



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGION IX
CALIFORNIA

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SAN FRANCISCO, CA 94102

March 8, 2017

Dr. Glenn McGee
Superintendent
Palo Alto Unified School District
25 Churchill Avenue
Palo Alto, CA 94306

(In reply, please refer to Nos. 09-13-5901 and 09-14-1217.)

Dear Superintendent McGee:

This letter is to inform you that the U.S. Department of Education (the Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced Directed Investigation (case number 09-13-5901) and complaint (case number 09-14-1217) against Palo Alto Unified School District (District). On June 3, 2013, OCR opened the Directed Investigation based on information received that the District has not provided a prompt and equitable response to notice of peer sexual harassment, including peer harassment related to sexual assault at Palo Alto High School (PAHS). Through the Directed Investigation, OCR investigated whether the District discriminated against students on the basis of sex because the District's policies and procedures do not comply with Title IX of the Education Amendments of 1972 (Title IX), as amended, 20 U.S.C. § 1681 *et seq.*, and its implementing regulations at 34 C.F.R. Part 106, and whether the District failed to provide students at PAHS with a prompt and equitable response to their allegations or other notice of sexual harassment, including sexual violence. On March 24, 2014, OCR opened case number 09-14-1217, based on allegations by a parent (Complainant) of a female student that the District did not provide a prompt and equitable response under Title IX to notice of sexual harassment at Gunn High School (Gunn) with respect to the student and other students.

OCR is responsible for enforcing Title IX and its implementing regulations, which prohibit discrimination on the basis of sex in education programs and activities receiving Federal financial assistance from the Department. The District offers educational programs and activities and is a recipient of financial assistance from the Department. Therefore, OCR had jurisdiction to investigate this matter under Title IX.

OCR investigated the following issues:

- A. Whether the District complied with Title IX requirements regarding development and dissemination of notice of nondiscrimination pursuant to 34 C.F.R. § 106.9;

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

- B. Whether the District complied with Title IX requirements regarding the designation and notice of a Title IX Coordinator pursuant to 34 C.F.R § 106.8(a);
- C. Whether the District's sexual harassment and sexual violence policies and procedures, as written, comply with Title IX and the regulation pursuant to 34 C.F.R § 106.8(b);
- D. Whether the District provided a prompt and equitable response to PAHS and Gunn incidents of sexual harassment and sexual violence of which it had notice pursuant to 34 C.F.R. §§ 106.31 and 106.8; and
- E. Whether the District's failure to provide a prompt and equitable response to PAHS and Gunn oral reports and written complaints of sexual harassment and sexual violence allowed affected students to be subjected to or to continue to be subjected to a sexually hostile environment pursuant to 34 C.F.R. §§ 106.31 and 106.8.

LEGAL STANDARDS

Sexually Hostile Environment and Duty to Respond Promptly and Equitably

The regulation implementing Title IX, at 34 C.F.R. § 106.31, provides that “. . . no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any . . . education program or activity” operated by recipients of Federal financial assistance.

Sexual harassment that creates a hostile environment is a form of sex discrimination prohibited by Title IX. Sexual harassment is unwelcome conduct of a sexual nature. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, including acts of sexual violence.

When a student sexually harasses another student, the harassing conduct creates a hostile environment if it is so severe, persistent, or pervasive that it denies or limits a student's ability to participate in or benefit from the recipient's program or activities. If a recipient knows or reasonably should know about student-on-student harassment, Title IX requires the recipient to respond in a prompt and equitable manner by taking immediate action to eliminate the harassment, prevent its recurrence, and address its effects.

If an employee who is acting, or reasonably appears to be acting, in the context of carrying out his/her responsibilities either (1) conditions an educational decision or benefit on a student's submission to unwelcome sexual conduct, or (2) engages in sexual harassment that is so severe, persistent, or pervasive to deny or limit a student's ability to participate in or benefit from the program, the recipient is responsible for the discriminatory conduct whether or not it has notice.

When responding to alleged sexual harassment, a recipient must take immediate and appropriate action to investigate or otherwise determine what occurred. The inquiry must be prompt, reliable, and impartial. Pending the outcome of a response to a report or an investigation of a complaint, Title IX requires a recipient to take steps to protect the complainant from further harassment as necessary, including taking interim measures. The recipient also should take steps to prevent any retaliation against the student who made the complaint and/or those who provided information.

A recipient must consider the effects of off-campus misconduct when evaluating whether there is a hostile environment on campus or in an off-campus education program or activity. This includes a review of misconduct that did not occur in the context of an education program or activity but may have had such an impact.

Title IX and its implementing regulations are intended to protect students from discrimination on the basis of sex, not to regulate the content of speech. In cases of alleged sexual harassment, OCR considers the protections of the First Amendment of the U.S. Constitution where issues of speech or expression by students or employees are concerned.

Grievance Procedures and Notice of Nondiscrimination

The regulation implementing Title IX, at 34 C.F.R. § 106.8(a), requires each recipient to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under the regulation implementing Title IX (Title IX coordinator), including investigation of any complaint communicated to the recipient alleging any actions which would be prohibited by the regulation implementing Title IX. The regulation implementing Title IX, at 34 C.F.R. § 106.8(b), requires that a recipient adopt and publish grievance procedures providing for the prompt and equitable resolution of student and employee complaints alleging any action prohibited by the regulation implementing Title IX. Finally, the regulation implementing Title IX, at 34 C.F.R. § 106.9, requires each recipient to implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in any educational program or activity which it operates, and that it is required by Title IX and its implementing regulation at 34 C.F.R. Part 106 not to discriminate in such a manner.

BACKGROUND

The District is located in Palo Alto, California. The District has 12 elementary schools, three middle schools, and two comprehensive high schools – PAHS and Gunn High School serving 9th through 12th graders. In the 2015-2016 school year, PAHS's total enrollment was 1,997 students, including 1,005 female and 992 male students. In the same year, Gunn's total enrollment was 1,934 students, including 932 female and 1,002 male students.

SUMMARY OF INVESTIGATION

In its investigation of these matters, OCR conducted four on-site visits and interviewed approximately 55 school and District staff, including the former Title IX Coordinator, the former Superintendent, the current Superintendent, the current PAHS Principal and the Gunn Principal, assistant principals, counselors, campus security supervisors, teachers and student club advisors. OCR also interviewed a parent of an affected student, and the Complainant and Student C in case number 09-14-1217.

OCR reviewed documents maintained and provided by the District related to four separate incidents of alleged sexual harassment and/or assault of students by employees, which were reported to the District during the 2014-2015 and 2015-2016 schools years and to a March 2014 incident of alleged off-campus sexual harassment between students. OCR also reviewed investigative and discipline files regarding oral reports and written complaints of sexual harassment and/or sexual violence during the 2011-2012, 2012-2013, and 2013-2014 school years for the District's two high schools. In this regard, OCR reviewed

information regarding disciplinary referrals at PAHS and Gunn during the 2011-2012 and 2012-2013 school years, and through February of the 2013-2014 school year, where the incident involved potential sexual harassment. This information was recorded in a "Behavior Detail Report," which included a description of the incident, the category of disciplinary offense, the resolution, and, if applicable, the dates reflecting when particular consequences were implemented or completed.

