

Resolution Agreement
Palo Alto Unified School District
OCR Case Nos. 09-13-5901 and 09-14-1217

In order to resolve the issues raised in the above-referenced investigations by the U.S. Department of Education, Office for Civil Rights (OCR), under Title IX of the Education Amendments of 1972 (Title IX), the Palo Alto Unified School District (District) agrees to take the actions outlined in this Resolution Agreement (Agreement). **The District's execution and performance of the terms of this Agreement do not constitute any admission of liability or any admission of a violation of federal or state law.**

A. Sexual Harassment Policies, Complaint Procedures, Notice of Nondiscrimination, and MOU with Police Department

1. The District will revise Board Policy (BP) 5145.3, "Nondiscrimination and Harassment", to include information about how complainants can file a complaint with the Office for Civil Rights and to ensure that it and any and all notices of nondiscrimination include the title, address, email, and phone number of the Title IX Coordinator.
2. The District will revise Board Policy (BP) 5145.7 concerning sexual harassment of students so that it is compliant with Title IX and its requirements, and amend it to include at least the following:
 - a. information about how complainants can file a complaint with the Office for Civil Rights
 - b. that the District strongly encourages any student who feels that he/she has been sexually harassed on school grounds or at a school-related activity by a student, employee, or a third party, to immediately contact a teacher, the principal or any other available school employee;
 - c. to include the definition of inappropriate relationships between employees and students in relation to the definition of sexual harassment, such as situations where an employee has crossed professional boundaries to cultivate an inappropriate relationship with a student. The policy will also include statements regarding employee responsibilities not to engage in sexual or inappropriate relationships with students, that sexual relationships with students violate Title IX, that sexual relationships with former students may also violate Title IX, and that in all instances involving sexual relationships between employees and students, the District shall assess whether a referral is necessary to either to law enforcement or other appropriate agency;
 - d. in order to ensure that the District conducts a prompt and equitable investigation as required by Title IX, a statement that all complaints regarding alleged sexual harassment and sexual violence by students, employees and third parties will be processed under BP/AR 5145.7 and BP/AR 1312.3 rather than District BP/AR

1312.1, 4119.11, 4219.11, and 4319.11. This statement is not intended to prevent the District from proceeding with a separate personnel investigation or from referring for a law enforcement investigation;

- e. that when a report of sexual harassment is made to a principal or other site administrator, he or she will inform the student and/or parent/guardian of the right to file a formal complaint through the District's Uniform Complaint Procedures (UCP), Administrative Regulation 1312.3, and provide a copy of or link to the UCP and if an informal process is retained that such process is voluntary, shall also comply with Title IX requirements, can be ended at any time by either party in order to proceed through the formal process, and will be concluded in 10 days;
 - f. that when an oral or written complaint of sexual harassment is initially submitted to a principal, he/she will, within two school days, forward the complaint itself or a transcription of the oral complaint to the District Compliance Officer ("Title IX Coordinator"); unless the complaint does not involve sexual violence and the complainant chooses to proceed through the informal investigation process at the local school site after being provided with information about the difference between the informal and formal processes and that such informal process may be ended at any time and the formal process started, the Title IX Coordinator will immediately contact the complainant and investigate and resolve the complaint under the UCP; and
 - g. If the District is on notice of a factual finding that a District employee engaged in behavior with a student, (including a student from a different district), which constitutes sexual harassment, sexual violence or the cultivation of an inappropriate relationship as defined in the District's revised policies pursuant to A. and G.1, the District shall investigate under the revised policies in Section A and take action to address the sexual harassment, sexual violence, or inappropriate behavior and any substantiated risk, including disciplinary action, up to and including dismissal of the employee, as applicable.
3. The District will revise the UCP, which already requires written notice of outcome to the complainant, to ensure compliance with Title IX and its requirements and amend it to include at least the following:
- a. written notice of the outcome will be provided to both parties, the complainant and the respondent/accused. Such notices shall maintain any applicable confidentiality rights of the parties and be issued in consideration of any legal limitations based on such confidentiality;
 - b. the district will address any complaint of sexual harassment;
 - c. that the complainant and respondent have equal appeal rights with respect to the determination under the UCP procedures;

