



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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SAN FRANCISCO, CA 94105

REGION IX  
CALIFORNIA

November 6, 2013

Bruce Harter  
Superintendent  
West Contra Costa Unified School District  
1108 Bissell Avenue  
Richmond, CA 94801

(In reply, please refer to case number 09-10-5002.)

Dear Superintendent Harter:

This letter confirms the resolution of the compliance review that was initiated by the U.S. Department of Education (Department), Office for Civil Rights (OCR) on March 31, 2010. OCR conducted the compliance review pursuant to Title IX of the Education Amendments of 1972 (Title IX), as amended, and its implementing regulation, 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in programs and activities receiving financial assistance from the Department. The compliance review assessed whether the West Contra Costa Unified School District (district) responded promptly and effectively to sexual harassment and sexual violence. Additionally, OCR reviewed the district's policies and procedures, appointment of a Title IX coordinator, and compliance with Title IX nondiscrimination notice requirements.

The district comprises 37 elementary schools, six middle schools and six high schools in addition to a number of alternative, continuation and charter schools. In 2012-2013, the total student enrollment was 30,398, of whom 51.64% were male, 51.2% were Hispanic, 20.2% were African American, 10.8% were white, 10.3% were Asian, and 33.2% were English Learners.

OCR conducted onsite investigations at three high schools (Richmond, Kennedy, Pinole Valley), three middle schools (Portola, Helms, Pinole), one elementary school (Bayview), and one continuation school (Harbour Way Academy). OCR interviewed students, parents, administrators, teachers, school resource officers, counselors, psychologists and other district and school staff. OCR's investigation included an examination of the district's policies and procedures, responses to sexual harassment, coordination of Title IX enforcement, training, and notice of nondiscrimination.

Based on its investigation, OCR concluded that the district is in violation of Title IX. OCR found that the district did not respond promptly and effectively to the sexual harassment of students, including sexual assaults and other verbal and physical conduct of a sexual nature, that resulted in a sexually hostile environment that denies or limits students' ability to participate in or benefit from the district's education program and activities. Although sexually harassing

behavior permeates the educational environment at the school sites, the district has not undertaken corrective action designed to stop the harassment, prevent its recurrence, eliminate any hostile environment, and remedy the effects on the victim and other adversely impacted individuals in the same environment. Additionally, OCR found that the district is not in compliance with the procedural requirements of Title IX. OCR's findings are set forth in detail below.

OCR acknowledges that the district has several relevant programs designed to serve its student population, including violence prevention programs.

## **LEGAL AUTHORITY**

The regulation implementing Title IX, at 34 C.F.R. §106.31(a), 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 a recipient. Sexual harassment that creates a hostile environment is a form of sex discrimination prohibited by Title IX.<sup>1</sup> 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, such as sexual assault or acts of sexual violence. Sexual harassment of a student creates a hostile environment if the conduct is sufficiently serious that it denies or limits a student's ability to participate in or benefit from the recipient's program.

In determining whether this denial or limitation has occurred, OCR examines all the relevant circumstances from an objective and subjective perspective, including: the type of harassment (e.g., whether it was verbal or physical); the frequency and severity of the conduct; the age, sex, and relationship of the individuals involved (e.g., teacher-student or student-student); the setting and context in which the harassment occurred; whether other incidents have occurred at the district; and other relevant factors. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the harassment is physical. For example, a single instance of rape is sufficiently severe to create a hostile environment.

If a district knows or reasonably should have known about sexual harassment that creates a hostile environment, Title IX requires the recipient to take immediate action to eliminate the harassment, prevent its recurrence, and address its effects. When responding to alleged sexual harassment, a district must take immediate and appropriate action to investigate or otherwise determine what occurred. If an investigation reveals that discriminatory harassment has occurred, a district must take prompt and effective steps reasonably calculated to end the

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<sup>1</sup> The applicable legal standards described herein are more fully discussed in OCR's 2011 Dear Colleague Letter on Sexual Violence, which is available at: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html> (Apr. 4, 2011). See also OCR's 2010 Dear Colleague Letter on Harassment and Bullying, which is available at: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html> (Oct. 26, 2010); OCR's Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties at: <http://www.ed.gov/about/offices/list/ocr/docs/shguide.html> (Jan. 19, 2001).

harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring.