In addition, OCR reviewed: policies and procedures related to sexual harassment and sexual violence effective August 2011 and as of February 23, 2017 still in effect; school climate data; other relevant documents provided by the District in the course of OCR's investigation, and relevant publicly available information.

FACTUAL FINDINGS AND ANALYSIS

A. Whether the District complied with Title IX requirements regarding development and dissemination of notice of nondiscrimination pursuant to 34 C.F.R. § 106.9.

The regulations implementing Title IX, at 34 C.F.R. § 106.9, require the recipient to take specific and continuing steps to notify applicants for admission and employment, student/parents, employees, sources of referral of applicants, and unions or organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of sex in its education programs and activities, including with respect to employment. Section 106.9(b) requires recipients to include notice of nondiscrimination in each announcement, bulletin, catalog, or application form that it makes available to the persons described above. The notice of nondiscrimination must include a statement that inquiries concerning Title IX may be referred to the Title IX Coordinator or to OCR and must include contact information, including the name (or title), address, and phone number for the Title IX Coordinator.

OCR found that the District's Board Policy (BP) 5145.3, "Nondiscrimination and Harassment", which has been in place throughout the period of investigation, prohibits unlawful sex discrimination, including sexual harassment at any District school or school activity. The District publicizes BP 5145.3 on its website and in the annual "Notice to Parents/Guardians of District Policies" (Parent Notice).¹ In addition, the District's website includes a "Complaint Policies and Administrative Regulations" page, which explains the different procedures applicable to discrimination, including sexual harassment complaints.² In compliance with the administrative regulation, the District's policy states that the notice shall be included in all reports and publications, and includes the phone number and address of the District Compliance Officer (who is also the Title IX Coordinator). OCR's review identified a violation of Title IX and its implementing regulations because the notice includes a link to OCR's website but does not include a statement that Title IX inquiries can be referred to OCR and because contact information for the Title IX Coordinator has not been updated to reflect that the current Title IX Coordinator is the District's Chief Student Services Officer.

B. Whether the District complied with Title IX requirements regarding the designation and notice of a Title IX Coordinator pursuant to 34 C.F.R § 106.8(a).

¹ <http://pausd.org/parents/discrimination/index.shtml> (last checked 2/16/17).

² http://pausd.org/community/complaint_policies/index.shtml (last checked 2/16/17).

The Title IX regulations require designation of at least one employee to coordinate compliance with the regulations, including coordination of investigations of complaints alleging noncompliance. 34 C.F.R. § 106.8(a). OCR found that, in compliance with Title IX requirements, the name and contact information for the Title IX Coordinator, who was employed in this position between approximately May 2012 and October 2015 (former Title IX Coordinator), was included in the District's sexual harassment policy, BP 5145.7, and in its Uniform Complaint Procedure (UCP), Administrative Regulation (AR) 1312.3, and was published on the District's website, and in the Parent Notice and Student Handbooks.

In addition, the District must ensure that the Title IX Coordinator is knowledgeable about the requirements of Title IX. The District originally designated the Assistant Superintendent of Educational Services as its Title IX Coordinator. OCR found that the former Title IX Coordinator had received adequate training due to participation in trainings and conferences, including the Association of Title IX Administrators National Conference (August 2013), the School Policy Institute on Sexual Misconduct and School Policy and Protocol (January 2014), and bi-annual trainings on sexual harassment prevention provided by the District (2011-2014).

In OCR's interview of the former Title IX Coordinator, he identified the District's obligation upon receiving an oral report or written complaint of harassment to stop the unwanted behavior, address its effects, prevent its recurrence and provide support to the complaining student. He explained that school sites are expected to consider interim measures, which may include providing counseling or separating students, as needed. He stated that schools consulted him about how to handle particular complaints and when requested, he provided guidance. He stated that if a written UCP complaint was filed, his secretary kept a copy of such records but that school sites were expected to keep records of harassment incidents resolved at the site level in the District's online student information system, including a description of the incident and the responsive action.

The former Title IX Coordinator reported that when a school site handled a written complaint or oral report of sexual harassment, he was generally not apprised of such oral reports or written complaints raising Title IX issues and he did not review the reports and complaints and their investigations. He stated that he did not review such oral reports and written complaints to identify any patterns or systemic problems. The former Title IX Coordinator's statements were confirmed through OCR's investigation and review of oral reports and written complaints during the three year period. As such, OCR found that the District violated Title IX because the former Title IX Coordinator failed to discharge his responsibilities pursuant to 34 C.F.R. § 106.8(a).

As of October 2015, the Chief Student Services Officer became the new Title IX Coordinator. Based on information provided to OCR in February 2017, OCR still has a concern because the District has not created a system for coordination of the investigation of oral reports and written complaints of alleged sexual harassment that are handled at the school sites. The District expressed an interest in entering into the enclosed Agreement to address the coordination deficiency, and OCR agreed that it was appropriate to do so.

C. Whether the District's sexual harassment and sexual violence policies and procedures, as written, comply with Title IX and the regulation pursuant to 34 C.F.R § 106.8(b).

Throughout the period of the investigation, the District has had multiple overlapping policies and procedures that address sexual harassment. As detailed in the sections that follow, OCR reviewed these policies and procedures for compliance with Title IX and found conflicting provisions with respect to the

applicable procedures and that these procedures have not been used consistently for the investigations conducted during the time period of OCR's investigation.

In specific, BP 5145.7, "Sexual Harassment," the District's policy prohibiting sexual harassment of students, became effective August 2011 and as of February 23, 2017 was still in effect. AR 5145.7 and AR 1312.3, the Uniform Complaint Procedure (UCP), were both identified as District grievance procedures for investigating sexual harassment complaints filed by students from August 2011 until February 10, 2014. In February 2014, the District revised BP 5145.7 and eliminated AR 5145.7, and, at that time, the District identified the UCP as the sole procedure for investigating sexual harassment complaints filed by students. However, the District also identified BP/AR 1312.1, "Complaints Concerning District Employees", which applies to sex discrimination complaints filed by parents and guardians against District employees and became effective August 2010 and as of February 23, 2017 is still in effect.

BP/AR 5145.7 (in effect August 2011-February 10, 2014)

BP 5145.7 (in effect August 2011-February 2014)

BP 5145.7 prohibited sexual harassment of students at school or at school-sponsored or school-related activities, and retaliatory action against persons who complain or otherwise participate in the complaint process. It did not address the effects of off-campus incidents that result in a hostile environment on campus. It did not include a statement that harassment *carried out* by employees and third parties against students is covered by the BP.

BP 5145.7 detailed the manner in which students would receive instruction on behavior that constituted sexual harassment, encouraged students to report incidents, and stated that students would be provided with information about the District's complaint procedure, including where and to whom a written complaint of sexual harassment should be made. However, neither the BP nor AR informed a student or parent where to file such complaints.

BP 5145.7 stated that sexual harassment complaints would be investigated under AR 5145.7 *and* AR 1312.3 (UCP), and that the Superintendent or designee would ensure such complaints were immediately investigated, promptly resolved, and appropriate action taken to end the harassment and address its effects on the victim. BP 5145.7 did not address whether an investigation would proceed under the two complaint procedures (the UCP and AR 5145.7) or how to address any inconsistencies between the two procedures. It stated that an employee who receives a report of sexual harassment from a student will report it "in accordance with administrative regulation", but did not specify the applicable regulation nor could OCR identify one.

