



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGION IX
CALIFORNIA

50 UNITED NATIONS PLAZA
MAIL BOX 1200, ROOM 1545
SAN FRANCISCO, CA 94102

June 23, 2022

VIA ELECTRONIC MAIL

Dr. Tara Taupier
Superintendent
Tamalpais Union School District
ttaupier@tamdistrict.org

(In reply, please refer to case no. 09-18-1466)

Dear Dr Taupier:

This letter is to inform you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against Tamalpais Union High School District (District). OCR investigated whether the District received notice in the 2017-18 school year that the Student¹ was subjected to peer harassment on the basis of sex, including sex stereotyping, at a District high school (School), and whether the District failed to respond in a prompt and equitable manner to notice of the harassment.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), as amended, 20 U.S.C. § 1681 *et seq.*, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in programs and activities receiving financial assistance from the U.S. Department of Education (the Department). The District is a recipient of financial assistance from the Department. Therefore, OCR had jurisdiction to investigate this matter under Title IX.²

OCR reviewed documents provided by the District and the Complainant. OCR also interviewed the Student, the Student's Guidance Counselor at the School (Guidance Counselor), and an Assistant Principal (Assistant Principal 1) at the School. The School's Senior Director of [redacted content] (Senior Director) was present during OCR's interview of Assistant Principal 1 and provided additional information. Based on the evidence OCR obtained and the applicable legal standards, OCR found that the District failed to respond in a prompt and equitable manner to repeated notice of sex-based harassment of the Student in [redacted content] of 2018, as required by the Title IX regulations in effect at that time. As a result of the District's failures,

¹ OCR previously provided the District with the identity of the Student. We are withholding her name from this letter to protect her privacy.

² Amendments to the Title IX regulation went into effect on August 14, 2020 and can be viewed [here](#). However, OCR investigated this case based on the Title IX regulation that was in effect in the 2017-2018 school year when the alleged harassment incidents occurred. You can find that regulation [here](#).

the harassment continued and the Student continued to experience a hostile environment on the basis of sex in violation of Title IX until the Student graduated in [redacted content]. OCR also found that the District's investigation of an incident involving alleged sex-based harassment on [redacted content], 2018, was neither adequate nor equitable, both of which Title IX required. To resolve OCR's findings of noncompliance, on June 22, 2022, the District entered into the enclosed resolution agreement (Agreement) that OCR will monitor to ensure the District's compliance with the Agreement's terms and the Title IX obligations at issue in this case.

Legal Standards

The regulation implementing Title IX, at 34 C.F.R. § 106.31(a), states as follows: "Except as provided elsewhere in this part, 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 academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives Federal financial assistance."

Sex-based harassment, including that predicated on sex-stereotyping, is covered by Title IX if the harassment is sufficiently serious to deny or limit the individual's ability to participate in or benefit from the recipient's education program or activity.

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

Under the Title IX regulations in effect at the time of the incidents at issue in this case, a district had a responsibility to respond promptly and effectively to notice of sex-based harassment. *See* 34 C.F.R. § 106.8(b). When the district has actual or constructive notice of such harassment, it must take appropriate steps to investigate or otherwise determine what occurred, and it may be appropriate for a school to take interim measures prior to or during the investigation of a complaint. Interim measures are individualized services offered as appropriate to either or both the reporting and responding parties involved in an alleged incident of sex-based harassment. Interim measures include counseling, extensions of time or other course-related adjustments, modifications of work or class schedules, campus escort services, restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar accommodations. If a school's investigation or other appropriate steps to determine what occurred identify student-on-student sex-based harassment that creates a hostile environment, schools are responsible for taking prompt and effective action to stop the harassment and prevent its recurrence. A school also may be responsible for remedying the effects of the harassment on the student who was harassed.

Factual Findings

The Student is a transgender girl who was a [redacted content] at the School during the 2017-2018 school year. On [redacted content], 2017, the Guidance Counselor sent an email to the Student's teachers informing them of the Student's preferred female name and that she had "come out in her classes" at the School the previous spring.

