



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS—REGION VI

June 14, 2012

Ref: 06111487

Ms. Sandra S. Park
Staff Attorney
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004

Dear Ms. Park:

The United States Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has completed its investigation of the above-referenced complaint that was received in OCR on August 26, 2011, filed against the Henderson Independent School District (HISD), Henderson, Texas. You alleged that the HISD discriminated against a student (Student) on the basis of sex. You also alleged retaliation. In our evaluation letter dated October 12, 2011, OCR informed both you and the HISD that we were investigating the following issues:

1. Whether the HISD discriminated against Student on the basis of sex by failing to take prompt and effective action to address sexually harassing conduct (sexual assault and subsequent harassing conduct), which was sufficient to constitute a hostile environment, of which it had or should have had notice from December 2010 through March 2011, in violation of Title IX and its implementing regulation at 34 C.F.R. § 106.31; and
2. Whether the HISD retaliated against Student based on sex when, after Student reported that she was sexually assaulted on December 6, 2010, the HISD removed her from Henderson High School and placed her in DAEP with her alleged attacker, in violation of Title IX and its implementing regulation at 34 C.F.R. § 106.71.

This agency is responsible for determining whether entities that receive or benefit from federal financial assistance from the Department, or an agency that has delegated investigative authority to this Department, are in compliance with Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681, and its implementing regulation at 34 C.F.R. Part 106 (2011), which prohibit discrimination on the basis of sex. The Title IX implementing regulation at 34 C.F.R. § 106.71 incorporates by reference the provision against retaliation under Title VI of the Civil Rights Act of 1964 (Title VI) 42 U.S.C. § 2000d, and its implementing regulation at 34 C.F.R. § 100.7. The HISD is a recipient of federal financial assistance from the Department. Therefore, OCR has jurisdictional authority to process this complaint for resolution under Title IX.

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

As a preliminary matter, please note that a finding that a recipient has violated one of the laws OCR enforces must be supported by a preponderance of the evidence (i.e., sufficient evidence to prove that it is more likely than not that unlawful discrimination occurred). In other words, OCR examines the evidence in support of and against a particular conclusion to determine whether the greater weight of the evidence supports the conclusion. When there is a significant conflict in the evidence and OCR is unable to resolve that conflict, for example, due to the lack of corroborating witness statements or additional evidence, OCR generally must conclude that there is insufficient evidence to establish a violation of the law.

In reaching a determination in this case, OCR conducted interviews with you, Student, Student's mother, administration and staff at the HISD, and reviewed documentation provided by you and the HISD. Based on a review of this information, OCR determined that there is sufficient evidence to support a conclusion of noncompliance with regard to issues investigated. The bases for the determinations are set forth below.

Issue 1

Legal Standards

Sexual harassment of students, which includes acts of sexual violence, is a form of sex discrimination prohibited by Title IX. Sexual violence refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol. A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, and sexual coercion. All such acts of sexual violence are forms of sexual harassment covered under Title IX.

When investigating complaints of discrimination based on sex, including sexual harassment, OCR will consider the following: whether the recipient has disseminated policy(ies) prohibiting sex discrimination under Title IX and effective grievance procedures; whether the recipient appropriately investigated or otherwise responded to allegations of sexual harassment; and whether the recipient has taken immediate and effective corrective action responsive to the harassment, including effective actions to end the harassment, prevent its recurrence, and as appropriate, remedy its effects. What constitutes a reasonable response to information about possible sexual harassment will differ depending on the circumstances.

Title IX also permits the use of a student disciplinary procedure not designed specifically for Title IX grievances to resolve sex discrimination complaints, as long as the procedure meets the Title IX requirements, including affording a complainant a "prompt and equitable" resolution. In some instances, a complainant may allege harassing conduct that constitutes both sex discrimination and possible criminal conduct (e.g., sexual assault). Police investigations or reports may be useful in terms of fact gathering. However, because legal standards for criminal investigations are different, police investigations or reports are not determinative of whether sexual harassment or violence violates Title IX. Conduct may constitute unlawful sexual

harassment under Title IX even if the police do not have sufficient evidence of a criminal violation. In addition, a criminal investigation into allegations of sexual violence does not relieve the recipient of its duty under Title IX to resolve complaints promptly and equitably. A school may not absolve itself of its Title IX obligation to investigate and resolve complaints of sexual harassment or violence by delegating responsibility to administer school discipline to school resource officers or "contract" law enforcement officers.