BP 5145.7 stated that all allegations of sexual harassment would be kept confidential, except as necessary to carry out the investigation or take other necessary action, and that the District would maintain a record of all reported cases of sexual harassment.

AR 5145.7 (in effect August 2011-February 10, 2014)

AR 5145.7 contained a definition of sexual harassment and examples of types of prohibited conduct. It prohibited such conduct by students at school or at school-sponsored or school-related activities but did

not state that the procedure applied to complaints alleging harassment *carried out* by employees and third parties or to the effects of off-campus incidents that result in a hostile environment on campus.

BP/AR 5145.7 was included in annual notifications to parents/guardians; displayed in prominent locations; provided in orientation programs and to employees/employee organizations; and appears in school/District publications. It detailed a site level grievance process. The AR stated that the school site principal or designee would promptly investigate written complaints by talking with the complaining student, the accused, anyone who witnessed the conduct, and anyone mentioned as having related information, but did not indicate where and to whom a written complaint should be made. The AR did not include any timelines for any stage of the grievance process. It did not address how employees should provide notice of oral reports or written complaints of sexual harassment or otherwise require reporting by employees who witness harassment.

It provided an optional mediation step, under which the complaining student and alleged harasser could agree to informally resolve the complaint with the help of a counselor, teacher, administrator or trained mediator. It did not explicitly prohibit mediation of sexual assault complaints. The AR states that to judge the severity of the harassment, the District may take into consideration a number of factors including how the misconduct affected one or more student's education, the type and frequency of the misconduct, the subject of the harassment, and other incidents at school.

It required the principal or designee to write a report of his/her findings, decision, and reasons for the decision and to "present this report" to the complainant and respondent. In addition, the principal or designee was required to give the Superintendent or designee a written report of the complaint and investigation. If the principal or designee verified that sexual harassment occurred, the report to the Superintendent was required to include a description of the actions taken to end the harassment, address the effects, and prevent retaliation or further harassment. The AR stated that the Superintendent/designee would take action to reinforce the sexual harassment policy, notify parents/guardians of actions taken, and notify child protective services, as needed.

As noted above, AR 1312.3 (UCP) and AR 1312.1 (Complainant Concerning District Employees), which are analyzed below, were also in effect during this period of time and identified as grievance procedures for sexual harassment.

Analysis – BP/AR 5145.7 (in effect August 2011-February 10, 2014)

OCR found that, as written, BP/AR 5145.7 did not satisfy Title IX's requirement, including because they failed to: 1) include reasonably prompt time frames for the major stages of the grievance process; 2) inform student and parents/guardians where to file a written complaint; and 3) state that the procedures applied to allegations of discrimination or harassment by third parties.

In addition, the District had three inconsistent policies and procedures in place at the same time, namely AR 5145.7, BP/AR 1312.1 and the UCP. (BP/AR 1312.1 and the UCP are analyzed below.) 34 C.F.R. § 106.8(b) requires the District to publish grievance procedures, thereby notifying a potential complainant which process he/she should use to address his/her complaint. By publishing three inconsistent policies and procedures, OCR found that the District failed to properly notify individuals of the applicable procedure for complaints of sexual harassment.

Revised BP 5145.7 (effective February 11, 2014 and as of February 23, 2017 is still in effect) and AR 1312.3 (UCP) (effective October 10, 2011 and as of February 23, 2017 is still in effect)

BP 5145.7, as updated February 11, 2014 and December 8, 2015

BP 5145.7 (effective February 11, 2014) includes a prohibition against sexual harassment of students at school and at school-sponsored or school-related activities. It identifies the District's Assistant Superintendent of Educational Services as the Title IX Coordinator, provides an office address and phone number, and states that sexual harassment complaints will be investigated under the UCP. However, the Chief Student Services Officer has been the Title IX Coordinator since approximately October 2015.

The BP defines sexual harassment as including "unwelcome sexual advances, unwanted requests for sexual favors, or other unwanted verbal, visual, or physical conduct of a sexual nature made against another person of the same or opposite sex in the educational setting". It lists examples of prohibited conduct, including sexual assault, battery, dating violence and stalking on the basis of sex.

The BP states that the Superintendent/designee shall ensure that all students receive age-appropriate instruction on sexual harassment, encouragement to report incidents, information about complaint procedures, and information about the rights of students and parents/guardians to file a criminal complaint, as applicable.

The BP identifies the UCP as the grievance procedure. It states that any student who believes he/she has been subjected to or has witnessed sexual harassment may report the incident orally to any school employee or file a written complaint, and requires employees who receive reports to notify their school site principal or designee within one day. Employees who receive reports of sexual harassment by a Principal or individual designated to investigate complaints must report such incidents to the Title IX Coordinator within one day. It states that when sexual harassment occurs off campus and results in harassment that interferes with or limits a student's ability to participate in or benefit from his/her educational program, the school will respond to eliminate it, prevent its recurrence, and address its effects.

The BP 5145.7 states that students who engage in sexual harassment/sexual violence or who retaliate against another will be subject to discipline and other actions. BP 5145.7 also provides that the Superintendent or designee shall maintain a record of all reported cases of sexual harassment in order to monitor, address and prevent repetitive harassing behavior in the schools.

AR 1312.3 (UCP), as updated February 11, 2014

The UCP states that all sexual harassment complaints will be investigated within 60 calendar days of receipt of the complaint by the District's Title IX Coordinator (also called the Compliance Officer). Although the UCP states that complaints may be *filed by* students, parents/guardians, or third parties, it does not state that it applies to harassment *carried out by* employees and third parties. The UCP timeline for filing complaints, namely not later than six months from the incident or from the date the complainant obtained knowledge of the facts, whichever comes later, is applied, such that the district need not investigate a later reported complaint. The UCP states that complainants alleging discrimination may be filed with OCR, and provides OCR's website.

The UCP states complaints will be investigated under the procedure regardless of whether the alleged harassment occurred on or off campus and that if the effects of off-campus incidents result in a hostile environment at school, the school must provide a prompt and effective response to stop the harassment, prevent its recurrence and address its effects. The UCP states that when a student reports off-campus harassment, the Title IX Coordinator's investigation and documentation will include the facts that explain the impact on school activities, attendance, or educational performance.

The UCP sets forth a duty for employees to report, as it requires any staff member who observes or receives an oral report of harassment to notify the site Principal/designee within one school day. The UCP further states that the Principal/designee shall, within one day of receiving the oral report, inform the individual making the report of the resolution options, including the right to file a written complaint. If a written complaint is submitted to a school site, the UCP requires that it be forwarded to the Title IX Coordinator within two school days. Where the Principal is the subject of the oral report or written complaint, the staff member shall notify the District's Title IX Coordinator.

The UCP states that the Title IX Coordinator will initiate an impartial investigation upon receipt "of a formal complaint under this procedure", but does not state that an investigation or other inquiry will be initiated or that the Title IX Coordinator will be notified based on an oral report alone. It does not state that the recordkeeping provision, which requires the District's Title IX Coordinator to maintain a log of complaints and record of actions, includes oral reports.

For formal complaints, the UCP provides a more detailed investigative process than the August 2011 AR 5145.7, including the consideration of interim measures, interviewing the complainant, respondent, and relevant witnesses and reviewing records. The UCP provides that the responsible administrator, defined as the Principal/designee or Title IX Coordinator, will determine whether interim measures are necessary to stop, prevent or address the effects of discrimination, and includes a list of appropriate measures, including placing students in separate classes, providing academic support, and following up to ensure no retaliation, and implementing interventions for the school community. In reaching a decision as to whether harassment occurred, the Title IX Coordinator may take into account the same factors as described in the August 2011 AR 5145.7.