The Title IX implementing regulation at 34 C.F.R. §106.8(a), requires school districts to designate at least one person to coordinate their efforts to comply with and carry out their responsibilities under Title IX (the Title IX Coordinator), and to notify all students and employees of the name or title, office address, and telephone number of the designated coordinator. In addition, OCR's 2011 Dear Colleague Letter on Sexual Violence states that recipients should notify all students and employees of the electronic mail address of the Title IX coordinator.<sup>2</sup>

The regulation implementing Title IX at 34 C.F.R. § 106.9(a), requires that a district implement specific and continuing steps to notify applicants for employment, students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the district that it does not discriminate on the basis of sex in the education programs or activities it operates; that the prohibition against discrimination extends to employment; and that inquiries to recipients concerning the application of Title IX and its implementing regulation may be referred to the Title IX coordinator or to OCR. The regulation implementing Title IX, at 34 C.F.R. § 106.9(b), requires districts to include the notice of nondiscrimination in each announcement, bulletin, catalog, or application form that it makes available to the persons described above, or which is otherwise used in the recruitment of students or employees.

The Title IX implementing regulation at 34 C.F.R. §106.8(b) requires a school district to adopt and publish grievance procedures providing for a prompt and equitable resolution of student and employee complaints alleging sex discrimination. OCR examines a number of factors in evaluating whether a district's grievance procedures are prompt and equitable, including whether the procedures provide for the following: notice of the procedure to students, parents and employees, including where to file complaints; application of the procedure to complaints alleging discrimination by employees, other students, and third parties; adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; designated and reasonably prompt timeframes for major stages of the complaint process; written notice to the parties of the outcome of the complaint and any appeal; and an assurance that the district will take steps to prevent further harassment and to correct its discriminatory effects on the complainant, if appropriate.<sup>3</sup> Title IX does not require a district to provide separate grievance procedures for sexual harassment complaints; however, a district's grievance procedures for handling discrimination complaints must comply with the prompt and equitable requirements of Title IX. To ensure individuals can invoke these grievance procedures without fear of reprisal, Title IX also prohibits the district and others, including students, from retaliating against any individual "for the purpose of interfering with any right or

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<sup>2</sup> <http://www2ed.gov/about/offices/list/ocr/letters/colleague-201104.html> (Apr. 4, 2011).

<sup>3</sup> See OCR's Revised Sexual Harassment Guidance: Harassment of Students by School Employees, other Students or Third Parties (2001)("OCR's 2001 Guidance"). See also OCR's "Dear Colleague Letter," dated April 4, 2011.

privilege secured by [Title IX],” or because that individual “has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing” under Title IX.<sup>4</sup> Prohibited retaliatory acts include intimidation, threats, coercion, or discrimination against any such individual. Districts therefore should take steps to prevent any retaliation against a student who makes a complaint or any student who provides information regarding the complaint. At a minimum, under Title IX, the district must ensure that complainants and their parents, if appropriate, know how to report any subsequent problems; and should follow up with complainants to determine whether any retaliation or new incidents of harassment have occurred.

Pending the outcome of an investigation, Title IX requires a district to take steps to protect the complainant from further harassment as necessary, including taking interim steps before the final outcome of the investigation. The district should undertake these steps promptly once it has notice of a sexual harassment allegation. It should notify the complainant of his or her options to avoid contact with the alleged perpetrator. For instance, the district may prohibit the alleged perpetrator from having contact with the complainant pending the results of the investigation. When taking steps to separate the complainant and the alleged perpetrator, a district should minimize the burden on the complainant and thus should not, as a matter of course, remove the complainant from classes while allowing the alleged perpetrator to remain. In addition, districts should ensure that complainants are aware of their Title IX rights and any available resources, such as counseling services, and, if appropriate, their right to file a complaint with local law enforcement.

In addition, if there is an incident involving potential criminal conduct, the district must determine, consistent with state and local law, whether appropriate law enforcement or other authorities should be notified. But a district’s Title IX investigation is different from any law enforcement investigation, and a law enforcement investigation does not relieve a district of its independent Title IX obligation to investigate the conduct. Although a school may need to delay temporarily the fact-finding portion of a Title IX investigation while the police are gathering evidence, once notified that the police department has completed its gathering of evidence (not the ultimate outcome of the investigation or the filing of any charges), the school must promptly resume and complete its fact-finding for the Title IX investigation. Moreover, the criminal investigation should not prevent a school from notifying complainants of their Title IX rights and the school’s grievance procedures, or from taking interim steps to ensure the safety and well-being of the complainant and the school community while the law enforcement agency’s fact-gathering is in progress. These duties are a district’s responsibility, regardless of whether a student has complained, asked the district to take action, or identified the harassment as a form of discrimination.