Fall 2017

During the 2017-2018 school year, the Student was enrolled in an [redacted content] class at the School where she was in a group with a male student (Student 2). According to the Student, Student 2 harassed her throughout the school year in the class because she is transgender. The Student stated that this harassment included that Student 2 made fun of and intentionally mispronounced the Student's female name, referred to her by her previous male name, mixed up male and female pronouns when referring to her, and mocked her voice. She also stated that Student 2 joked about her "[redacted content]," her appearance, [redacted content], and his perception of [redacted content], saying that one day she would be "[redacted content]."

On [redacted content], 2017, the Student's mother and the Guidance Counselor exchanged emails. In her emails, the Student's mother stated that during the [redacted content] class, a student who had previously directed "insults" at the Student (who was subsequently identified as Student 2) [redacted content]. The Student's mother asked the Guidance Counselor whether the Student should consider changing out of the [redacted content] class after the semester was over. In reply to the Student's mother's email, the Guidance Counselor stated that she was waiting to hear back from Assistant Principal 1 regarding a different situation with the Student and that this incident "should be handled too," but if it was not handled by Assistant Principal 1, the Student could drop the class. The Student's mother replied that the Student did not want to mention the incident to the [redacted content] class teacher (Teacher).

The Guidance Counselor told OCR that she did not understand at the time that Student 2's alleged comment about [redacted content] was a derogatory reference to the Student identifying as female, nor did the Guidance Counselor know that the student who made the comment was Student 2. The Guidance Counselor stated that she understood that the comment had upset the Student, and so she communicated it to Assistant Principal 1. The Guidance Counselor further stated that after the [redacted content], 2018 incident, she became aware from the Student's mother that the Student was "subjected to relentless gender comments" on a daily basis including that Student 2 had made comments about the Student's appearance, [redacted content], as well as had asked her, "[redacted content]?". The Guidance Counselor also told OCR that she learned from the Student that Student 2 had told her, "[redacted content]." The Guidance Counselor understood from the Student that she did not feel that reporting the incidents would make a difference.

During OCR's interview with the Student, her description of the sex-based harassment she endured and reported to the School was consistent with the Guidance Counselor's description to OCR. For example, according to the Student, Student 2 told two of the Student's friends in [redacted content] 2017 or [redacted content] 2018 that [redacted content]. The Student told OCR that Student 2 made "jokes" several times about [redacted content], which the Student

believed were references to [redacted content]. The Student also stated that she told the Guidance Counselor that she was feeling harassed by Student 2, and that the Guidance Counselor shared the Student's concerns with the administration, but that "nothing happened" as a result. The Student also told OCR that it felt like the District was willing to overlook the harassment and did not care that she had been targeted.

The Incident Between the Student and Student 2 of [redacted content], 2018

On [redacted content], 2018, the Student and Student 2 engaged in a verbal interaction in [redacted content] class that resulted in the Student [redacted content] Student 2 ("the incident"). The Student told OCR that she [redacted content] him because he mocked her voice and had been harassing her in class over the course of the school year.

The Teacher intervened, separated the students, and discussed with them individually what happened. After class, the Teacher emailed Assistant Principal 1 and the [redacted content] and informed them of the incident, including that the Student had stated that Student 2's "ongoing bullying" contributed to the incident. The Teacher identified a witness to the incident and asked that the administrators follow up with the witness. The Teacher also emailed the Student's mother and informed her of the incident, including that the Student said that Student 2 had been "bullying" her "for some time."

The Teacher also emailed the Guidance Counselor, informed her of the incident, and stated that it seemed that the Student had "lashed out" in response to "bullying from [Student 2]." The Teacher further stated that he was not aware of the alleged harassment until that day. The Guidance Counselor responded that she had heard about the incident, that she was not previously aware that the Student was being "targeted for her gender," and that the Student had protections under Title IX. The Guidance Counselor asked the Teacher to let her or members of the administration know of any further sex-based harassment of the Student. According to the District, the Guidance Counselor reported the incident as a possible Title IX incident to the school administration later that day.

The District's Investigation of the Incident of [redacted content], 2018

Assistant Principal 1 investigated the [redacted content] incident between the Student and Student 2.³ The District provided OCR with Assistant Principal 1's notes from her interviews with Student 2 and four student witnesses whom the Student had identified, as well as with written statements from the Student and Student 2 taken on the day of the incident. The District did not provide documentary evidence that Assistant Principal 1 interviewed the Student about the incident.