The UCP states that the Title IX Coordinator will provide a written report to the complainant within 60 days of receiving the written complaint. The UCP states that the written report will include: (a) the findings of fact; (b) the District's conclusions as to whether the discrimination occurred as to each allegation; (c) the rationale for such conclusions; (d) corrective actions, if any, including consequences imposed on the individual who engaged in the discrimination, individual remedies and systemic measures; (e) a notice that the individual who was the subject of the complaint and her/his parent/guardian should immediately report any reoccurrence or retaliation; and (f) a notice of the appeal process. While the UCP requires that the written report be provided to the complainant, it does not state that the written report will be provided to the respondent.

The UCP includes examples of final remedial actions, such as discipline, counseling, training, and interventions for the student community. The UCP states that the Title IX Coordinator shall maintain a log of complaints received and a record of actions, including steps taken during the investigation in response to each complaint. If the timeline of the investigation is extended for good cause, only the complainant is informed. An appeal is available to California Department of Education for complainants but not respondents. With consent of the parties, the site Principal/designee may arrange for the

students to resolve the complaint informally with the help of a counselor, teacher, or administrator. The procedures make it clear that the informal process is voluntary and must be completed within 10 days.

The UCP prohibits retaliation and specifies that the Title IX Coordinator and other employees designated to resolve complaints shall receive training and be knowledgeable about the investigation steps, complaint documentation requirements, and applicable legal standards.

Analysis – Revised BP 5145.7 (effective February 11, 2014 and as of February 23, 2017 is still in effect) and AR 1312.3 (effective October 10, 2011 and as of February 23, 2017 is still in effect)

OCR finds that, as written, the current policies and procedures do not satisfy Title IX's requirement to identify a prompt and equitable process because they do not include: 1) a process for promptly and equitably responding to oral reports; 2) a statement that the sexual harassment grievance procedure applies to harassment *carried out by third parties*; 3) a notice to the respondent of the outcome of the investigation; and 4) equal appeal rights for the respondent.

In addition, the District had three inconsistent policies and procedures in place at the same time, namely AR 5145.7, BP/AR 1312.1 and the UCP. (BP/AR 1312.1 and the UCP are analyzed below.) 34 C.F.R. § 106.8(b) requires the District to publish grievance procedures, thereby notifying a potential complainant which process he/she should use to address his/her complaint. By publishing three inconsistent policies and procedures, OCR found that the District failed to properly notify individuals of the applicable procedure for complaints of sexual harassment.

Complaints Concerning District Employees (BP/AR 1312.1 with a cross-reference to the UCP) (effective August 31, 2010 and as of February 23, 2017 is still in effect)

BP/AR 1312.1 became effective August 31, 2010 and as of February 23, 2017 is still in effect.³ It applies to complaints filed by parents/guardians against employees, including complaints of discrimination. However, it does not state that such complaints can be filed by a student. The BP states that the Board will not investigate anonymous complaints “unless it so desires” and fails to include factors for assessing whether, even when the complaint is anonymous, an investigation or other prompt and effective inquiry should proceed to ensure that the District provides a school environment free of unlawful harassment.

AR 1312.1 states that the UCP is to be used for complaints of unlawful discrimination. However, AR 1312.1 has a separate and different five step process for resolution of complaints. The five steps from the AR 1312.1 include two informal steps, a meeting with the parent/guardian and employee and a meeting with the employee's immediate supervisor. Neither of the two informal steps has a timeline, and the second step is required. If the complaint is not reduced to writing, the AR states that the District will not take any “formal action”. However, if the concern is in writing, the supervisor shall respond in writing within 10 working days. Step three requires that the complaint be in writing, and the principal investigate and respond within 10 working days. Step four provides for an appeal to the Superintendent's designee, who responds in writing to all parties and the principal within 10 working days. If the resolution by the Superintendent's designee is unsatisfactory, the parent/guardian may request review by the Superintendent, who responds in writing to all parties within 20 working days.

³ <https://www.pausd.org/policies#/browse/document/842> (last checked 2/23/17).

The BP/AR does not include interim measures to protect the complainant. While AR 1312.1 requires that the investigation and written report be completed within 60 calendar days under the UCP, the AR's five step process includes two steps with no timeline related, which when added to the 50 days involved in the next three steps could result in untimely resolution of investigations. Although the Superintendent's decision may be appealed to the Board of Education and the CDE, the appeal to the Board does not have a timeline for response and, under the District's procedures, only the complainant may appeal to CDE. The BP states that retaliation against complainants is prohibited.

Analysis – Policy Regarding Complaints Concerning District Employees (effective August 31, 2010 and as of February 23, 2017 is still in effect)

As written, BP/AR 1312.1 creates confusion as to which procedures apply to parent/guardian complaints against employees, since it both refers to the UCP and creates a separate and different five step process for resolution of such complaints, which also is not compliant with Title IX. In addition, none of the District's policies explicitly covers sexual harassment complaints filed by students against employees in the absence of a parent-initiated complaint. As such, there is a concern that students have not received appropriate notice regarding how to file a sexual harassment complaint against an employee.

This separate policy and procedure for complaints filed by parents and guardians against employees does not satisfy Title IX's requirement to identify a prompt and equitable process because it: 1) contains conflicting provisions with respect to the applicable procedures; 2) states that no "formal action" will be taken unless the concern is in writing; 3) fails to identify who is responsible for resolving complaints, namely whether it is the Title IX Coordinator or the Superintendent or designee; 4) does not provide any steps or process for ensuring an investigation is adequate, reliable and impartial; 5) lacks timeframes for certain major stages of the process; 6) states that there will be no investigation of anonymous complaints, unless the Board "so desires"; and 7) does not include equal appeal rights for the respondent.

- D. Whether the District provided a prompt and equitable response to PAHS and Gunn incidents of sexual harassment and sexual violence of which it had notice pursuant to 34 C.F.R. §§ 106.31 and 106.8; and**
- E. Whether the District's failure to provide a prompt and equitable response to PAHS and Gunn oral reports and written complaints of sexual harassment and sexual violence allowed affected students to be subjected to or to continue to be subjected to a sexually hostile environment pursuant to 34 C.F.R. §§ 106.31 and 106.8.**

Report of Alleged Student-to-Student Sexual Assault – XXXXXXXX 20XX

Findings of Fact

In XXXXXXXX 20XX, PAHS received an oral report alleging an off-campus sexual assault of a female student (Student A) by a male student in the District. As described by Student A's parent, after receiving notice, the PAHS Counselor referred Student A to on-campus counseling, provided her a list of rape counseling services, assisted her with filing a police report, and facilitated an exam waiver so that she would not have to return to campus before XXX XXXXXX XXXXX.

Student A's mother also stated that she believed a high school principal questioned the male student and another student who was present, and that Student A's Counselor spoke with a female student who had been present, but Student A's mother was not aware of what resulted from these meetings. No documentation of these meetings was provided to OCR. The District did not provide notification of the outcome of the investigation to Student A or her mother.