Findings of Fact

OCR reviewed the HISD grievance procedures regarding sexual harassment (Policy). The Policy is online and is referred to in the HISD Student Handbook under "sexual harassment." The Policy provides the name and contact information for the HISD's Title IX Coordinator. It provides that, upon notice of a report of sexual harassment, "the District official [defined under the policy as the Title IX Coordinator, ADA/Section 504 Coordinator and Superintendent] shall determine whether the allegations, if proven, would constitute prohibited conduct as defined by this policy. If so, the District official shall immediately authorize or undertake an investigation, regardless of whether a criminal or regulatory investigation regarding the same . . . allegations is pending. The investigation may be conducted by the District official or a designee, such as the campus principal, or by a third party designated by the District. . ." Investigations are generally to be completed within 10 business days from the date of the report, and the investigator must prepare a written report of the investigation. Furthermore, OCR's review indicated that a student dissatisfied with the outcome of the investigation may appeal through FNG (Local), beginning at the appropriate level.

OCR's review of the HISD Student Handbook policy under "Sexual Harassment" states the following: "a complaint alleging sexual harassment by another student . . . may be presented by a student and/or parent in a conference with the principal or designee or with the Title IX coordinator. . . . The principal or Title IX coordinator will coordinate an appropriate investigation, which ordinarily will be completed within 10 days." The policy also states "if the resolution of the complaint is not satisfactory to the student or parent, the student or parent within 10 days may request a conference with the Superintendent or designee by following the procedure set out in Board policy FNCJ (Local)."

OCR's review of documentation and interviews with you, Student, Student's parent, HISD administrators and staff revealed the following with regard to the incident of alleged sexual assault. You alleged that Student was sexually assaulted (the incident) by a male student (Student 2) in the band practice room within Henderson High School (HHS) on December 6, 2010. Student informed the Assistant Band Director (ABD 1) about the incident immediately after it occurred. However, the ABD 1 did not take any action regarding the incident and failed to report it to the police or any HISD administrator or official. Student was absent from school the following day, and upon her return to school on December 8, 2010 she told a second Assistant Band Director (ABD 2) about the incident, who immediately took her to the Assistant Vice Principal's (AVP) office. The AVP subsequently called the HHS School Resource Officer

(Officer 1) who told the AVP that Student would be taken to the Child Advocacy Center (CAC) for an interview regarding the incident. The AVP also contacted Student's mother, and informed her about the incident when she arrived at HHS. Officer 1, who is a police officer with the Henderson Police Department (HPD) assigned to HHS, contacted his supervisor at the HPD to inform him about the incident. A police officer from the HPD (Officer 2) arrived at HHS and took Student to the CAC. After Student, her mother, and Officer 2 went to the CAC, the AVP contacted the HISD's Title IX Coordinator (Coordinator) and told her of the incident. The Coordinator responded by asking if the police had been called. Interviews with Student's mother and officials with HHS reveal that the HPD notified Student's mother on December 9, 2010, that the HPD's investigation regarding Student had concluded and that there would be no criminal charges filed against Student 2; rather, the HPD determined that the incident was "consensual" by both parties. Student's parent met with the Principal of HHS (Principal) on December 13, 2010 and was notified that Student would be disciplined based on the HPD's determination. Student and Student 2 were administered the discipline of a 45 day DAEP placement by the HISD for committing the infraction of "public lewdness" under the HISD school code.