The Student's written statement indicated that from the start of the [redacted content] class in Fall 2017, Student 2 repeatedly made snide comments about the Student being transgender. The Student stated that Student 2's comments included jokes about the Student's appearance, her sex, [redacted content], her voice, [redacted content] and that Student 2 [redacted content]. The

³ Assistant Principal 1 informed OCR that she is responsible for investigating incidents of student-on-student harassment and that her practice is to obtain information from the alleged victim, any witnesses, and the alleged harasser. She stated that she had received training on how to conduct student-on-student harassment investigations.

Student stated that Student 2 made the comments nearly every day and “in ways where he could get away with it,” such as whispering to the Student when no one else could hear in order to get a reaction from her. The Student also stated that only Student 2 and one other student in the class [redacted content].

The Student’s statement noted that on the day of the incident, [redacted content]. She further stated that Student 2 overheard her and said to her, [redacted content] and that when she repeatedly asked Student 2 what he meant, he did not respond except to call her annoying and mock her voice. The Student stated that she then “snapped” and [redacted content], and the Teacher [redacted content] and asked what happened. According to the Student, Student 2 responded that he had made a comment about the Student [redacted content] and she responded that this was a “lie” and told the Teacher “what had been happening” in class all year. The Student identified four witnesses to the incident or to Student 2’s alleged harassment of her “over the year.”

Student 2’s written statement indicated that he heard the Student make “some comment about [redacted content]” [sic] and that he had responded by saying “something along the lines of ‘[redacted content].’” He stated that he ignored the Student when the Student repeatedly asked him what he had meant, and that the Student then started [redacted content].

Assistant Principal 1’s notes of her interview of Student 2 indicated that he clarified that his comment, “[redacted content]” referred to the Student [redacted content] previously that day in class, and not to the Student being transgender. The notes also indicated that Student 2 “admitted that he may have made other comments that [the Student] thought was [sic] offensive.” The notes did not reflect that Assistant Principal 1 asked Student 2 about the “other comments” or the comments that the Student’s written statement alleged had been made throughout the school year. The notes indicated that Student 2 told Assistant Principal 1 that “he may have [redacted content]” during the incident on [redacted content], 2018.

With regard to the four witnesses identified by the Student, Assistant Principal 1’s interview notes indicate that three of the student witnesses (Witnesses 1, 2 and 4) stated that Student 2 had said something that upset the Student, that she became angry, and that [redacted content]. Witness 1 stated that “[Student 2] said something that upset [the Student]” and “wouldn’t repeat it when [the Student] asked him to” and then Witness 1 saw them [redacted content]. Witness 4 stated that “[Student 2] brought something up” and the Student tried to get him to repeat it and then “[redacted content].” Witness 2, whom the Student stated was the only student in the class other than Student 2 who [redacted content], told Assistant Principal 1 that Student 2 was “in some ways the aggressor” during the incident, including that he “[redacted content],” “used profanity,” and told the Student that [redacted content]. Witness 2 further informed Assistant Principal 1 that Student 2 had made “homophobic” comments in the past and “took things too far,” and that by [redacted content], the Student was trying to “send a message” to Student 2. Witness 2 also told Assistant Principal 1 that he had spoken with Student 2 during the [redacted content] break ([redacted content], 2018), and that Student 2 had called the Student an “[redacted content].” Witness 3 told Assistant Principal 1 that Student 2 had made comments in the past about the Student’s [redacted content], and that Student 2 seemed “curious but confused” by the Student, which had the effect of making Student 2 “seem rude.”

On [redacted content], 2018, Assistant Principal 1 emailed Assistant Principal 2, the [redacted content], and the Guidance Counselor and stated that she (Assistant Principal 1) had spoken with the Student's mother, who said that she had reported harassment of the Student by Student 2 during the previous semester and had asked about possibly moving the Student out of the [redacted content] class in response to the harassment. In her email, Assistant Principal 1 stated that the Student had mentioned being harassed by Student 2 in her written statement as well, and Assistant Principal 1 asked if the staff members had any information about these allegations. In her [redacted content], 2018 reply to Assistant Principal 1, the Guidance Counselor stated that she did not recall any conversation with the Student or her mother about Student 2 or with the Student about being "targeted by a student for her gender" and wanting to move classes because of it. On [redacted content], 2018, the Guidance Counselor forwarded to Assistant Principal 1 her [redacted content] email exchange with the Student's mother and stated that there was nothing in the email exchange indicating that the Student had been targeted for her gender, as well as that the exchange did not mention Student 2 by name. The Guidance Counselor also stated that she could not recall further communications with the Student's mother about the "[redacted content] comment," and thought that Assistant Principal 1 or Assistant Principal 2 "took it from there."