Student A's mother informed the District that after other students learned that Student A had reported the alleged sexual assault, other students began harassing Student A, including at school. Student A's mother stated the conduct included XXXXX XXX XXXXXXX XXXXXXX XXXXXXX XXXXXXX X XX XXXXXXXXXXX XXXXXX XXX XXXXXXX XXXX XXX XXXXX XXXX X XXX XXXXX. Student A's mother stated that the Counselor made multiple attempts to find out who was engaging in this conduct against Student A, but that Student A chose not to identify the offending students because she had already lost several friends.

Student A's mother stated that following XXXXXX XXXXX, in XXXXXXX 20XX, Student A did not want to return to PAHS due to the ongoing harassment related to her report. X---paragraph redacted---X. Student A's mother stated that the harassment through social media continued through spring semester 20XX. As a result, Student A informed the Counselor of the identity of one of the female students involved in the harassment. Student A and her mother were never informed as to whether the District took any action with respect to the report of this harassment. Student A's mother stated that she spoke with the former Superintendent and told him that she was satisfied with the District's response.

Analysis

OCR's investigation revealed that PAHS assisted Student A and her mother in filing a police report, referred Student A to on-campus counseling, provided Student A with a list of rape counseling services, facilitated a waiver of Student A's exams, and, XXXXXXXXXXX XXXXXXX XXX XXX XXXXXXX XX XXXXXXX XXXXXX. In addition, after the post-incident harassment, the District took some steps to find out who was harassing Student A, even when Student A initially chose not to identify the students. Student A later identified one of the students who harassed her.

However, there was no evidence that an investigation of the alleged sexual assault was conducted by the District; furthermore, the District did not inform Student A and her mother of the outcome of any investigation of the sexual assault. In addition, there was no evidence that the District investigated the alleged harassment after Student A reported the sexual assault, notwithstanding Student A's later identification of one of the alleged harassers.

Accordingly, OCR found that the District failed to respond promptly and equitably to her complaint of sexual assault in violation of Title IX. Furthermore, OCR found that the District violated Title IX when it failed to take immediate and appropriate steps to investigate her reports of harassment after she reported the alleged sexual assault.

Complaint of Alleged Sexual Harassment by Former Principal – June 2013

Findings of Fact

On June 7, 2013, the former Assistant Principal of PAHS met with the District's former Title IX Coordinator and told him that she had been concerned about the former Principal's conduct, including allegations of sexual harassment of staff and students.

The District provided OCR with the former Title IX Coordinator's June 7, 2013 notes from the meeting with the former Assistant Principal. The notes described the former Assistant Principal's disclosure which covered a three-year period of allegations from approximately 25 staff members who either reported observing the Principal's behavior - or being the subject of the Principal's behavior - that may have been sexual in nature. These oral reports pertained to the former Principal's interactions with staff as well as students. In follow up to the meeting, on or about June 10, 2013, the former Assistant Principal submitted a letter with an attached spreadsheet of allegations. In her letter, the former Assistant Principal also stated her concern that the former Principal had sent "mixed-messages" about student streaking, while more than 100 streaking incidents, which she and other staff had observed, had occurred in one school year. In addition, entries on the spreadsheet included alleged comments, including sexual references made to individual female and male students. It also included allegations that female staff had been subjected to unwelcome hugs, touching and comments of a sexual nature that were directed at them by the former Principal. In her letter attached to the spreadsheet, the former Assistant Principal stated that she believed that a "hostile work environment" existed on campus, and that the immediate issue that she sought to resolve is "improving the climate for women and girls on our campus." She stated that she had not reported the conduct earlier because she was uncertain about her obligation to do so and also had concerns about becoming the target of retaliation by the former Principal.

As documented in the timeline provided to OCR, on June 7, 2013, the former Title IX Coordinator discussed the former Assistant Principal's report with the Assistant Superintendent and former Superintendent and the administrators met with the former Principal to review the allegations with him.

On June 10, 2013, the Assistant Superintendent initiated an investigation of the allegations as a personnel matter rather than an investigation pursuant to the District's sexual harassment grievance procedures. The Assistant Superintendent interviewed a total of four staff members who had information about the former Principal's conduct; he did not interview any students. Before the investigation was complete, the former Superintendent praised the former Principal's performance and character in a newspaper article.

According to the District, on June 11, 2013, the Assistant Superintendent shared details of the report with the School Board in a closed session. In letters dated June 12, 2013 and June 13, 2013, from the Assistant Superintendent to the former Principal, information regarding the former Assistant Principal's allegations, as well as new allegations, was described. On June 12, 2013, the former Principal submitted a letter of resignation from his position as Principal to the Superintendent. Subsequently, on June 14, 2013, the former Principal responded to the allegations in the Superintendent's June 12, 2013 letter. In his response, he denied or contested the characterization of the described conduct. On June 18, 2013, the Assistant Superintendent provided the School Board with an update on his investigation during a closed session.

Following the board meeting, on or about June XX, 2013, the Assistant Superintendent received a parent's written complaint describing her observations of the former Principal engaging in unwelcome physical contact with several female students (i.e., touching earlobes and earrings, touching a student's arm) in the course of an afternoon visit to PAHS. There is no evidence that the District responded to or conducted an investigation of the parent's complaint.

In August 2013, the School Board issued to the former Principal a Notice of Unprofessional Conduct and a Notice of Unsatisfactory Performance. The former Principal was reassigned within the District; in May 2015, he was separated from the District. The Assistant Superintendent told OCR that his investigation did not include an analysis and determination about whether the former Principal engaged in sexual harassment that created a hostile environment.

Analysis

If an employee who is acting, or reasonably appears to be acting, in the context of carrying out his or her responsibilities either (1) conditions an educational decision or benefit on a student's submission to unwelcome sexual conduct, or (2) engages in sexual harassment that is sufficiently severe, persistent or pervasive so as to deny or limit a student's ability to participate in or benefit from the program, the District is responsible for the discriminatory conduct.

In her position, the former Assistant Principal was a high level District employee. Over a period of three years, the former Assistant Principal received reports from approximately 25 staff of alleged sexual harassment by the former Principal but did not discharge her responsibility to take immediate and appropriate steps to address them when they were reported to her. Accordingly, OCR found that the District did not respond promptly and equitably to the oral reports, in violation of Title IX and its implementing regulation at 34 C.F.R. § 106.8(b).

When on June 5, 2013, the former Assistant Principal relayed these reports to the former Title IX Coordinator, an investigation was initiated and concluded in approximately two months. However, OCR found that the District failed to conduct a Title IX investigation. The District did not determine whether the alleged conduct constituted sexual harassment that created a hostile environment for the affected students, staff, and the broader school community, take steps to eliminate any hostile environment that may have been created, and prevent the harassment from recurring. Also, there is no evidence that the District provided notice of the outcome of its investigation to any of the affected students or staff. Accordingly, OCR found that the District did not respond promptly and equitably to the oral reports, in violation of the Title IX and its implementing regulation at 34 C.F.R. § 106.8(b).

Additionally, there is no evidence that the District investigated the June XX, 2013 written complaint made by a parent. Accordingly, the District did not provide a prompt and equitable response to the parent's complaint of alleged sexual harassment, in violation of Title IX and its implementing regulation at 34 C.F.R. § 106.8(b).