Student was placed in DAEP on January 5, 2011, in a separate classroom from Student 2. Student stated that she saw Student 2 several times a day, while waiting to enter the DAEP building, when going to the bathroom, when she had to check her blood sugar, and when he would be transitioning back to class. Student also said that other students in DAEP would make comments to her about the incident. Specifically, she told OCR that one student asked her "what she was in here for" and stated "you guys [Student and Student 2] did it." OCR sought to interview the students identified by Student as those who overheard the above-referenced comment made to Student, however, OCR did not receive parental consent to interview any of the identified students. OCR interviewed the paraprofessional who was assigned to accompany Student during the first half of her placement in DAEP, who stated that Student would see Student 2 every day while waiting to enter the building; however, the paraprofessional stated that Student did not have to walk through Student 2's classroom, see him when going to the bathroom or to check her blood sugar or take medication. The paraprofessional also said Student did not have to see Student 2 when transitioning to her class. OCR also interviewed Student's counselor at DAEP. The counselor reported that she always went to Student's classroom to walk her to the counselor's office for any visits. The counselor informed OCR that they did not have to walk through Student 2's classroom and that Student's classroom did not require walking through another classroom to get to the bathroom or main office. The DAEP Principal reported to OCR that the Student's parent once complained about comments allegedly made to Student by other students regarding the incident on December 6, 2010. The DAEP principal interviewed all adults who worked with Student during the school day and could not confirm that the comments were made. The DAEP principal also reported that she asked Student's parent for the names of the students who made the alleged comments, but the parent did not provide any student names.

Legal Analysis

Applying the legal standards to the findings of fact, OCR found that the recipient disseminated policy (ies) prohibiting sex discrimination under Title IX and effective grievance procedures. However, in determining whether the recipient appropriately investigated or otherwise responded to allegation of sexual harassment, OCR found sufficient evidence to show that HISD failed to appropriately investigate or otherwise respond to the allegation of sexual harassment.

First, the Title IX Coordinator stated to OCR that she did not conduct an investigation into the incident as "per the HISD's policy," campus administrators conduct Title IX investigations as her "designee." The Principal reported to OCR that he did not interview any of the students or staff that were involved in, or potential witnesses to, Student's sexual assault allegation. He explained that he had reported the allegation to the Coordinator on December 9, 2010 and she told him to "make sure the police were involved." He further stated to OCR that the HPD conducted the investigation and found that the incident was consensual and, as such, HISD disciplined both parties according to the student code.

As discussed above, Student alleged harassing conduct that constituted both sex discrimination and criminal conduct. While police investigations or reports may be useful in terms of fact gathering, police investigations or reports may not be determinative of whether harassment occurred under Title IX and do not relieve HISD of its duty to respond promptly and effectively. In this case, there is sufficient evidence that HISD failed to take immediate and effective corrective action responsive to the harassment. HISD failed to conduct an independent investigation of Student's allegation of harassment. As noted above, Principal confirmed that he did not interview any teachers or students involved in, or witnesses to, the incident. The HISD improperly relied on a criminal investigation conducted by the HPD, and failed to conduct an independent investigation using a preponderance of the evidence standard as required under Title IX. Therefore, OCR has determined that there is sufficient evidence to support a conclusion of noncompliance with Title IX and its implementing regulation at 34 C.F.R. § 106.31.

Issue 2

Legal Standards

In order for an allegation of retaliation to be sustained, OCR must determine that: (1) the complainant engaged in a protected activity; (2) the recipient had notice of the complainant's protected activity; (3) the recipient took an adverse action contemporaneously with or subsequent to the protected activity; and (4) there was a causal connection between the protected activity and the adverse action. If any one of the foregoing cannot be established, then OCR finds insufficient evidence of a violation. However, if all of these elements are established, OCR then considers whether the recipient can establish a legitimate, nondiscriminatory reason for taking the adverse action. If so, OCR then considers whether the reason asserted is a pretext for discrimination.

Findings of Fact

As discussed above, Student informed HISD staff on December 6, 2010, of an alleged sexual assault occurring on the same day. On December 13, 2010, Student's parent was notified by the Principal that Student would be disciplined based on the HPD's determination. Student and Student 2 were administered the discipline of a 45 day DAEP placement by the HISD for committing the infraction of "public lewdness" under the HISD school code, and Student began serving DAEP on January 5, 2011.