- d. a definition of conflict of interest, a statement that conflicts of interest, including with respect to outside entities contracted to conduct investigations, are prohibited and a process for identifying and addressing such conflicts; and
 - e. a complainant's past sexual relationships with individuals other than respondent are excluded.
4. The District will post and provide notice of the revised BP 5145.7 and BP/AR 1312.3 in accordance with the Notification section of each respective policy/procedure, including providing a copy of the revised policy and procedure to school site administrators, employees and District and school climate committees.
 5. In order to ensure that the District conducts a prompt and equitable investigation as required by Title IX, a statement that all complaints regarding alleged sexual harassment and sexual violence by students, employees, or third parties will not be processed under BP/AR 1312.1 and BP/AR 4119.11, 4219.11, and 4319.11, but rather, revised BP 5145.7 and UCP (AR 1312.3). The District will revise and re-issue the 2012-2013 Discrimination Policy and Complaint Procedure Guidance Memorandum to Staff to include definitions of sexual harassment and sexual violence.
 6. The District will revise its Memorandum of Understanding (MOU) with the Palo Alto Police Department to clarify the roles and responsibilities of police department and district staff with respect to compliance with Title IX and a safe, nondiscriminatory school environment, including the responsibility of the District's separate obligation to promptly and equitably resolve complaints of sexual harassment even while a criminal investigation is ongoing. The MOU will also address training on Title IX requirements and the District's grievance process that will be provided to school resources officers involved in investigating and resolving such complaints.
 7. To the extent not addressed by the above listed provisions, the District will develop and implement policies, procedures, and practices in compliance with Title IX requirements.

B. Tracking Reports and Complaints of Sexual Harassment

1. The District will develop an online system where students and parents can make anonymous reports of sexual harassment and sexual violence. To the extent possible based on anonymous reports, complaints will be processed consistent with Section A.2.e and A.2.f.
2. The District will continue to develop a confidential system for tracking all complaints and allegations of sexual harassment and sexual violence in the District, including, but not limited to, matters that are resolved informally at the school site level and through the UCP. The system will include the following information: (a) the date the matter was first reported and to whom it was first reported (i.e., school principal, Title IX Coordinator, etc.); (b) if first reported to the school site, the date the Title IX Coordinator was notified of the complaint or report; (c) who filed the complaint (parent, student, or third party); (d) the school where the student was enrolled; (e) the nature of

- the allegation; (e) if resolved at the school-site, information about the resolution, including remedies and sanctions and whether notice of the outcome was provided to both parties; (f) the date any formal investigation under the UCP was completed; (g) under the UCP, the date notice of the outcome of the complaint was provided to the complainant and respondent; (h) the consequences or sanctions imposed on any individual found to have engaged in sexual harassment; and (i) all interim and remedial actions taken to assist and support the complainant.
3. All schools shall develop a confidential system for tracking all reports and complaints of sexual harassment or sexual violence, including, but not limited to, matters that are resolved at the site level (i.e., those that are not resolved through the UCP process). The system will include the following information: (a) who made the report or complaint; (b) who received the report or complaint; (c) whether the complainant was informed of the right to file a criminal complaint, when the data support such action; (d) whether the complainant was informed of the right to file a UCP complaint and provided with the UCP procedures; (e) the nature of the report or complaint; (f) how the allegations were resolved, including any consequences imposed on the alleged harasser and any actions taken to assist and support the complainant(s), (g) how and when notice of the outcome was provided to the individual who made the report or complaint and the respondent, and (h) the date that information about the resolution was provided to the Title IX Coordinator.
 4. At the end of each school year, the Title IX Coordinator will report to the Superintendent and Board of Education a summary of the information shown by the tracking systems, including the number of reports or complaints regarding sexual harassment and sexual violence, including, but not limited to, complaints filed and resolved under the UCP and the number of complaints resolved through an informal process at the schools in the District, any patterns or concerns raised by the information gathered, any steps the District and/or Schools have taken to address the concerns, and recommendations for future actions.