Districts should also inform and obtain consent from the complainant (or the complainant’s parents) before beginning an investigation. If the complainant requests confidentiality or asks that the complaint not be pursued, a district should take all reasonable steps to investigate and

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<sup>4</sup> 34 C.F.R. §§ 106.8(b), 106.71, incorporating by reference 34 C.F.R. § 100.7(e).

respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation. If the complainant insists that his or her name or other identifiable information not be disclosed to the alleged perpetrator, a district should inform the complainant that its ability to respond may be limited. A district also should tell the complainant that Title IX prohibits retaliation, and that school officials will not only take steps to prevent retaliation but also take strong responsive action if it occurs.

Grievance procedures generally may include voluntary informal mechanisms (e.g., mediation) for resolving some types of sexual harassment complaints; however, it is improper for a complainant to be required to work out the problem directly with the alleged perpetrator. The complainant must be notified of the right to end the informal process at any time and begin the formal stage of the complaint process. Moreover, in cases involving allegations of sexual assault/violence, mediation is not appropriate even on a voluntary basis. OCR recommends that districts clarify in their grievance procedures that mediation will not be used to resolve sexual assault/violence complaints.

Throughout the district's investigation and in any hearing, both parties must have equal opportunity to present relevant witnesses and other evidence. Also, in order for a district's grievance procedures to be consistent with the Title IX evidentiary standard, the district must use a preponderance of the evidence standard for investigating allegations of sexual harassment or violence. If a district provides for appeal of the findings or remedy, it must do so for both parties. The district must maintain documentation of all proceedings.

In addition, districts should provide training to employees about its grievance procedures and their implementation. Districts should provide such training to any employees likely to witness or receive reports of sexual harassment and violence; including teachers, law enforcement unit employees, administrators, guidance counselors, health personnel, and other employees. Districts need to ensure that their employees are trained so that they know to report harassment to appropriate officials, and so that employees with the authority to address harassment know how to respond properly.

## **FINDINGS**

### **Procedural Requirements**

When OCR initiated its investigation, the district had not designated an individual to coordinate the district's efforts to comply with and carry out its responsibilities under Title IX, other than in the area of athletics. Also, the district's various publications provided conflicting instructions regarding the appropriate person to contact about sexual harassment matters. Similarly, although the district informed OCR that it uses its Uniform Complaint Procedure (UCP) to resolve sexual harassment complaints, the district's various publications were not consistent on this point. Further, various publications suggested that, unless the UCP is invoked, complaints should be resolved according to school site procedures. The majority of sexual harassment

incidents are addressed at the school site level, but the schools did not have procedures or district-wide guidance for responding; each school responded according to its own protocol.

The district's UCP did not provide for an adequate, reliable and impartial investigation; did not explain how decisions as to whether sexual harassment occurred will be reached; and did not contemplate corrective action designed to stop the harassment, prevent its recurrence, eliminate any hostile environment, and remedy the effects on the victim and other adversely-impacted individuals in the same environment. The procedure also suggested that complainants will be required to meet with the alleged harassers, which is always inappropriate in instances of sexual assault/violence, and that the district may condition formal resolution of the student's complaint on the student's completion of such an informal process.

The majority of administrators and employees interviewed at the schools were not sufficiently aware of the types of conduct that constitute sexual harassment, were uncertain of their responsibility to respond to such conduct, and received minimal training on these issues. Similarly, students were not sufficiently aware of the types of conduct that constitute sexual harassment, and of their right to seek redress for such conduct.

### **Sexual Harassment**

#### ***High Schools: Richmond, Kennedy, Pinole Valley***

##### *Assaults and Employee to Student Harassment*

In October 2009, several men raped a Richmond High School student on school property over a period of hours after she left a homecoming dance. Some of the alleged perpetrators were or had previously attended district schools, including Richmond High School. News outlets reported that several other individuals, including district students, witnessed, photographed, and recorded the rape, but did not report it to police or school officials. This assault was highly publicized by news media throughout the country. Students and staff at Richmond High School were dramatically impacted by both the assault itself and by the ensuing negative press attention focused on the district.<sup>5</sup>

Female students from other district high schools also reported to OCR that, as a result of the rape at Richmond High School, they felt unsafe and at risk of attack in school. Students reported avoiding certain areas of their school campuses, avoiding groups of male students, not participating in educational programs and activities located on campuses that they perceived as unsafe and taking precautions and detours while en route between home and school. Witnesses spoke of students having intense emotional reactions, including fear, anger and sadness.