Legal Analysis

OCR's investigation demonstrated that Student participated in a protected activity under Title IX, and provided the HISD with notice of the same, when she notified ABD1 on December 6, 2010 that she had been sexually assaulted. OCR determines that an adverse action occurred when Student was removed from HHS and placed in DAEP. OCR also finds that there was a causal connection between Student's protected activity and the adverse action, in that the proximity of time between the protected activity, December 6, 2010, was close to the time of the adverse action: when the Principal notified Parent of Student's DAEP placement on December 13, 2010. Thus, OCR determined that a *prima facie*¹ case of retaliation has been established and investigated further to determine whether HISD had a legitimate, non-discriminatory reason for placing Student in DAEP.

The Principal reported to OCR that with regard to the assignment of DAEP, Student was assigned 45 days of DAEP for committing the offense of "public lewdness" under the school code. However, there is no evidence to show that any HISD officials investigated the Student's complaint of alleged sexually harassing conduct; rather, the evidence shows that the HISD relied on the HPD's determination of consensual sexual conduct to determine that the Student committed "public lewdness", which resulted in the assignment of the Student to DAEP. As discussed in issue 1, HISD failed under the obligations of Title IX to conduct an independent investigation of the alleged harassing conduct that gave rise to the disciplinary action taken against the Student. Thus, the Student's own self-reporting of alleged sexual violence to the HISD resulted in disciplinary action against her without any investigation by HISD of the alleged conduct. As such, OCR determined that the HISD failed to provide a legitimate, non-discriminatory reason for placing Student in DAEP for the conduct of "public lewdness." Therefore, there is sufficient evidence to support a conclusion of noncompliance with Title IX and its implementing regulation regarding Issue 2.

¹ Middle English, from Latin. "At first view" or "on the first appearance." In a legal sense, meaning legally sufficient to establish a fact or a case unless disproved.

Conclusion

The HISD, in the enclosed Resolution Agreement (RA) dated June 13, 2012, has agreed to address the above identified compliance issues. We have determined that proper implementation of the RA will resolve the issues in this complaint. OCR will monitor the implementation of the RA. Please be advised that if the HISD fails to adhere to the actions outlined in this RA, OCR will immediately resume its compliance efforts.

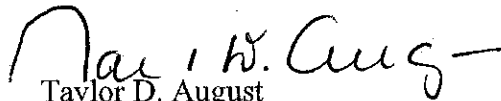
This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Under OCR procedures, we are obligated to advise you and the institution against whom a complaint is filed that intimidation or retaliation against a complainant is prohibited by regulations enforced by this agency. Specifically, the regulations enforced by OCR, directly or by reference, state that no recipient or other person shall intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by regulations enforced by OCR or because one has made a complaint, testified, assisted or participated in any manner in an investigation, proceedings or hearing held in connection with a complaint.

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

If you have any questions about this letter, you may contact Timothy D. Caum, General Attorney, at 214-661-9648, or Adriane P. Martin, Team Leader, at 214-661-9600.

Sincerely,



Taylor D. August
Regional Director
Dallas Office

Enclosure

RESOLUTION AGREEMENT

Henderson Independent School District
OCR Reference Number: 06111487

To ensure compliance with Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681, and its implementing regulation at 34 C.F.R. Part 106 (2011), which prohibit discrimination on the basis of sex, the Henderson Independent School District (HISD), Henderson, Texas, makes the following commitments to the U.S. Department of Education, Office for Civil Rights (OCR) to resolve the complaint issues in the above-referenced complaint.