On [redacted content], 2018, the mother of Student 2 sent an e-mail to Assistant Principal 1 expressing her dissatisfaction with the District's investigation of the [redacted content] incident. The mother's email referred to her communication with Assistant Principal 1 on [redacted content]: "In my conversation with you last [redacted content] you said your concerns were about [Student 2's] comments and [the Student's] safety and made some allusion to gender. According to your perception, [the Student] [redacted] on [Student 2] because of words Student 2 spoke that offended the Student's gender. [redacted content] Nevertheless, you threatened [Student 2] with suspension and said nothing about your intentions regarding [the Student]."

On [redacted content], 2018, the Student's mother emailed Assistant Principal 1, the Teacher, the [redacted content], and the Guidance Counselor and stated that Student 2 had been "bullying [the Student] about being transgender since the beginning of the school year," and that the Student had not reported the harassment to the Teacher because "[the Student]'s not one to complain." The Teacher responded later that day and stated that he was very upset by this information, and that he would rearrange the class so that the Student and Student 2 were not in the same group. The Teacher also offered to have the [redacted content] speak to the class about kindness and community; the Student's mother declined this offer. There is no evidence that Assistant Principal 1 replied to the Student's mother's statement that Student 2 had been harassing the Student about being transgender since the beginning of the school year.

On [redacted content], 2018, Assistant Principal 1 emailed Student 2's parents about the [redacted content] incident and to inform them that the School was creating a safety plan to protect Student 2. Assistant Principal 1 also informed Student 2's parents that she "plan[ne]d to investigate the allegations of [Student 2]'s ongoing harassment" of the Student, and that she would let them know the outcome of this investigation.

On [redacted content], 2018, Assistant Principal 1 emailed Student 2's parents and clarified that the safety plan included that the Student and Student 2 would not work together and would not have verbal or physical contact in class. Assistant Principal 1 also offered to switch Student 2

into another [redacted content] class and to create a travel route through the School so that the two students could avoid hallway encounters. Assistant Principal 1 stated in the e-mail that when she interviewed Student 2 about the [redacted content] incident, Student 2 stated that he had previously made comments to other students “about how he did not [redacted content].”

The District stated that it took steps after the [redacted content] incident to address what had happened, including assigning both students new partners in the [redacted content] class, instructing them to have no physical or verbal communication, and having the Teacher speak to the class generally about kindness and respect. The Guidance Counselor told OCR that both students were directed not to be near one another and not to speak to each other. On [redacted content], 2018, the Teacher emailed the Student’s mother and said that he had spoken to the class, generally, about the importance of kindness and respect.

The District disciplined the Student for the [redacted content] incident by suspending her for one day ([redacted content]) for having caused [redacted content] to Student 2. The District’s narrative response to OCR submitted by the Senior Director informed OCR that no disciplinary action was taken against Student 2 for his conduct during the [redacted content] incident because Student 2 “would not admit to engaging in any harassing behavior and no witnesses were found to corroborate [the Student’s] version of events.”

OCR explored the reasons for not disciplining Student 2 in an interview with the Senior Director and Assistant Principal 1. Initially in the interview, Assistant Principal 1 stated that she, in consultation with the Senior Director, the Principal, and possibly Assistant Principal 2, made the determination that Student 2’s conduct on [redacted content] did not constitute harassment “based on a protected basis,” and that in making this determination they considered the Student’s version of what happened and “witness information.” Assistant Principal 1 then clarified that the District was “unable to determine whether it was harassment at that level.” When OCR asked why, Assistant Principal 1 asked the Senior Director to help her answer the question and stated that it was reported as one incident, not something that was “ongoing harassment.” However, the Senior Director then told OCR that from what he had heard from Assistant Principal 1, the Student felt like she had reached a breaking point on [redacted content] as a result of the “ongoing harassment” and that she included this information in her written statement. The Senior Director added that prior to [redacted content], the Teacher was not aware of the harassment and no one had reported it.