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<sup>5</sup> In 2010, six males were indicted for the assault. In October 2012, one defendant pled guilty to charges of rape. In January 2013 a second defendant pled guilty to charges of rape. Two other defendants were convicted of rape in August 2013. The remaining two defendants are awaiting trial.

In another incident, a site supervisor at Richmond High School was accused in 2009 of sexually inappropriate conduct with female students who were on the girls' basketball team, of which he was the coach. The site supervisor's alleged conduct included watching female students change clothes and inappropriate touching and sexual comments that occurred in a locker room in the presence of an entire girls' basketball team. The employee also had female students' phone numbers stored in his cell phone.

In October 2008, a Pinole Valley High School student was raped in a classroom by two male students. According to district witnesses, the student body became aware of what happened, but no steps were taken to assess or address the impact of the assault on Pinole Valley students.

#### *Other Physical and Verbal Harassment*

Witnesses at all of the high schools indicated that there is frequent nonconsensual sexual touching among students, most frequently during periods between classes and lunch periods. Inappropriate touching most commonly consisted of groping, grabbing, forced kisses and hugs, and "grinding." However, students and employees also provided many examples of more extreme sexual touching. At one high school, a health center employee informed OCR that every year she counsels students who complain about forced oral sex, being grabbed and held against their will, and being groped.

Students indicated that nonconsensual touching occurred most frequently between male students and female students, but that it was also sometimes from female to male or between students of the same sex. Students stated that they worried about unwanted touching and, as a result, tried to avoid certain areas of campus. Both male and female witnesses informed OCR that this behavior made them feel uncomfortable.

Interviews revealed that female students sometimes submitted to unwanted touching out of fear that if they resisted, it would escalate into something worse. Some female students who experienced unwanted touching said that it made them angry or sad, while others described feelings of resignation and a sense that the conduct was inevitable. Many students told OCR that they frequently worried about themselves or their friends being subjected to unwanted touching, and students described taking measures to try to protect themselves, such as avoiding certain areas of campus or groups of students, and positioning their arms and bodies so as to shield themselves.

Students and staff informed OCR that students frequently call each other names that are sexually derogatory in nature; they stated that this type of language was used throughout the day, every day. Witnesses indicated that they hear sexually suggestive statements made about and to students, slang references to female anatomy and inappropriate song lyrics, and that many rumors circulate concerning the sexual reputation of female students. Witnesses stated that sexually derogatory name-calling was directed most frequently by male students to female students, but that it was also sometimes from female to male or between students of the same sex.

The evidence also showed that students frequently engaged in public consensual sexual touching on campus, including kissing and fondling. Some witnesses also spoke of their belief that students sometimes engaged in sexual intercourse on campus. Many students reported that these public displays and perceptions made them feel uncomfortable.

### *Reporting and Response*

With respect to the rape at Richmond High School, the evidence showed that the district took several responsive measures on that campus. The district worked with law enforcement to help identify and arrest the perpetrators, and expelled the one alleged perpetrator who was then a student. The district also improved security on campus, including installing lights and cameras, hiring additional security personnel and establishing safety protocols for school dances. After the rape, the district organized a vigil in support of the victim that was attended by hundreds of community members. The district worked with community-based organizations to provide students with opportunities to discuss the circumstances of the rape, and to educate and promote dialogue among students about issues related to sex, sexual assault and sexual harassment. However, the district did not take any comprehensive steps to address the impact of the rape on students at other high schools.

In response to the conduct of the Richmond High School site supervisor, the school principal conducted an investigation sufficient to substantiate the employee's conduct. At the conclusion of the investigation, the principal placed a letter in the employee's file and instructed him not to be around female students while they undress, make any comment that could be construed as sexual while at work, or store students' phone numbers in his phone. The site supervisor was permitted to work as the assistant coach for the girls' basketball team the next school year.

In response to the rape at Pinole Valley High School, school administrators promptly investigated the incident, expelled the perpetrators, involved law enforcement, offered the victim counseling, and transferred her to a new school at her request. However, the district did not take steps to ensure that the victim did not experience further harassment, and the student was later contacted and sexually propositioned by her assailants, including while at school. The district also did not implement preventative measures to improve student safety at the high school after the assault. Although witnesses reported that the student body was aware of the assault, administrators took no steps to assess or address the impact of the assault on other students.