TITLE IX GRIEVANCE PROCEDURES AND HISD POLICIES/PROCEDURES

Action Item 1

By June 30, 2012, the HISD will review and revise its current policies/procedures to ensure that all complaints received, whether verbal or written, alleging discrimination on the basis of sex, including allegations of harassment on the basis of sex or sexual violence, are appropriately investigated and responded to as required by Title IX and its implementing regulations. The policies/procedures will ensure a prompt and equitable response and resolution of complaints alleging sex discrimination including responsive actions taken by the HISD to reasonably prevent recurrence and assure that students are not restricted in their participation or benefits as a result of a sexually hostile environment created by students, employees or non-employees by the alleged conduct. The HISD shall ensure that the revised policies/procedures include, but are not limited to the following provisions:

- Notice that the grievance procedures apply to complaints alleging sex discrimination (including sex harassment, sexual assault, and sexual violence) by employees, students, or third parties;
- Definitions and examples of what types of actions may constitute sex discrimination (including sexual harassment, sexual assault, and sexual violence);
- Notice to students, parents, and employees of the process for filing a complaint/grievance, including the name, office address, and telephone number of the individual with whom to file a complaint/grievance;
- A statement providing for the adequate, reliable, and impartial investigation of all complaints/grievances, including the opportunity for the parties to present witnesses and other evidence;
- A statement that the HISD will conduct its own investigation of any complaint/grievance under Title IX, independent of any law enforcement investigation regarding the same complaint or grievance;

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- A statement providing for designated reasonable timeframes for each stage of the complaint/grievance process, with a provision indicating that the HISD will comply with law enforcement requests for cooperation and such cooperation may require the HISD to temporarily suspend the fact-finding aspect of a Title IX investigation while the law enforcement agency is in the process of gathering evidence and that the HISD will promptly resume its Title IX investigation as soon as notified by the law enforcement agency that it has completed the evidence gathering process, which typically takes three to ten calendar days, although the delay in the HISD's investigation may be longer in certain instances;
- An assurance that the HISD will implement interim steps during the law enforcement agency's investigation period to provide for the safety of the victim(s) and the avoidance of retaliation
- Provisions for maintaining confidentiality of the complainant and investigation of the complaint to the extent possible;
- An assurance that the HISD will ensure that victims are aware of their Title IX rights and available resources, such as counseling, and their right to file a complaint with local law enforcement;
- Written notification to the parties of the outcome of the complaint;
- Notice of the opportunity for the parties to appeal the findings;
- A fair and equitable appeal process, with an assurance that an appeal will be conducted in an impartial manner by an impartial decision-maker;
- Assurance that if discrimination, harassment or retaliation has occurred, appropriate corrective and remedial actions will be taken as well as actions to prevent its recurrence, with examples of the range of possible disciplinary sanctions, and to remedy the discriminatory effects on the victim(s) and others; and
- A statement that Title IX prohibits retaliation against any individual who files a complaint under Title IX or participates in a complaint investigation.

Reporting Requirement

By June 30, 2012, the HISD will, prior to adoption and dissemination, provide OCR with a copy of its revised complaint/grievance procedures, for OCR's review and approval, as referenced in Action Item 1.

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Within fifteen (15) days of HISD's receipt of the OCR-approved amended Title IX policies/procedures, in which the information identified under Action Item 1 above has been incorporated, HISD will provide OCR with documentation to substantiate that it has formally adopted the OCR-approved amended Notice.

Action Item 2

Within 45 calendar days of written notification from OCR that the revised policies/procedures developed in accordance with Action Item 1 are consistent with Title IX requirements, the HISD will notify all HISD students and parents, via the HISD Student Handbook and posting on the HISD website, of the revised policies/procedures referenced in Action Item 1. The notification will explain the HISD's responsibility to investigate and/or otherwise resolve Title IX issues.

Reporting Requirement

By October 15, 2012, the HISD will provide OCR with documentation evincing how and when the HISD apprised its students and parents of the revised policies/procedures they may utilize to report and resolve Title IX complaints, including sexual harassment, as referenced in Action Item 2.

Action Item 3

By September 1, 2012, the HISD will ensure that the Title IX coordinator is apprised, immediately, of every student complaint or notification of any complaint of sexual harassment, including sexual assault that is received by any HISD employee. The Title IX coordinator shall document the notification and any action taken.