C. Staff Guidance and Training

1. The District will provide annual mandatory Title IX training for employees, including administrators, classified staff, and teaching staff throughout the District. This training may be provided through online modules. At Palo Alto and Gunn, this training shall include an in person component for the duration of this Resolution Agreement. The Title IX training shall clarify employee responsibilities when they receive a report or complaint of sexual harassment or sexual violence, including their responsibilities when a complainant requests informal resolution at the site level. The training shall also address employee responsibility for forwarding all oral or written sexual harassment or sexual violence complaints to the Title IX Coordinator.
2. At each training session, the District will distribute a guidance memorandum or bulletin. The training and guidance memorandum will address at least the items below:

- a. the District's policy prohibiting discrimination and sexual harassment of a student by other students, third parties, or by District employees based on sex, including the policy revisions described above;
- b. OCR's January 2001 "Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties" and other OCR guidance documents (which OCR shall provide the District before August 15 of each school year), which explains a school's responsibility to respond promptly and effectively to sexual violence against students in accordance with Title IX;
- c. all of the types of conduct that could constitute sexual harassment and sexual violence;
- d. appropriate student and staff boundaries and power imbalance;
- e. that staff members who are responsible employees and that those responsible employees must report to the Title IX Coordinator and the principal if he or she learns of possible sexual harassment of a student by a peer or by an employee;
- f. an explanation that the UCP is the District's procedure for resolving all sexual harassment and sexual violence complaints, a summary of the procedure, where individuals can locate the full procedure, and the name and contact information of the Title IX Coordinator who is responsible for responding to complaints of sex discrimination, including sexual harassment;
- g. that the Title IX Coordinator must be notified when informal resolution is requested;
- h. that the informal resolution process must be completed within 10 days of receipt of the complaint and is voluntary;
- i. that the principal/designee will notify the parent/student and his or her parent/guardian and any respondent of the right to terminate informal resolution at any time;
- j. that neither the student or his or her parent/guardian may be asked or required to work out the complaint directly with the respondent;
- k. that the student or parent filing the complaint must be advised that he or she may file a formal complaint under the UCP at any time during or after the informal process;
- l. that optional mediation may be arranged only when the student, his or her parent, and the respondent student agree to resolve the complaint informally with the help of a counselor, teacher, administrator, or trained mediator, and that this does not apply to complaints of sexual violence;

- m. that the principal/designee will document whether informal resolution has been successful in resolving the complaint to the satisfaction of all the parties and to ensure compliance with Title IX, and will notify the Title IX Coordinator in writing; and
 - n. an explanation, as required under the revised UCP, of the equitable application of the UCP, and that in all cases the complainant and respondent will be provided with a written notice of outcome of the informal or formal investigation which will include, among other things, any remedies and sanctions, consistent with confidentiality considerations.
 3. The District will develop guidance and provide training for administrators and teaching and classified staff regarding the responsibility of the District and school to develop and implement a prompt, equitable and appropriate response to sexual harassment complaints when students with disabilities are involved, including, when necessary, holding manifestation determination hearings. This shall include:
 - a. the application of BP 5145.7 to such students;
 - b. the District's obligations to such students under both Title IX and the IDEA/ Section 504;
 - c. the appropriate steps that should be taken when sexual harassment of or by a student with a disability is reported, including which staff members should respond to such reports;
 - d. when remedies such as discipline, schedule changes, or stay away orders might constitute a change in a student's placement; and
 - e. the appropriate steps to apprise the student's Individual Education Program team or Section 504 team of necessary information regarding sexual harassment and/or remedial actions.
 4. The District will develop guidance and provide training for administrators and all staff to clarify the District's obligation with respect to the enforcement of protective orders and restraining orders between students, whether or not those orders result from reports of sexual harassment or sexual violence. The guidance and training on enforcement of such orders will include, but not be limited to, when notification of such an order may trigger the District's responsibilities under BP 5145.7 and/or AR 1312.3.
 5. The District will provide annual training for its designated Title IX Coordinator. The training will include, but not be limited to, the topics described in sections C.1-4 above.