With regard to other physical and verbal harassment, witness interviews revealed that students usually do not report incidents to school officials because they do not understand the conduct they are experiencing constitutes harassment, believe that complaining will not be effective in addressing the problem, or believe that the behavior is normal or condoned. Students also expressed significant concern about being labeled a "snitch" and explained that such a label may result in ostracism both within school and in the broader community, and even physical retaliation including assault. Employees also readily acknowledged to OCR that students are deterred from reporting harassment due to fear of being labeled a snitch.

With regard to the response to the use of sexually harassing language at the school sites, witnesses stated that teachers sometimes instruct students to stop using the language and, in some circumstances, impose discipline. However, more commonly, staff members simply do not respond; many witnesses stated that it is impossible to respond because the language permeates the educational setting.

With regard to nonconsensual sexual touching, staff had varying degrees of awareness of this type of conduct and, according to students, ignore much of the conduct. This was attributed by students and staff primarily to inadequate supervision and apathy among some staff. Witnesses indicated that many teachers stay in their classrooms between class periods, lunch and recesses, and that site supervisors do not actively patrol school grounds.

### **Middle Schools: Helms, Portola, Pinole**

#### *Assaults*

Staff at Helms Middle School informed OCR that some of the students who were prosecuted for the rape at Richmond High School were former students of Helms Middle School. Students and staff informed OCR that the rape had a significant impact on them, and students said that they felt upset and felt unsafe afterward. OCR also learned that a female student was sexually assaulted by a female classmate in a bathroom at the school in 2009. The school's investigation of this incident revealed that other students had also been sexual harassed by the assailant. Another female student was sexually assaulted by a classmate while she was walking home from school, also in 2009.

Students and staff at Portola Middle School reported to OCR that students were significantly impacted by the alleged rape on school grounds while school was in session of a 12-year-old student by a 14-year-old fellow student. The accused student had previously been disciplined twice for nonconsensual touching of a female student.

#### *Other Physical and Verbal Harassment*

Students and staff informed OCR that students engaged in unwelcome sexual touching at the middle schools. The sexual touching most frequently involves grabbing, trying to kiss and hug, touching or hitting bottoms, and grabbing or touching breasts and genitals. Students also described instances of male students teaming up and "sandwiching" a female student between them, male students pushing female students up against a locker, and encircling a female student and then grabbing her. Some female students reported to OCR that if they refuse male students who want to hug and kiss them, the male students sometimes will escalate their behavior by pushing them into lockers and rubbing against them, and threatening to engage in sexual acts with them. Staff at one middle school reported seeing students expose themselves and simulate masturbation. Students at another middle school reported that a group of male students repeatedly put their genitals on both male and female students' faces. Female students at all of the middle schools indicated that they worry about male students touching

them, and that they avoid certain areas on campus where they believe that unwanted sexual touching is most likely to occur.

Students from all the middle schools that OCR visited stated that students regularly used sexually derogatory language describing sexual acts and sexual reputations, and made sexual threats; some teachers stated that they heard such language daily. Student witnesses also stated that male students who appear “feminine” were called names like “faggot.” A middle school principal stated that the male students who are taunted are not necessarily gay, but rather are perceived to be gay because of their mannerisms, because they have primarily female friends or because they do not engage in “masculine” activities like sports. One middle school employee recounted walking across the school yard with a male student who was perceived to be effeminate and hearing other male students taunt him with words like “faggot,” even though she was right next to him. Witnesses also reported that students directed sexually derogatory language at adults. One middle school teacher informed OCR that students called him “faggot” and spoke to him in mock effeminate voices. Another middle school employee stated to OCR that a group of male students called her a “bitch.”

OCR representatives observed at one middle school pervasive graffiti of a sexual nature (drawings of females and males with exaggerated sexual anatomy, sexual comments, slang descriptions of male and female anatomy, lists of names of students with descriptions of sexual activities): it was found on classroom doors, lockers, stairwell walls, hallway walls and windows, bathroom stalls, and outdoor walls of the school.

The evidence also showed that students frequently engaged in public consensual sexual touching on campus, including kissing and fondling. Some witnesses also spoke of their belief that students sometimes engaged in sexual intercourse on campus. Many students reported that these public displays and perceptions made them feel uncomfortable.

### *Reporting and Response*

Some school staff provided interventions to students who expressed that they were upset or frightened by the Richmond High School Rape. However, these responses were provided on an ad hoc basis, and the school implemented no school-wide measures for responding to student needs, not did they provide staff training or bring in professionals from outside the school to address this impact.