During the interview, the Senior Director confirmed that the District’s investigation of the [redacted content] incident took into account both students’ statements as well as the observations of the Teacher and four to five other students in the class. The Senior Director told OCR that it was “more probable that generally some comment had been made” by Student 2, but it could not be determined whether “that was going on in the moment” of the [redacted content] incident, and as a result, there was a finding that there was insufficient evidence that Student 2 harassed the Student. OCR asked the Senior Director and Assistant Principal 1 why the District concluded that there was insufficient evidence to find that Student 2 harassed the Student based on a lack of witness corroboration of the Student’s version of the events and Student 2 not admitting to any harassing behavior when Witness 3 stated that Student 2 made comments in the past about the Student’s [redacted content]; Witness 4 stated that Student 2 made homophobic comments in the past, stated that the Student “[redacted content]” during the incident, and later

called the Student an “[redacted content]”; and Student 2’s written statement refers to the Student using male pronouns and Student 2 admitted during the interview that he may have made other comments that the Student found offensive. In response to this question, Assistant Principal 1 stated that, “all that evidence was available to us as well,” and “there was no determination made.”

The District’s Response to the Allegations of [redacted content], 2018 that Student 2’s Harassment of the Student Dated Back to the Start of the 2017-2018 School Year

As stated above, Assistant Principal 1 informed Student 2’s parents on [redacted content], 2018, that she planned to investigate the allegations of Student 2’s “ongoing harassment” of the Student. The District provided no evidence that such an investigation took place. Assistant Principal 1 told OCR that there was no separate investigative file of her investigation of Student 2’s alleged ongoing harassment of the Student, and that she did not conduct interviews other than those she had already conducted as part of her investigation of the [redacted content], 2018 incident.

There was no evidence of a reply from Assistant Principal 1 to the Student’s mother’s email on [redacted content], alleging Student 2’s bullying of the Student since the fall. The Student’s mother told OCR that Assistant Principal 1 did not share any information or results of a potential investigation of Student 2’s harassing comments to the Student before the [redacted content] incident. The District did not provide OCR with any documentary evidence that it informed the Student’s mother of the outcome of its investigation of the alleged ongoing harassment. Assistant Principal 1 told OCR that she did not inform the Student’s parents of the outcome of her investigation of Student 2’s alleged ongoing harassment of the Student. She stated that it is “generally not the School’s practice to report out on any conversations or disciplinary consequences on other students.” Though Assistant Principal 1 told Student 2’s parents that she would notify them of the outcome of her investigation of his alleged ongoing harassment of the Student, Assistant Principal 1 told OCR that she could not recall if she had informed Student 2’s parents of the outcome, and there is no evidence that the District informed them of the outcome.

Allegations of Ongoing Harassment After the Incident of [redacted content], 2018

On [redacted content], 2018, the Student’s mother emailed the Teacher and Guidance Counselor and stated that the Student “endures bullying because she’s transgender” and that she hoped that the Student could appeal her suspension for the [redacted content] incident so that she could [redacted content].⁴ The mother also asked about the appeal process, whether she and the Student “need to file a Title IX complaint,” and what the School was doing in response to Student 2’s continued “[t]easing, mocking, and disrespecting” the Student. The Teacher responded that he had “reprimanded [Student 2] a number of times,” would continue to do so, and had also addressed the issue with the other students in the class. The Teacher included Assistant Principal 1 on his reply email to the mother, noting his assumption “that both students were suspended – [the Student] for [redacted content], the other student [Student 2] for bullying,” and asking Assistant Principal 1 to confirm. The emails produced by the District do

⁴ The District permitted the Student to [redacted content].

not include a reply email from Assistant Principal 1. On [redacted content], 2018, the Guidance Counselor responded that the Senior Director could help the Student “know [about] her rights.”

The Guidance Counselor informed OCR that on [redacted content], 2018, the Student told her that Student 2 was continuing to harass her, including that Student 2 whispered her previous male name to her when she walked by him on [redacted content], 2018, the day she returned to the [redacted content] class after her one-day suspension. He also sat near her and made other comments under his breath, even though the School had instructed them to stay away from each other. According to the Guidance Counselor, the Student said that Student 2’s actions made her feel “unsafe” and “on edge.” The Guidance Counselor told OCR that every time the Student reported harassment to her, she informed the School administrators of the alleged harassment orally and/or through email. The District’s data response did not include any emails from the Guidance Counselor to School administrators regarding Student 2’s alleged continued harassment of the Student, and Assistant Principal 1 told OCR that she did not recall the Guidance Counselor informing her that Student 2 continued to harass the Student after the incident of [redacted content], 2018.