D. School Climate Assessment

1. The District will conduct a school climate assessment at each school in the District, including a student and parent survey, during the 2016-2017 school year to assess the extent to which students are subjected to or witness sexual harassment by any party,

whether such sexual harassment is reported to school staff and if not, why, and the effectiveness of school sexual harassment response and prevention efforts. At Palo Alto and Gunn High Schools, this survey shall include questions regarding maintenance of appropriate boundaries between staff and students. The District may modify an existing survey, such as the California Healthy Kids Survey or other climate assessment conducted by the school site, provided that the survey asks specific questions sufficient to assess the areas described in this section. The survey will be administered using the District's established method of parental notification and consent.

2. The District will provide a copy of and discuss the results of the school climate survey described with the District's Safe and Welcoming Schools Committee and consider whether additional steps should be taken to strengthen the District's school climate programs and activities in response to the survey results.

E. Sexual Harassment Investigations

1. The District will conduct an investigation into:
 - a. reports the District received during the 2013-2014 school year that the former Principal at Palo Alto High School (PAHS) sexually harassed students and address all the information obtained during the investigation to determine whether remedial actions or services are needed.
 - i. whether staff in the District or at the school-site should be disciplined and/or provided training for failing to report the behavior.
 - b. reports the District received in 2007 and 2013 regarding a former teacher at PAHS who had been subject to investigations regarding alleged crossing of professional boundaries for the purpose of cultivating an inappropriate relationship with former student(s) in order to determine whether there are any other affected current or former students and whether they require remedial actions or services.
 - c. as it pertains to investigations in E.1.a. and b. above, determine whether staff in the District or at the school-site should be disciplined or provided training for enabling or failing to report behavior if such findings are made.
 - d. reports the District received of an off-campus sexual violence during the 2012-13 school year and the March 2014 off campus incident related to PAHS.
 - e. The investigations described in E.1 a-d will be conducted by an Independent Investigator approved by OCR in collaboration with the District's Title IX Coordinator under the District's UCP.
2. For the investigation described in E.1.a., the investigation will involve:

- a. review of the information gathered during the District's investigation under its personnel policies;
 - b. identification of the current and former students who were subjected to sexually harassing conduct during the period that the former Principal was at PAHS and/or at the middle school that he was assigned to after resignation from PAHS and notify their parents/guardians;
 - c. conducting and documenting interviews with students, staff and other relevant witnesses;
 - d. for each identified student and for the parent who filed a formal complaint about conduct that she observed during an onsite visit, reach a written determination regarding whether sexual harassment occurred; and
 - e. if applicable, determine and document what remedial actions will be taken and services provided, for the student(s) and if any additional actions need to be taken at the school-site to address any ongoing problems. This includes actions and services provided for former students and any actions to address any failure to report by responsible employees.
3. With respect to all of the investigations, consistent with the revisions to the UCP discussed in A.3.a the District will provide a written notice of outcome to complainant(s) (with any remedies and sanctions) and the respondent(s) (with any sanctions) after OCR review and approval. Such notices shall maintain any applicable confidentiality rights of the parties and be issued in consideration of any legal limitations based on such confidentiality
 4. The District will review the behavioral incident reports the District received at both Gunn and Palo Alto High School for the 2012-13, 2013-14, 2014-15, and 2015-16 school years to determine whether the incidents were handled appropriately under Title IX and whether any remedies are needed for the complainants, whether the steps taken for the respondents have been sufficient to address prevention of further sexual harassment, and, to the extent not already issued, provide a notice of written outcome to the complainants and respondents, if the incident involves a Title IX issue.
 5. In exercising due diligence in locating respective parties in the above referenced investigations and providing notice of the investigations in Subdivision E, the District shall send written correspondence to the last known address, unless additional current telephone or email contact information is in the District's possession. If additional telephone or email contact information is in the District's possession, it shall attempt to notify parties through those means as well.
 6. For review and approval, the District will provide OCR with the investigative reports and all underlying documents and interviews conducted to produce the reports related