In response to the assaults that Helms Middle School students suffered on or near that campus, the district responded by investigating the incidents, involving law enforcement, expelling the perpetrators and offering counseling to the victims. However, despite witnesses indicating that the broader student body was aware of, distracted by and emotionally impacted by these assaults, the school did not take steps to mitigate the impact that these incidents had on the broader educational environment.

In response to the alleged assault at Portola Middle School, a district administrator informed OCR that the principal and vice-principal were placed on administrative leave while the district

investigated the incident because they did not immediately inform district administrators of the rape allegation. The district suspended the accused student and reported the incident to law enforcement.<sup>6</sup> Although some steps were taken by the district to address the impact on the students at the school, including sending a Crisis Intervention Team to the school after the incident and implementing a policy requiring adults to escort students in the hallways during class time, the benefit of such efforts was impaired by the disparaging and widely-publicized comments of two school site security staff members about the student who brought the allegation forward. Additionally, witnesses informed OCR that there was no comprehensive response to address the impact on the school community and to prevent future incidents.

Students and staff at Pinole Middle School informed OCR that there were no school-wide initiatives at Pinole to address the impact on students of reports of sexual assault at other schools in the district.

With respect to other harassing conduct, students informed OCR that many students do not report incidents of sexual harassment for reasons such as not understanding that they have a right to complain, a belief that staff will not respond effectively, reluctance to get themselves or their peers in trouble and fear of being labeled a snitch. A number of staff informed OCR that students do not understand that they have the right to an educational environment that is free of sexual harassment. One middle school counselor informed OCR that female students have become “immune” to much of this language.

Most of the students interviewed by OCR stated that they were likely to be labeled “snitches” if they reported unwelcome conduct to an authority figure. Students indicated that being labeled a snitch could result in damage to their reputation, retaliation, or both. Teachers and administrators confirmed that students’ fear of being labeled a snitch deters reporting of unwelcome sexual conduct.

Students stated that they usually do not receive discipline for using sexually derogatory language about other students because it is so common; they reported that they generally only received discipline for such language when directed at an adult. Witnesses stated that staff only infrequently refer students to counselors or administrators to respond to conduct that might constitute sexual harassment. Students at one middle school stated that while some teachers respond to complaints of sexual harassment, others “just stare” and do not respond because they are afraid of certain students. In addition, they stated that some teachers do not know what constitutes sexually harassing conduct. Both students and staff reported to OCR that sexually harassing conduct often goes unaddressed by staff due to inadequate supervision; they stated that many teachers stay in their classrooms during periods between classes, lunch period and recesses, and that site supervisors do not actively patrol school grounds and do not receive adequate training in what constitutes sexual harassment.

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<sup>6</sup> The accused student was prosecuted and found guilty of a lewd act.

**Elementary School: Bayview**

*Employee to Student Harassment*

Several students were subjected to or witnessed sexual harassment by employees at Bayview Elementary School. A school site investigation substantiated a substitute teacher's inappropriate touching and sexually inappropriate language directed at certain students that was witnessed by an entire sixth grade class. Similarly, the conduct of a classroom teacher toward a female student, including derogatory name-calling and false accusations of sexually inappropriate conduct, was observed by the student's entire class; in addition, the teacher allowed other students to call the girl sexually derogatory names. This conduct was also corroborated by a school site investigation.

*Other Physical and Verbal Harassment*

Female students described unwelcome sexual touching by male students, such as grabbing their breasts, smacking their bottoms, and trying to kiss them. Teachers confirmed these observations and noted that some male students also try to hit other male students in the genitals. Incident reports from the school also evidence this type of behavior.

The fifth and sixth graders who were interviewed by OCR reported that students frequently call each other names such as "slut," "bitch," "ho," and "faggot," and that this sexually derogatory language is used multiple times every day. Several teachers also stated that these words were used by students on a daily basis. Female students said that male students talk about their private parts in front of them, which makes them uncomfortable. Staff informed OCR that there was often sexual graffiti on the walls of the school.

*Reporting and Response*

In response to the reports of inappropriate conduct by a substitute teacher, site administrators responded promptly by conducting an investigation, notifying law enforcement of the alleged conduct, and reaching a conclusion that the harassing conduct had occurred. However, the district took no action to assess and address the impact of the harassment on the numerous students who experienced and witnessed it. Although the substitute teacher was removed from Bayview, the district did not inform the California Commission on Teacher Credentialing so that the body could determine whether other appropriate action should be taken. Indeed, several months later, the district erroneously rehired the substitute to teach at the same elementary school.