Report of Alleged Student-to-Student Sexual Harassment at PAHS – XXXXX 20XX

Findings of Fact

In XXXXX 20XX, two students made reports to a counselor and an Assistant Principal of an allegation that a male student locked a female student in a bathroom at a student's house party over the weekend and told her he would not let her out unless she performed oral sex on him. Both reported the incident to the former Title IX Coordinator who began "an investigation into the alleged off-campus incident and potential effects on [the female student] and others in the school environment." The District stated that the female student's counselor met with her, informed her of counseling available at the school, her right to file a UCP complaint, and encouraged her to immediately report any new harassment from the

male student or others regarding the incident. The Title IX Coordinator told the female student's parent that she could file a police report and offered the District's assistance if the parent decided to do so.

The former Title IX Coordinator and the Assistant Principal met with the accused male student, who denied the incident occurred. The former Title IX Coordinator and the Assistant Principal warned him to not harass the female student. The former Title IX Coordinator discussed the allegation with the male student's parent. The former Title IX Coordinator told the parent that counseling regarding appropriate sexual contact was available for her son. The former Title IX Coordinator followed up with the female student's parent, who stated that she had filed a police report. The District did not receive a UCP complaint. The District informed OCR that it continued to monitor the situation but did not provide notice of an outcome regarding the oral report to either party.

Analysis

The District had an obligation to investigate and reach a resolution based on the oral report, regardless of whether it received a written complaint. The District started the investigation and met with the female student and her parents. The District provided counseling resources, information about the UCP complaint process and how to report harassment, and offered assistance with filing a police report. The District met with the male student and contacted the female and male students' parents. However, there are deficiencies because there is no documentary evidence that the District completed the investigation and made any findings, or that notice of the outcome was provided to any party. In addition, there is no documentary evidence that the District assessed and addressed whether a hostile environment existed for the student. Prior to OCR completing its investigation, the District expressed an interest in entering into a voluntary resolution, and OCR agreed it was appropriate to do so.

Complaint of Alleged Teacher-Student Relationship – September 20XX

Findings of Fact

Documents provided by the District to OCR indicated that on September XX, 20XX, the parents of a student (Student B) met with the school's Assistant Principal and stated that Student B had engaged in a post-graduation sexual relationship with Teacher A and that Student B was receiving counseling services. The Assistant Principal's note includes that the "[p]arents reported that they were told there have been other instances in previous years" involving other student(s). On September XX, 20XX, Student B's parents met with the Assistant Superintendent and the current Principal to inquire as to what actions had been taken concerning their complaint. On October X, 20XX, the current Principal informed the Palo Alto Police Department (PAPD) of the parents' allegations, and also discussed an alleged off-campus after-hours incident with students involving Teacher A from 2007 that had previously been reported to PAPD.

On October XX, 20XX, the current Principal met with Teacher A and a union representative. Although Teacher A did not admit to a sexual relationship or inappropriate contact with Student B, he admitted to socializing with Student B several times - sharing meals, having coffee in public - while she was still in high school. He stated that Student B had some contact with him after she graduated from high school, but that the contact had stopped "at this point." On or about October XX, 20XX, Student B sent an email wherein she denied any inappropriate relationship or behavior by Teacher A. Subsequently, the PAPD stated that it could not investigate without further information from Student B.

On December XX, 20XX, the current Principal requested that the Assistant Superintendent provide her with an update as to whether he had spoken with Teacher A. In January 20XX, the current Principal sent several other emails to the Assistant Superintendent requesting follow-up.

On February XX, 20XX, a PAHS graduate and the former boyfriend of Student B sent a letter to the current Principal alleging that Teacher A may have engaged in “grooming” while Student B was in high school. In response to the letter, the current Principal sent an email to the Superintendent, the Assistant Superintendent, and the former Title IX Coordinator on February XX, 20XX, wherein she reiterated her request for an investigation and for Teacher A to be placed on administrative leave during the investigation. The next day the Assistant Superintendent interviewed a teacher and a counselor at PAHS neither of whom could confirm any pre-graduation sexual relationship between Teacher A and Student B.

After the District received the February XX, 20XX letter from Student B’s former boyfriend, the District contracted with a law firm to conduct an investigation. In June 20XX, the law firm provided reports to the District regarding its investigation and findings. The reports concluded that the preponderance of evidence did not support a conclusion that Teacher A’s behavior was unwelcome or created a sexually hostile environment for Student B.

On July XX, 20XX, the District issued a notice of unprofessional conduct to Teacher A. On November X, 20XX, the District entered into a resignation agreement with Teacher A.

Analysis

OCR found that the investigation into the alleged teacher-student relationship was not prompt. The documents provided by the District show that the District initially met with Teacher A and received information from Student B but did not begin to interview other potential witnesses until at least February of 20XX, more than four months after the parents of Student B first reported the incident. Then, the investigation by the law firm was not concluded until June X, 20XX, and a notice of unprofessional conduct to Teacher A was not issued until July XX, 20XX, nearly ten months after the initial complaint. In conclusion, the District violated Title IX because the investigation was not prompt, as it took nearly 10 months to complete.

Report of Alleged Teacher-to-Student Sexual Assault – June 2016

Findings of Fact

On June 16, 2016, the District notified OCR of allegations of sexual assault of a student by a PAHS teacher (Teacher B) and included a link to a media report, which stated that on June 7, 2016, a male science teacher asked a female 9th grade student to come to his classroom after school, where Teacher B put his hands under the student’s clothes and touched her breasts; and took one of her hands and placed it on his clothed groin area. The media report stated that on June 15, 2016, the student notified her parents and Teacher B was arrested.

The District sent OCR copies of June 16, 2016 messages that it sent to PAHS staff, high school mental health staff, and summer school leadership teams regarding the incident and available mental health resources for students and staff. The District informed OCR that Teacher B was immediately placed on unpaid leave. OCR requested all documentation regarding the incident, its investigation, and response.

As of October 12, 2016, the District had engaged outside counsel to conduct the investigation; OCR has not yet received an investigation report.

Analysis

With respect to the June 2016 complaint regarding an allegation that Teacher B sexually assaulted a student, OCR found that the District acted promptly in placing the teacher on unpaid leave after his arrest and providing mental health counseling resources and information to PAHS. However, OCR identified a deficiency because the District did not initiate a Title IX investigation until October 12, 2016. OCR will review the investigation and notice of the outcome as part of the monitoring of the Agreement.

Report of Alleged Student-to-Student Sexual Harassment at Gunn - March 2014

Findings of Fact

On March 24, 2014, OCR opened case number 09-14-1217, based on allegations by the mother (Complainant) of a female student (Student C) that the District did not provide a prompt and equitable response under Title IX to complaints of sexual harassment involving Gunn students, including Student C.

On XXXXXXXXX X, 20XX, a community member reported that she observed a male and female student having a loud disagreement near the school. In response to the community member's report, the campus security supervisor located Student C in her class and found the male student (Student D) standing outside the class, waiting for her. Student D ignored the campus security supervisor's instructions to come to the front office and left the campus.

Later on the same day, the campus security supervisor sent Student C to the office to speak with the Assistant Principal. The Assistant Principal stated that Student C told her that she and Student D had been dating for about a year, and that Student C characterized the relationship as serious and "healthy." Student C denied that she described her relationship with Student D as healthy; she recalled that the Assistant Principal offered her information about couples counseling available at the school.