to the two alleged incidents of sexual harassment reported to OCR during the spring semester of the 2015-16 school year at Ohlone and PAHS, along with a proposed corrective action plan and written notices of outcome, consistent with the UCP. For review and approval, the District will provide OCR with a proposed corrective action plan to address the concerns raised about policies, procedures, and staff training in the investigative report issued related to the allegations of an inappropriate relationship at Gunn in December of 2015.

F. Individual Student (Case No. 09-14-1217)

1. The District will provide the Complainant and Student at issue in Case No. 09-14-1217 with a letter describing the actions the District will take pursuant to this Agreement and the current resources available to victims of sexual harassment, stalking and dating violence based on gender or sex at the Student's school.
2. The District will invite the Complainant and Student to share their perspectives on how the District can strengthen its commitment to providing a prompt and equitable response to reports of sexual harassment, stalking and dating violence based on gender or sex with an individual of their choice with appropriate expertise and authority, such as the District Superintendent or Title IX Coordinator. The District will incorporate the feedback of the Complainant and Student, wherever relevant, in the development of the staff training and guidance and school climate assessment described in this Agreement.
3. Within seven days of the signing this Agreement, the District will request documentation from the Complainant regarding private counseling expenses incurred to date as a result of the sexual harassment and dating violence based on gender or sex the Student endured and, within 45 days, reimburse the Complainant for such documented expenses if requested.
4. The District will provide an opportunity at a time and location convenient for the Student to retake any courses or exams given during the period of time during which the complaint was being investigated by the District and her grades dropped.

G. Reporting Requirements

Assuming the RA is approved and signed by the District and OCR by February 28, 2017, the following reporting requirements will be in effect:

1. By June 30, 2017, the District will provide OCR with a draft of the revised policies, notice, and UCP described in Section A for review and approval. The District will provide OCR with a copy of the adopted policies and notice within 30 days of OCR approval. The District will also provide information regarding the method of dissemination of the adopted policies and documentation of the same.
2. By June 30, 2017, the District will provide OCR with a draft of the notice and staff memorandum described in Sections A.4 and 5 for review and approval. The District

will provide OCR with a copy of the final notice and verification that it was distributed within 15 days after the OCR approval.