Regarding the sixth grade teacher's harassment of a female student, the school site principal conducted a prompt investigation that substantiated the behavior and instructed the teacher to cease her behavior. The district also transferred the student to a new school at her parent's request. The district did not take any other responsive action.

## **ANALYSIS AND CONCLUSIONS**

OCR determined that students at each school level in the district were subjected to verbal and physical conduct of a sexual nature, including sexual assaults and violence. Most of the harassment occurred during the school day on school grounds. The harassment was sufficiently serious to create a hostile environment that denied or limited students' ability to participate in or benefit from the education program and activities. OCR further concluded that the district failed to take immediate action to eliminate the harassment, prevent its recurrence, and address its effects, in violation of Title IX.

As set forth above, the rape of a student at Richmond High School, the rape of a student at Pinole Valley High School, the sexual assaults of students at Helms Middle School and the alleged assault of a student at Portola Middle School, and the sexual harassment of students by employees at Bayview Elementary School and Richmond High School created a hostile environment both for the students who were subjected to the acts as well as to the broader school community.

Although the district took some steps to address the impact of the rape of a student at Richmond High School, it did not take steps to address the hostile environment created by the traumatic impact of the rape on students at other schools and has not responded appropriately to other sexually harassing conduct that regularly takes place at Richmond High School that denies or limits students' ability to participate in or benefit from the district's education program. Similarly, the district did not take steps to address the hostile environment created by the impact of the rape of a student at Pinole Valley High School and the sexual assaults of students at Helms Middle School and the alleged assault of a student at Portola Middle School. The evidence also established that the district failed to provide an appropriate response to the instances of sexual harassment of students by employees. In each of the instances of employee harassment revealed by OCR's investigation, the employee's conduct was sufficient to result in a hostile environment for the students who were subjected to it as well as the school community; accordingly, it was the responsibility of the district to end the harassment, prevent its recurrence and remedy its effects. The district did not satisfy this responsibility.

OCR's investigation further revealed that other physical and verbal conduct at each school level created a hostile environment. As described previously, there was frequent unwelcome sexual touching between students at all school levels, but particularly at the middle schools and high schools. The evidence also established that students at all school levels routinely refer to each other using sexually derogatory names, direct sexually explicit, lewd and vulgar language at fellow students; demand that fellow students perform sexual acts; and engage in other verbal conduct of a sexual nature such as graffiti and circulating documents in which female students are described in a highly sexualized manner. The evidence also indicated widespread public consensual sexual touching on campus and a common perception among students that their peers engaged in sex on school grounds. OCR also found evidence of harassment consisting of the use of gay slurs to refer to male students who are perceived as feminine in their appearance or mannerisms.

Students at all school levels expressed reluctance to report sexual harassment. The reasons for this reluctance include a failure by students to understand that the conduct they are experiencing constitutes sexual harassment, a belief that complaining will not be effective in addressing the problem, a sense that the conduct is normal or condoned, and reluctance to get their peers in trouble. Female students told OCR that they do not report sexually harassing conduct because they are used to it. They stated that they do not tell teachers because teachers often appear either not to care or are afraid to respond to the incidents. In addition, students at all school levels reported a fear of being labeled a snitch by peers; according to students and adults alike this label may result in ostracism and physical retaliation, not only at school but also in the broader community. Student witnesses indicated that they are fearful of both fellow students and adults in the school community revealing the identities of students who report sexual harassment. The evidence also indicated that parents often do not report incidents of which they are aware for similar reasons. Employees commonly acknowledged students' strong reluctance to report sexual harassment incidents and the reasons for such reluctance.

Notwithstanding the reluctance of students to report incidents of sexual harassment, the evidence established that the district knew or reasonably should have known about the harassment that permeated the educational environment at all of the school sites that OCR visited. The evidence is clear that staff and administrators witnessed the sexual harassment of students and were otherwise aware that students at all school levels were subjected to a hostile environment. Accordingly, the district was required to take prompt and effective steps to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring. The district repeatedly failed to do this, in violation of Title IX.

OCR also found that school sites did not provide education to students, parents or employees about issues related to sexual harassment, including what constitutes sexual harassment and the impact it has on individual students and the educational environment, the prohibition of sexual harassment in the educational setting, the importance of reporting sexual harassment, and the district's obligation to take prompt and effective steps to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring.