Reporting Requirement

By November 1, 2012 and June 1, 2013, the HISD will provide OCR with documentation regarding all Title IX student complaints or notifications of alleged Title IX violations involving students (including complaints alleging sexual harassment or sexual violence) for the 2011-2012 and 2012-2013 school years. The HISD will provide OCR with documentation of the Title IX Coordinator's receipt of the notice and/or complaint and the HISD's response to resolve the Title IX issue, as referenced in Action Item 3.

Action Item 4

By November 1, 2012, and annually thereafter for a period of 2 years, the HISD will conduct a mandatory training session regarding the revised policy referenced in Action Item 1 for all employees so that they know to report harassment to appropriate school officials and that

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employees with the authority to address harassment know how to respond properly. The training shall include practical information about how to identify and report sexual harassment and violence, and how to conduct Title IX investigations. The above-referenced training shall be provided to all HISD employees, administrators and law enforcement liaisons.

Reporting Requirement

By December 1, 2012, 2013 and 2014, the HISD will submit a report to OCR detailing the date of the Title IX training referenced in Action Item 4 above. This report will include a copy of the agenda, copies of (or a list of) and handouts, qualifications or credentials of the trainer(s) and a sign in sheet identifying all persons by position, in attendance.

Action Item 5

By September 1, 2012, the HISD will designate one counselor at each school within the HISD to be "on call" to assist victims of sexual harassment or violence whenever needed during school hours.

Reporting Requirement

By October 15, 2012, the HISD will provide OCR with the name, title and contact information for each of the counselors designated as "on call" to assist victims of sexual harassment or violence under Action Item 5.

Action Item 6

By November 1, 2012, the HISD will review its campus police records for the 2009-10 through 2011-12 school years for any complaint of sexual assault that was treated solely as a criminal matter and/or where the Title IX Coordinator was not involved. The HISD's Title IX Coordinator will review the pertinent records to determine whether sexual harassment occurred in violation of Title IX and if it did, whether the remedies provided were effective. If the remedies were not appropriate, the HISD will promptly take measures (i.e., re-investigate the complaint, secure additional remedies) should the alleged victim or alleged perpetrator still be enrolled as a student, to ensure the sexual harassment was fully and effectively addressed.

Reporting Requirement

By November 15, 2012, the HISD will make available to OCR documentation showing implementation of Action Item 6, including copies of the initial report, any campus police records, and the investigative files of both the campus police and the HISD's Title IX Coordinator showing the response and additional remedies obtained, if any.

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INDIVIDUAL STUDENT REMEDIES

Action Item 7

By September 1, 2012, the HISD will expunge Student's DAEP placement from her discipline records.

Reporting Requirement

By September 15, 2012, the HISD will provide OCR with a copy of Student's updated discipline records in reference to Action Item 7.

Action Item 8

By September 1, 2012, the HISD will make a written offer of non-district-based counseling services to Student to be provided at the HISD's expense, not to exceed 2 counseling sessions per month for a total of 3 consecutive months, for the assessment and/or treatment of the effects from the HISD's failure to investigate Student's allegation of sexual harassment. The HISD's letter will inform the Student that she has thirty (30) calendar days from the date of the letter to accept the offer by providing written notice of Student's acceptance to the HISD.

Reporting Requirement

By October 1, 2012, the HISD will provide OCR with documentation evincing that the HISD made the counseling offer to Student referenced in Action Item 8, and whether Student accepted such an offer.

Action Item 9

By October 1, 2012, if the Student accepts the HISD's offer of non-district based counseling services for the assessment and/or treatment of the effects from the HISD's failure to investigate Student's allegation of sexual harassment as referenced in Action Item 8, the HISD will provide, at its expense, the required non-district based counseling not to exceed 2 counseling sessions per month for a total of 3 consecutive months.

Reporting Requirement

By January 1, 2013, the HISD will provide documentation evincing the provision of non-district based counseling services to Student as referenced in Action Item 9.