On [redacted content], 2018, the Student’s mother emailed Assistant Principal 1 and the Guidance Counselor and stated that Student 2 “who harassed the Student in [the [redacted content] class] is still taunting her.” In the email the Student’s mother stated that she was considering filing a Title IX complaint but did not want to cause the Student additional stress, and that she hoped the School would deal with Student 2’s continued harassment of the Student. In her reply to the Student’s mother, Assistant Principal 1 stated that she had not been “aware that [the Student] was experiencing this harassment since the Fall semester” and that she would contact the Student the following day to obtain more information. The Guidance Counselor told OCR that District staff knew about this continued harassment from the Student’s mother and the Guidance Counselor, and that the School did not take any additional measures.

Assistant Principal 1 told OCR that after receiving the [redacted content], 2018 email from the Student’s mother, she “probably” spoke to the Student, but that she could not recall what the Student had said other than that she did not provide very much information. Assistant Principal 1 could not recall whether she spoke to Student 2. Assistant Principal 1 stated that generally she tells students that she “cannot do much” if they do not share more information, and that in this case she “didn’t have additional information and [the Student] wasn’t interested in moving forward.” She also stated that after her conversation with the Student in [redacted content] 2018, other staff members continued to check-in with the Student and provide her with support. The Guidance Counselor told OCR that she and the [redacted content] supported the Student, including advocating for her to be able to [redacted content]. Despite this support, the Guidance Counselor stated the Student struggled throughout the school year, her grades declined, and she did not feel safe on campus as a result of the continuing harassment. The Guidance Counselor stated that during their counseling meetings, the Student would be depressed [redacted content].

The Student told OCR that she felt like Student 2 had “gotten away with” the harassment, he knew it, and the harassment made her feel awful. The Student stated that she did not feel like she could speak up about the harassment with School officials, and that when she did, her concerns were not taken seriously, including that the School did not take seriously what had led up to the incident in [redacted content] 2018.

The Student and Student 2 graduated from the School in [redacted content].

Analysis

Under the Title IX regulations in effect at the time of the incidents in this case, a school had a responsibility to respond promptly and effectively to notice of sex-based harassment, including taking appropriate steps to investigate or otherwise determine what occurred and taking appropriate steps to stop the harassment and prevent its recurrence. As described below, OCR found that the District failed to respond promptly and effectively to repeated notice of ongoing sex-based harassment of the Student by Student 2. Specifically, OCR found that the District failed to investigate alleged “ongoing” sex-based harassment of the Student by Student 2 dating back to the beginning of the school year, despite being put on notice of this ongoing harassment as a result of the incident on [redacted content], 2018, and despite Assistant Principal 1’s plan to conduct this investigation as articulated in her email to Student 2’s parents on [redacted content], 2018. OCR further found that the District failed to respond promptly and effectively to notice in [redacted content] 2018 that Student 2 continued to engage in sex-based harassment of the Student. As a result of these failures, OCR found that the District permitted the Student to be subjected to a hostile environment that was sufficiently serious to deny or limit the Student’s ability to participate in or benefit from the School’s program. OCR also found that the District’s investigation of the [redacted content] incident itself was not adequate or equitable.