The Complainant informed OCR that on XXXXXXXXX XX, 20XX, Student C broke up with Student D because he was becoming increasingly possessive and intimidating. Student C stated that following the break up, Student D had been stalking her based on her refusal to be in a relationship with him; he harassed her on a daily basis at school and off campus, including waiting for her outside her classroom and following her between her classes and to her home. Student C said she was fearful of Student D because he knew her schedule and the route she took to walk home. Student C stated that Student D's conduct caused her to be tardy on some occasions, and she could not focus on her work because she could see him staring at her through the class window. Student C said she believed teachers had seen Student D standing outside of her classes.

Student C told OCR that, on XXXXXXXXX XX, 20XX, Student D followed her as she walked home from school. Student D grabbed her by the hair, pulled her head down and hit her in the head with his other hand. Subsequently, Student D was arrested by PAPD and placed in juvenile hall. Later on that same day, the Complainant received an Emergency Protective Order (Protective Order) from court, which required Student D to stay 300 yards away from Student C. Also on that day, the Complainant informed

the Principal about the incident, Student D's arrest, and provided the Principal with a copy of the Protective Order.

On XXXXXXXX XX, 20XX, the Complainant told the Assistant Principal that the assault occurred while Student C was on her way home from school and that Student C had a Protective Order against Student D. The Assistant Principal offered counseling for Student C, which the Complainant declined. On XXXXXXXX XX, 20XX, the Complainant emailed the Assistant Principal and the Principal and asked for the school to create a plan to keep Student C safe once Student D was released. The Complainant sent a subsequent email to the Assistant Principal, Principal and former Superintendent; she again requested a safety plan and asked that Student D be transferred to another school.

On XXXXXXXX XX, 20XX, the Assistant Principal met with the Complainant and Student C's father and told them that if the Protective Order was for 300 yards, she did not know how the school would enforce it⁴ and needed to confer with other administrators. The Assistant Principal suggested having a campus security supervisor monitor Student C between classes to ensure Student D would not approach her.

Following the meeting, the Complainant asked the Assistant Principal to have a campus security supervisor follow Student D, rather than Student C. The Complainant sent an email attaching a list of harassing incidents, which occurred during school hours or at school on XXXXXXXX XX, 20XX and between XXXXXXXX XX and XXXXXXXX XX, 20XX, including: X---paragraph redacted---X. The Complainant stated that Student D would miss his classes to follow Student C home on days when she was dismissed early.

In an XXXXXXX X, 20XX email, the Assistant Principal told the Complainant that "once a student gets home, our authority ends", and that the assault happened at the Complainant's home. On XXXXXXX XX, 20XX, the Assistant Principal met with the Complainant and Student C's father and stated that she realized that Student D had assaulted Student C on her way home, and not at the Complainant's home.

On XXXXXXX XX, 20XX, the Complainant forwarded an email from the District Attorney regarding the Protective Order and its scope. On XXXXXXX XX, 20XX, the Assistant Principal emailed the Complainant and stated, among other things, that the school told Student D's parents that he could not be on campus at this time, informed campus supervisors, and filed a suspension for the assault. On XXXXXXX X, 20XX, the Complainant informed the District that the Court issued the permanent Protective Order for 300 yards.

The Complainant and Student C's father told OCR that the District did not provide them with information regarding its sexual harassment complaint procedure. Student C stated that, between the alleged assault and XXXXXXX XX, 20XX, she was extremely anxious, fearful, and suffered from migraines -- all of which she attributed to the stress of not knowing when and if Student D would return to school. The Complainant stated that Student C's grades suffered, and that she was not able to pay attention in class.

Analysis

⁴ The District has a Memorandum of Understanding (MOU) with the PAPD but the MOU does not address the role of SROs in responding to sexual harassment or assault complaints or discuss the information shared between the school and law enforcement when concurrent investigations are ongoing.

On XXXXXXXXXX XX, 20XX, the District received notice that because Student C refused to date Student D, Student D engaged in alleged stalking and dating violence that occurred on XXXXXXXXXX XX, 20XX and between XXXXXXXXXX XX and XX, 20XX.

The Complainant informed the Gunn Principal of the alleged stalking and dating violence, that Student D had been arrested, and that she obtained a Protective Order barring Student D from being within 300 yards of Student C. Although on XXXXXXXXXX XX, 20XX the Assistant Principal offered counseling for Student C and on XXXXXXXXXX XX, 20XX, she offered to have the campus security supervisor follow Student C, Gunn administrators failed to consider the full scope of the conduct and impact as reported by Student C and the Complainant. The Complainant did not know when Student D would be released from juvenile hall, and requested interim measures to protect Student C, including enforcement of the Protective Order. Student C reported that she was extremely anxious and fearful, she could not pay attention in class and her grades suffered following the attack and stalking and during the period when she did not know when or whether the District would allow Student D to return to Gunn. In particular, Gunn administrators did not understand the District's obligation to respond to sexual harassment that occurs off campus and to assess whether there are any continuing effects of such harassment on campus that are creating or contributing to a hostile environment and, if so, address the hostile environment.

Accordingly, OCR found that the District failed to respond promptly and equitably to the Complainant's report of sexual harassment, including failing to take immediate interim measures to protect Student C, failing to assess and address the hostile environment that existed for Student C and failing to provide notice of the outcome of its investigation, in violation of Title IX and its implementing regulations.

Report of Alleged Classified Employee-to-Student Sexual Harassment – December 2015

Findings of Fact

On December X, 2015, the District learned of a possible inappropriate relationship between a classified (i.e., non-credentialed) employee and a XX-year-old student. On January XX, 2016, the District initiated an independent investigation by an outside investigator after a XXXXXXXX teacher told the Assistant Principal that the classified employee and the student were "dating", and that there was a "hazy line between students and staff with someone like [the classified employee]."

The outside investigator reviewed relevant documents and interviewed nine individuals, including the Assistant Principal, the Secondary Campus Supervisor, the Student, the Theater Facilities Supervisor, the Technical Director of Gunn Theater, the Theater Teacher and campus supervisors. The report included summaries of all witness interviews and attachment of eight documents that were reviewed. The investigator noted that she operated with "complete independence as to witness identification, interview content, and preparation of findings." The investigation and 11-page report was completed on February X, 2016.

The investigator used a preponderance of the evidence standard and found that the student and the classified employee were not in a romantic relationship. The investigator found that: 1) a teacher had suspected a dating relationship; 2) the classified employee's supervisor was concerned that the student may be "infatuated" with the classified employee; and 3) two staff knew that the student and the classified employee had driven together in the student's car on dates prior to December X, 2013, and were not certain whether that was permitted by District policy. The investigator also noted that the

Assistant Principal had stated that while non-classified staff receives sexual harassment and appropriate relationship policies and training regarding the same when they are hired, classified employees do not receive such policies and training.

Analysis

Once notice was provided to the Assistant Principal, the District's investigation of the allegations of an inappropriate employee-to-student relationship was prompt (December XX, 2015-February X, 2016). The outside investigator interviewed multiple witnesses, including the student and employee and relevant teachers and administrators, maintained notes, reviewed policies and procedures and relevant documents, and made findings regarding the allegations. However, prior to OCR completing its investigation, the District expressed an interest in entering into a voluntary resolution, and OCR agreed it was appropriate to do so.

