alto High School Title IX Investigation*
Summary of Investigative Findings

As you know, the Palo Alto Unified School District ("District") requested our law firm's assistance to investigate reports of alleged sexual harassment in violation of Title IX of the Education Amendments of 1972 ("Title IX"). In accordance with Administrative Regulation 1312.3 and Title 5 of the California Code of Regulations, section 4631, this memorandum summarizes our findings of fact and conclusions of law contained in the full report of our investigation, which includes confidential information and is attorney-client privileged.

After careful investigation of the allegations through interviews and review of documents, we found the District complied with its responsibilities concerning the allegations. (20 U.S.C. 1681; 34 C.F.R. part 106; Dear Colleague Letter, U.S. Dept. of Educ., Office for Civil Rights (April 24, 2015).) Nonetheless, based on the allegations reviewed and information received in our investigation, we provide recommendations at the close of our full report for proactive steps the District may take to strengthen its compliance efforts under Title IX. We have included these recommendations in this summary as well. These recommendations are intended to enhance Paly's and the District's preventive and protective measures to ensure non-discriminatory and respectful school environments. Below is a summary of our investigative findings.

II. INVESTIGATION

To evaluate the reports and allegations of sexual harassment, we reviewed available documentary evidence and interviewed two former Paly students; two current Paly students; two Paly counselors; four Paly teachers; two Paly administrators; and two District administrators.

III. FINDINGS OF FACT AND LEGAL CONCLUSIONS

Legal Framework

Title IX prohibits various forms of sexual harassment. Sexual harassment is unwelcome conduct of a sexual nature and can include unwelcome sexual advances, and other verbal, nonverbal or physical conduct of a sexual nature. (Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, U.S. Dept. of Educ., Office for Civil Rights (Jan. 2001).) When sexual harassment of a student denies or limits that student's ability to "participate in or receive the benefits, services, or opportunities in a school's program," such harassment violates Title IX. (*Id.*)

When a school district "knows or reasonably should know" of possible sex-based harassment, it must take immediate and appropriate steps to investigate the alleged harassment and, if harassment is found to have occurred, take prompt and effective steps to end the harassment, eliminate the hostile environment, prevent the harassment from recurring, and remedy its effects. (Title IX Resource Guide, U.S. Dept. of Educ., Office for Civil Rights (April 2015).)

Findings of Fact and Legal Conclusions

After thorough investigation of these matters, we were unable to conclude by a preponderance of the evidence that any sexual harassment occurred at any point in question. No witness that we interviewed was able to provide any firsthand knowledge of any behavior in violation of Title IX and the alleged victim adamantly denied that any harassing behavior occurred at any point in time. Additionally, review of available records also did not provide evidence that participation or performance in any educational activities were diminished in any way as a result of the alleged harassment. Though there was some reports of behaviors that, though seemingly benign at the time of their observation, took on potential significance in hindsight, due to the lack of personal observation by any witness or other factual evidence, it was not possible for us to reach a definitive conclusion that such behavior rose to the level of sexual harassment as defined under federal law.

It is important to emphasize, however, that our limited factual finding should not limit the District's continuing development of proactive and preventive efforts to ensure compliance with Title IX and related federal and state guidance. Continued proactive and preventive work by the District in this area is important.

IV. RECOMMENDED ADDITIONAL PROACTIVE STEPS FOR CONSIDERATION

Based on all available information and extensive interviews, we conclude that the District was always in compliance with Title IX with respect to the allegations of sexual harassment in this matter. To ensure that the District and its schools remain in compliance with Title IX, the development of additional proactive steps for Title IX education and outreach should be considered.

The investigators are aware of the extensive educational efforts that the District and Paly undertake in this area (see attachment). Certainly, these steps make the District a leader among school districts in California and nationwide on Title IX outreach and compliance. Nonetheless, the environment at Paly also reflects a college-like atmosphere in many ways, for example in terms of the academic maturity, goals, discussions among students and a general college-like social atmosphere, and the District should continue to be vigilant and proactive in this area. Based on the insightful comments provided by students, parents, and teachers during our review, we recommend additional steps for the District to consider toward its goal of encouraging and maintaining a positive and respectful environment for all students at all times.

- The making and circulation of rumors at Paly are among the most concerning aspects of this case. Irrespective of factual and legal conclusions, the spreading of rumors among students can affect students, parents, teachers, and administrators' perceptions of people within the school community. Such rumors can affect morale and reputation of the target(s) of such rumors. Paly and the District must be prepared to take proactive, responsive steps to address and short-circuit rumors and enhance efforts to educate students and staff on the prevention and potential damage of rumors. Certainly, the District took important steps in this area in meeting with students involved and educating them on the importance of factual information and due process. We recommend additional, responsive steps in the future that may include immediate action plans for conducting meetings with parties known to be discussing or involved in such information; creating open lines of communication between site and District administrators and involved teachers and students; and continuing to educate students and staff members on the importance of preventing rumors, respecting the privacy of individuals, and reporting any concerns promptly based on factual information.
- Paly and the District should continue to address Title IX issues proactively, including prevention of sexual harassment and assault. These efforts should include discussion of appropriate boundaries and the effects of an imbalance of power on romantic/sexual relationships. Some students interviewed reported that they completed the Living Skills class three or four years ago, prior to inclusion of new, enhanced components addressing bullying prevention, sexual harassment and assault. Students expressed awareness of Not In Our Schools Week activities and curriculum discussed in Advisory classes on bullying and harassment prevention, but students acknowledged some students do not take these classes and activities very seriously. Paly and the District should continue to find ways to emphasize these issues in the high school curriculum and to encourage all teachers and students to take discussion of these issues very seriously for the benefit of all.

VI. CONCLUSION

Our investigation revealed that students and teachers in the Paly community generally experience the school environment to be safe and equitable for students, regardless of their sex and/or

gender. We thoroughly investigated the specific allegations in this matter, and based on all available information we determined that the District complied fully with its obligations under Title IX. The District has done a great deal of positive and constructive work in this area. It is evident from interviews we conducted with students and staff that this work has had a positive impact and staff and students are aware of the importance of preventing discriminatory behavior. Our recommendations are intended to bolster the District's current and past efforts to ensure a learning environment free from discrimination or harassment based on sex, gender, national origin or disability. We appreciate the opportunity to work with the District in addressing this matter. Please do not hesitate to contact us with any questions or concerns you may have with respect to our findings, conclusions, or recommendations.