Based upon the preponderance of the evidence, OCR determined that the District failed to investigate whether Student 2 had engaged in ongoing sex-based harassment of the Student dating back to the start of the school year or to otherwise respond effectively to multiple forms of notice of this harassment between [redacted content] and [redacted content], 2018. The evidence for this notice includes: (1) the Student’s written statement about the [redacted content] incident, which alleged serious sex-based harassment since Fall 2017; (2) Assistant Principal 1’s email to District staff on [redacted content], 2018, memorializing her conversation with the Student’s mother about the [redacted content] incident and sex-based harassment from the fall; (3) the Guidance Counselor’s email of [redacted content], forwarding the Student’s mother’s emails from [redacted content] 2017 about a boy insulting the Student in the [redacted content] class and asking her if she [redacted content]; and (4) the Student mother’s email to Assistant Principal 1 on [redacted content], 2018, stating that Student 2 had been “bullying [the Student] about being transgender since the beginning of the school year.” Faced with this notice, the District knew it should investigate because on [redacted content], 2018, Assistant Principal 1 emailed Student 2’s parents and stated that she “plan[s] to investigate the allegations of [Student 2]’s ongoing harassment of [the Student] and will let [them] know the outcome of this investigation.” However, the District produced no evidence indicating that after [redacted content], it investigated this alleged ongoing harassment and whether it had created a hostile environment for the student based on sex. Assistant Principal 1 told OCR that there was no separate investigative file of the alleged ongoing harassment by Student 2, and that she did not conduct interviews other than those she had already done for her investigation of the [redacted content] incident. Those interviews with three of the four student witnesses corroborated some of the prior sex-based harassment by Student 2 that the Student had described in her written statement. Despite this evidence supporting the Student’s and her mother’s allegations of ongoing harassing comments dating back to the fall, the District did not produce any evidence

that it interviewed the Student or Student 2 about these ongoing harassing comments or otherwise investigated them after [redacted content].

OCR also determined that the few steps the District took to respond to the [redacted content] incident and notice of sex-based harassment that preceded this incident were not reasonably calculated to prevent recurrence of the harassment, and as a result, the evidence showed that the Student was subjected to further harassment by Student 2. The District stated that following the [redacted content] incident it assigned both students new partners in the [redacted content] class, instructed them to have no physical or verbal communication, and permitted the Teacher to speak to the class generally about kindness and respect. There was no evidence that the District provided the Student with any other interim measures despite notice that she had allegedly been harassed for many months. In addition, the three measures the District did take proved insufficient to prevent recurrence of the reported sex-based harassment, as evidenced by the Student's mother subsequently reporting to School staff additional harassment in her email of [redacted content], 2018. While the Teacher's [redacted content] reply to her email stated that he had "reprimanded [Student 2] a number of times" and would continue to do so, this measure also proved inadequate because the Student's mother reported that Student 2 continued to harass the Student in her emailed reports of [redacted content] and [redacted content], 2018.

OCR further found by a preponderance of the evidence that the District failed to respond promptly and effectively to these three reports in [redacted content] 2018 that Student 2 continued to engage in sex-based harassment of the Student. OCR found no evidence that the District investigated the Student's mother's [redacted content] and [redacted content] reports of Student 2's ongoing harassment of the Student. The District claims that it initiated an investigation of the alleged ongoing harassment reported by the Student's mother on [redacted content], and then ended the investigation because Assistant Principal 1 determined that the Student "wasn't interested in moving forward" and the District "didn't have additional information." Yet Assistant Principal 1 could not confirm that she spoke to the Student or Student 2; Assistant Principal told OCR that she "probably" spoke to the Student but could not recall what the Student said and could not recall if she spoke to Student 2. The District also did not produce any documentary evidence that it investigated the mother's report of [redacted content], in contrast to the witness statements and interview notes produced for its investigation of the [redacted content] incident.

Given what the District knew about Student 2's alleged ongoing harassment of the Student, the District's responses to such notice in [redacted content] remained inadequate and the limited steps taken by the District to separate the Students in the [redacted content] class were not effective in preventing a recurrence of sex-based harassment by Student 2. Sex-based harassment can create a hostile educational environment when the harassment is sufficiently serious to deny or limit the individual's ability to participate in or benefit from the recipient's education program or activity. The Student reported to the Guidance Counselor that as a result of Student 2's ongoing harassment, she felt unsafe and on edge around Student 2 for the remainder of the school year and that her grades declined. The Guidance Counselor confirmed that the Student reported not feeling safe on campus as a result of Student 2's ongoing harassment and that she would be depressed during their counseling meetings [redacted content].

OCR therefore finds that the District repeatedly failed to respond promptly and effectively to notice of sex-based harassment that the Student was experiencing and that, as a result, the District permitted the Student to be subjected to a hostile environment that denied or limited her ability to participate in or benefit from the district's program on the basis of sex in violation of Title IX.