STUDENT FOCUSED REMEDIES

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Action Item 10

By October 1, 2012, the HISD will create a Committee consisting of: (1) the HISD's Title IX Coordinator; (2) representative HISD administrators, faculty members and parents/guardians of HISD students; (3) representatives from any community-based organizations which provide services to the HISD related to sexual harassment/violence prevention; and (4) other individuals the HISD determines appropriate, such as guidance counselors, school nurses or athletic coaches. The HISD will also invite at least six (6) high school and/or middle school student representatives to serve as advisors to the Committee in carrying out its responsibilities.

Reporting Requirement

By October 1, 2012, the HISD will provide OCR with documentation evincing the creation, and membership, of the Committee referenced in Action Item 10.

Action Item 11

By January 31, 2013, the Committee referenced in Action Item 10 will develop strategies and materials for educating students, parents and employees about issues related to sexual harassment/violence, including what constitutes sexual harassment/violence and the impact it has on individual students and the educational environment, the prohibition of sexual harassment/violence in the educational setting, the importance of reporting sexual harassment/violence, how and to whom to report incidents of sexual harassment/violence, contact information for counseling services on and off school grounds, how to contact the HISD's Title IX Coordinator, the HISD's obligation to respond appropriately to notice of sexual harassment/violence, and what the HISD will do to respond to allegations of sexual harassment/violence, including the interim measures that can be taken. In developing the materials, the Committee will consider a variety of age-appropriate approaches to student education. The materials should be widely available and posted throughout school buildings, available on the HISD's website, distributed upon receipt of complaints, distributed to parents at the beginning of the school year, and available to parents at events such as parent-teacher conferences or back-to-school night.

Reporting Requirement

By January 31, 2013, the HISD will provide OCR with a copy of the materials distributed to students and parents as referenced in Action Item 11.

Action Item 12

By February 1, 2013, the HISD will conduct a climate check or series of climate checks with all enrolled students to assess the effectiveness of steps taken pursuant to this agreement or

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otherwise by the HISD, to ensure that HISD campuses are free of sexual harassment, including sexual assaults and sexual violence. This climate check may be accomplished through a written or electronic survey, provided that students receiving the survey also are notified of a contact person, such as a counselor, should they wish to discuss this issue with a counselor. If this method is selected, the HISD will consult with OCR in creating the written survey which must be provided to OCR for review and approval prior to its use. Information gathered during these climate checks will be used to inform future proactive steps that can be taken by the HISD.

Reporting Requirement

By February 28, 2013, the HISD will submit the results of the school climate check referenced in Action Item 12. The HISD will also provide an action plan to OCR regarding how it will use the results of the school climate check to further ensure HISD students are protected from sexual harassment and violence.

Action Item 13

By June 1, 2013, the HISD's Title IX Coordinator will conduct a review of all Title IX, sexual harassment/sexual assault complaints it has received and investigated for that school year.

Reporting Requirement

By June 30, 2013, the HISD will report to OCR with the following information regarding the Title IX complaints received and investigations conducted by the HISD, as referenced in Action Item 13: the complaint allegation, the parties involved, the issue investigated, the determination and the remedy secured.

IMPLEMENTATION AND ENFORCEMENT OF THIS AGREEMENT

The HISD understands that OCR will not close the monitoring of this agreement until OCR determines that the recipient has fulfilled the terms of this agreement and is in compliance with the regulation implementing Title IX, at 34 C.F.R. Part 106 (2011), which is at issue in this case.

The HISD understands that by signing this agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this agreement. Further, the HISD understands that during the monitoring of this agreement OCR may visit the HISD, interview staff and personnel, and request such additional reports or data as are necessary for OCR to determine whether the HISD has fulfilled the terms of this agreement and is in compliance with the regulation implementing Title IX, at 34 C.F.R. Part 106 (2011).

The HISD understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this Agreement. Before

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initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce this Agreement, OCR shall give the HISD written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.



Keith Boles, Superintendent
Henderson Independent School District

6-13-12

Date