Report of Alleged Sexual Assault of a Minor – January 2016

Findings of Fact and Analysis

In January 2016, the current Superintendent informed OCR that on January 14, 2016, the District learned that a teacher at a District elementary school was criminally charged with sexual abuse of a minor for conduct that was alleged to have occurred in 2003 when the teacher was not an employee of the District. The District immediately placed the teacher on administrative leave, until such time as judgment is entered in his criminal case, and provided counseling resources to the school community. In October 2016, the District told OCR that it would be initiating an outside investigation to determine if additional supports were needed. In January 2017, the District reported to OCR that the teacher was still on administrative leave. OCR has a concern because more than a year has passed since the District learned of the alleged sexual abuse, and the District has not completed its inquiry or issued a notice of the outcome to OCR. OCR will review the investigation and notice of the outcome as part of the monitoring of the Agreement.

Behavior Detail Reports for 2011-2012, 2012-2013 and through February 2014

Findings of Fact

BP 5145.7, adopted in August 2011, stated that the Superintendent or designee shall maintain a record of all reported cases of sexual harassment, and the District's current policy BP 5145.7 provides that the Superintendent or designee shall maintain a record of all reported cases of sexual harassment to enable the District to monitor, address, and prevent repetitive harassing behavior.

In response to OCR's request for records of reported cases of sexual harassment, the District provided Behavior Detail Reports) that include conduct of a sexual nature from both PAHS and Gunn for the 2011-2012 and 2012-2013 school years and through February of the 2013-2014 school year. The following are examples of sexual harassment reports documented in Gunn Behavior Detail Reports:

Two female students reported that a male student (Student E) harassed them on Facebook, including by referring to them using obscenities and threatening to "hit [one of the students] so hard until she bleeds." Student E was counseled and warned that continued similar behavior may result in involuntary transfer. A female student reported that Student E groped her breast in class, smacked her bottom,

poured water down her shirt and, on previous occasions, had tried to lift her shirt up. Two other female students stated that Student E pats girls on their bottoms in class, uses language such as "I'd hit that" and states that girls are "hot like porn stars." Student E received a two day suspension, and he and his parents were notified that continued similar conduct would result in a five day suspension. Subsequently, Student E received a five day suspension after he hit a female student on her bottom during class and became aggressive with a teacher.

A female student stated that a male student (Student F) looked up a female student's skirt, stated "your butt is beautiful," and had been telling the female student, "I love you", "you are beautiful" and "I cannot live without you" for most of the semester and ignored her requests that he stop. In response, the Assistant Principal counseled Student F, and he read and signed the sexual harassment policy. Between January 20XX and March of 20XX, Student F was referred for behavior documented in five separate reports. In the first, a female student reported Student F was following her around campus, coming to her class to walk her to her next class, taking pictures of her with his cell phone, drawing pictures of her and texting her. In response, the Dean contacted Student F's father, warned the student that his conduct was harassment, and that if it continued, he would be suspended. In the second, the same female student reported that Student F continued to follow a female student he was warned to stay away from. He received a one day suspension and a warning that continued conduct would result in another suspension and police contact. In a third incident, Student F was referred for telling multiple students that XX XXX XXXXXXXX XX XXXXXX XXX XXXX XXXXXXX XXXXXXXX XX XXX XXXX XXXXXXXXXXXX XXXXXXXXXXXX XXX XXXXXXXXXXX XXX "XXXXXXXX XXX XXXXX XXX XXXXX XX." The Assistant Principal contacted the parents of Student F and the female student, met with Student F and the SRO, and warned Student F not to have any contact with the female student; the Assistant Principal printed months of harassing text messages from Student F to the female student and deleted the pictures and videos of the female student that she could find on Student F's phone. In the fourth incident, Student F was again referred for continued harassment of the same female student; PAPD and Student F's father were notified. Student F was warned that if he continued to follow the female student he would be suspended and may be dropped from his XXXXXXXX class. In the fifth incident, the Assistant Principal gave Student F a suspension after the same female student reported that he continued to follow and approach her on a daily basis; a meeting was to be scheduled to consider removing Student F from his XXXXXXXX class.

OCR reviewed the other Behavior Detail Reports that the District provided; however, a number of the reports did not include information such as whether interim measures were provided or whether notice of the outcome was provided to affected complainants. The District informed OCR that in instances where it provided an interim measure, such as counseling to a complainant, it generally did not assess whether interim measures were effective. In addition, a report made in May 2013 that approximately 100 streaking incidents at PAHS created a hostile environment and a report concerning the alleged sexual assault of a PAHS student were not recorded as required under the District's policies.

Analysis

Although the District's policies in effect for the period under review in OCR's investigation required the District to maintain a record of all reported cases of sexual harassment, and the most recent policy identifies the importance of maintaining such records to enable the District to monitor, address and prevent repetitive harassing behavior, the District did not comply with its policies.

With respect to the information contained in the behavioral reports for all three years, the data provided generally reflects that the school investigated and took some action with respect to all of the incidents reported by the District. However, OCR identified a deficiency because the records related to the majority of oral reports of sexual harassment do not reflect that notice of the outcome was provided to any complainants, and, with respect to the majority of oral reports, there is no information included about interim measures or remedies for complainants. In addition, OCR could not determine from the records that it reviewed whether the District addressed the concerns of affected students or assessed and addressed, as appropriate, whether other actions were needed to address the effects of sexual harassment on the broader school community and prevent its recurrence. Prior to completing the investigation, the District expressed an interest in voluntarily resolving these deficiencies.

CONCLUSION

The District has entered into the enclosed Resolution Agreement (Agreement) to address the deficiencies and violations identified in these consolidated matters. The Agreement includes but is not limited to:

- Revisions to the District's policies so that they are compliant with Title IX requirements;
- Continued development of a confidential tracking system for written complaints and oral reports of sexual harassment, which includes information about remedies and notice of the outcome;
- Guidance and training for staff regarding the revised policy, procedure and complaint tracking system, including with respect to restraining orders and campus interim measures;
- Improvements to the District's assessment of the effectiveness of its school climate initiatives through confidential student and parent surveys and yearly focus groups;
- Consistent with the District's Title IX responsibilities, conduct investigations into:
 - reports of sexual harassment allegations against the former Principal and a former teacher;
 - reports of off-campus sexual harassment/violence incidents involving PAHS students in March 2014 and 2012-2013;
- Review of the behavioral incident reports at Gunn and PAHS for the three years reviewed to determine whether the incidents were handled appropriately under Title IX;
- Review of the District's investigative reports regarding alleged employee-to-student sexual harassment and/or sexual assault reported to OCR by the District in 2016, except as to the classified employee incident, and the District's proposed action plan as to all such incidents; and
- Provision of individual remedies for Student C in case number 09-14-1217.

Based on the commitments made in the enclosed Agreement, OCR is closing the investigation of this complaint as of the date of this letter. When fully implemented, the Agreement is intended to address OCR's compliance concerns in this investigation. OCR will monitor the implementation of the Agreement until the District is in compliance with the statute(s) and regulations at issue in the case. OCR's determination in this matter should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

This letter sets forth OCR's determination in these consolidated OCR cases. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. Please be

advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the Complainant may file another complaint alleging such treatment.

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

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Kendra Fox-Davis or Laura Welp at the San Francisco OCR office at (415) 486-5555.

Sincerely,

/S/

Laura Faer
Regional Director

Enc.