Lastly, OCR finds that while the District conducted a prompt investigation of the [redacted content] incident, it did not conduct an adequate or equitable investigation into whether Student 2 had engaged in sex-based harassment immediately prior to the [redacted content]. For example, the District gave Student 2 an opportunity to present his version of the incident through an interview as well as a written statement, but the District did not interview the Student to obtain information about her version of the incident or about her allegations of prior serious sex-based harassment as described in her written statement. Additionally, Assistant Principal's interview notes include that Student 2 admitted that he said something that the Student thought was a "transgender joke" and "admitted that he may have made other comments that [the Student] thought was [sic] offensive." Despite these admissions, the notes do not reflect that Assistant Principal 1 asked Student 2 about these "other comments" or the numerous sex-based harassing comments alleged in the Student's written statement, including whether he made jokes about the Student's appearance, gender, name, voice, [redacted content], her [redacted content], and her "[redacted content]," or if he had [redacted content].

In addition, the District's asserted bases for its conclusion that there was insufficient evidence that Student 2 harassed the Student prior to the [redacted content] on [redacted content] do not support that conclusion. Through its narrative and an interview with Assistant Principal 1 and the Senior Director, the District told OCR that there was insufficient evidence of such harassment because (1) Student 2 did not admit to it, (2) the Student did not report it as ongoing harassment at the time, and (3) no witnesses corroborated the Student's version of what happened during the [redacted content] incident. However, the District provided OCR with evidence that did not support these bases. First, as noted above, Student 2 admitted to Assistant Principal 1 that he said something that the Student thought was a "transgender joke," he may have made "other comments" that the Student found offensive, and "he may have [redacted content] [the Student] back" during the incident. Second, the Student's written statement plainly alleges ongoing sex-based harassment throughout the school year and her mother's email to Assistant Principal 1 and other staff on [redacted content] alleges ongoing harassment as well. And immediately after the incident, the Teacher notified Assistant Principal 1 that the Student said that Student 2 had been saying negative things to her "all year."

Third, the Student's written statement included that the Student 2 had mocked her voice immediately prior to the [redacted content] as well as had commented that she had "[redacted content]." Witnesses 1, 2, and 4 corroborated portions of the Student's version of events, as discussed above. Witness 2 stated that Student 2 "[redacted content],"⁵ "used profanity," and told the Student that "[redacted content]." In addition, Witness 2 stated that during the [redacted content] break, Student 2 had called the Student an "[redacted content]." Finally, according to the email from Student 2's mother to Assistant Principal 1 on [redacted content], 2018, the two had spoken the day of the [redacted content] incident and Assistant Principal 1 perceived it as

⁵ Student 2 admitted that he may have [redacted content] the Student in his interview with Assistant Principal 1.

Student 2 having said words that offended the Student's sex before the fight, and the Assistant Principal had conveyed concerns about the Student's safety to Student 2's mother.

This evidence the District obtained while investigating the [redacted content] incident should have led it to follow through on its stated plan to investigate the Student's and her mother's allegations of ongoing sex-based harassment dating back to Fall 2017. Instead, the District failed to promptly and effectively respond to this notice in [redacted content] 2018 and again in [redacted content] of 2018. These repeated failures violated Title IX and permitted the Student to be subjected to a hostile environment.

Resolution

To address OCR's findings, on June 22, 2022, the District entered into the enclosed resolution agreement (Agreement). Under the Agreement, the District will offer to reimburse the Student for costs related to counseling and ensure that its policies and grievance procedures to address sex-based harassment comply with Title IX, including by clarifying in its policies that such harassment includes harassment based on sex stereotyping. The District also agreed to issue a guidance memorandum to all School staff, including administrators and Guidance Counselors, regarding the District's obligation to respond promptly and effectively to complaints of sex-based harassment, including harassment based on sex stereotyping, and to provide training on Title IX and the District's grievance procedures for addressing complaints of sex-based harassment to all School staff with responsibility for investigating complaints of sex-based harassment.

Conclusion

This concludes OCR's investigation of the complaint and 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. OCR is closing the investigation of this complaint as of the date of this letter and notifying the Complainant concurrently.

This letter sets forth OCR's determination in an individual OCR case. 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, retaliate, or discriminate against any individual because the individual has filed a complaint or participated in the complaint resolution process. If this happens, he or she may file a retaliation complaint with OCR.

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, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions regarding this letter, please contact Matthew Wood, Civil Rights Attorney, at Matthew.Wood@ed.gov.

Sincerely,

/s/

Ava De Almeida Law
Team Leader

Encl.