OCR notes that at the time the investigation was initiated, the district was working with several community-based organizations (Community Violence Solutions, STAND! For Families Free of Violence, Contra Costa Crisis Center, and the RYSE Center) to provide services to students related to sexual harassment and sexual violence. Some of these relationships already existed at the time of the rape at Richmond High School, while others were established in response to the rape. Since OCR opened its investigation, some of the district's programs were expanded and other, smaller programs were established. For example, Community Violence Solutions began working in elementary schools, which it had not previously done, Stand! Against Domestic Violence expanded its teen dating violence prevention program, and some new sex education/healthy choice programs were put in place. The district also began some work to target sex trafficking of students. Additionally, the district expanded the services available at its school-based health centers in relevant ways. For example, some centers are training students

as peer educators to reduce harassment and violence, and several schools expanded the wellness counseling and mental health services available to students, including students who engage in or are subject to harassment. The district has also developed research-based action plans to create “full-service community schools” to, among other improvements, better coordinate its partnership with community-based organizations. The district’s full implementation of these action plans will be significant because OCR’s investigation showed the community-based organizations providing important services and supports in the area of sexual harassment were operating independently, rather than in coordination with other district services and providers, to expand their reach.

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On September 30, 2013, the district agreed to implement the enclosed resolution agreement, which addresses the above-mentioned compliance concerns.

Specifically, the resolution agreement commits the district to take the following actions:

- Designate a Title IX Coordinator and ensure that grievance procedures comply with Title IX requirements;
- Hire a consultant with expertise in the area of sexual harassment prevention and training;
- Revise its policies, procedures, and practices for preventing, promptly investigating, and remediating sexual harassment and sexual violence;
- Develop guidance to help ensure the effectiveness of remedial actions and conduct annual assessments of the climate at district schools to evaluate the effectiveness of the actions being taken, the students’ attitudes, knowledge and experiences around sexual harassment, and to inform future proactive steps to ensure a safe environment for students;
- Take interim measures to ensure the safety of victims, reporting students and the school community; and address any ongoing harassment and prevent retaliation;
- Create a task force composed of parents, students, community members and representatives of community-based organizations to identify strategies to improve the school climate, and prevent sexual harassment and sexual violence;
- Develop a comprehensive plan for educating students, parents and employees to ensure that they are aware of Title IX’s prohibition against sex discrimination, including the right to be protected from sexual harassment; how to recognize it when it occurs and how to report incidents. The plan will take into account the results of the climate assessments and recommendations of the task force;
- Provide annual training to all district staff and School Resource Officers and age-appropriate instruction to students;
- Increase supervision of students at school sites and at all school-sponsored after-school activities, whether held on campus or off campus;
- Develop and implement multidisciplinary best practices for reducing the incidence of sexual harassment in District schools;

- Implement systems for tracking reports that may constitute sexual harassment, even when no formal complaints are filed, to ensure that incidents are promptly and impartially investigated and resolved; and assess the effectiveness of its efforts to prevent and address sexual harassment and sexual violence.

Based on the commitments the district has made in the resolution agreement described above, OCR has determined that it is appropriate to close the investigative phase of this compliance review. The district has agreed to provide data and other information demonstrating implementation of the resolution agreement in a timely manner in accordance with the reporting requirements of the resolution agreement. OCR may conduct additional visits and request additional information as necessary to determine whether the district has fulfilled the terms of the resolution agreement and is in compliance with Title IX and its implementing regulation with regard to the issues in review.

OCR will monitor the district's implementation of the resolution agreement, and will not close such monitoring until OCR determines that the district has fulfilled the terms of the resolution agreement and is in compliance with Title IX and its implementing regulation. If the district fails to implement the resolution agreement, OCR may initiate administrative enforcement of judicial proceedings to enforce the specific terms and obligations of the resolution agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10) or judicial proceedings to enforce the resolution agreement, OCR will give the district written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

This letter and the enclosed agreement address only the issues investigated as part of this compliance review and should not be construed to address any other issues not addressed in this letter. This letter is a fact-specific disposition of this review; it 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.

Under the Freedom of Information Act, this document and related records may be released upon request or made public by OCR. In the event that OCR receives such a request or intends to make these documents public, the respective agency will seek to protect, to the extent provided by law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

Thank you for the courtesy and cooperation that you and your staff extended to OCR. OCR appreciated the collaborative nature of the relationship between OCR and the district throughout the investigation and resolution of this review. In particular, we wish to recognize the efforts of Associate Superintendent Wendell Greer. We look forward to working with the district as it implements the provisions in the resolution agreement. If you have any questions regarding this letter, please contact OCR staff attorney Suzanne Taylor (415-486-5561).

Sincerely,

*/s/*  
Arthur Zeidman  
Director  
OCR San Francisco