3. By August 14, 2017, the District will provide OCR with a draft of the revised MOU described in A.6 for review and approval. After receiving approval, the District will immediately engage and take the necessary steps with the PAPD to obtain its approval and signature on the revised agreement. Within thirty days of receiving approval and signature, the District will distribute the MOU to administrative staff at all schools and provide training to administrators regarding the same.
4. By June 30, 2017, the District will provide OCR with verification that it has designed the tracking system and implemented the provisions under Sections B.1-3. After approval by OCR, the District will immediately begin implementing the systems. By June 30, 2018, and by the same date for each year thereafter, the District will provide OCR with printouts of the data from the tracking systems and a copy of the report presented to the Board by the District Compliance Coordinator pursuant to Section B.4.
5. By July 30, 2017, and by July 30th for each year thereafter, the District will provide OCR with the case files for all oral and written complaints filed with the Title IX coordinator for review. Within 30 days after OCR's review of the case files, if OCR determines that there are any issues raised with respect to whether the complaint was promptly and equitably resolved, a meeting with the District will be scheduled to discuss a corrective action plan.
6. By December 30, 2017, and by December 30th for each year thereafter, the District will provide OCR with verification that the training described in Sections C.1-4 has been completed. The verification will include the date(s) of the training, the names of the trainer(s), the agenda and materials from the training, and a list of the participants.
7. By March 15, 2017, the District will provide OCR with a draft of the student and parent survey described in Section D.1 for review and approval. By August 1 of each school year, District will provide OCR with a copy of the survey results, and a description of the steps it will take to address any concerns raised by the survey results within 60 days of the survey administration.¹
8. By March 30, 2017, the District will provide OCR with a copy of the qualifications of the proposed independent investigator for OCR review and approval, as described in Section E.1-2. In addition, by December 30, 2017 the District will provide OCR with all documents gathered during the investigations described in Section E, its proposed determinations and its proposed remedial actions, if applicable, for review and approval. With respect to the investigations in Section E.1-2, the District will not issue any notice of its decision (E.3) to students or parents/guardians prior to receiving OCR

¹ This date may be extended if the survey report is generated by a third party, such as the California Healthy Kids Survey. Should such a situation arise, the District will work in good faith with OCR to communicate with the third party and establish the date the survey report will be provided.

approval. Within 30 days of OCR approval, the District will provide verification to OCR that it has issued the notices of outcome to the relevant parties.

9. By December 30, 2017, the District will provide OCR with copies of the written notices of outcome to be provided after its review of the Behavioral Incident Reports at Gunn and PAHS described in E.4. The District will not issue any notice of outcome to students or parents/guardians prior to receiving OCR approval. Within 30 days of OCR approval, the District will provide verification to OCR that it has issued the notices of outcome to the relevant parties.
10. By June 30, 2017, the District will provide OCR with the investigative reports and all underlying documents and interviews for review and approval with respect to the investigations of the incidents described in E.6 and the proposed corrective action plan related to the allegations at Gunn. Within 30 days of receiving OCR's review and approval of the investigative reports, the District will provide OCR with a proposed corrective action plan, including but not limited to proposed written notices of outcome for the complainants and respondents, any remedies for the complainant, any actions necessary to address harm to the school community, and any actions necessary to prevent further recurrence of sexual harassment. Within 15 days of receiving OCR's approval of the corrective action plans and written notices, the District will implement the plans and issue the notices.
11. By March 30, 2017, the District will provide OCR with a draft of the letter and invitation to the Complainant and Student to participate in the District's school climate efforts, as described in Section F for review and approval. Within 7 days of receiving OCR's approval, the District will issue the invitation to the last know address and email address of the Complainant and provide OCR with documentation of the same. By June 30, 2017, the District will provide OCR with documentation of any counseling reimbursements provided to the Complainant, any courses or exams that Student was allowed to retake, if applicable, and any other appropriate remedies.

H. Monitoring

1. OCR will monitor this resolution agreement for a minimum of three years.
2. The District understands that OCR will not close the monitoring of this Agreement until OCR determines that the District has fulfilled its terms and is in compliance with the Title IX and its implementing regulations, including 34 C.F.R. §106.31, 34 C.F.R § 106.8(a)-(b), 34 C.F.R. § 106.9, which were at issue in this case.
3. The District further understands that during the monitoring of this agreement, if necessary, OCR may visit the District to interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the District has fulfilled the terms of this agreement and is in compliance with Title IX and its implementing regulations, which were at issue in this case. By signing this Agreement, the District agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement.

4. The District understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings, including to enforce the specific terms and obligations of this Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings, including to enforce this Agreement, OCR shall give the District written notice of the alleged breach and 60 calendar days to cure the alleged breach.

Dr. Max McGee, Superintendent

Date

Board President

Date

Board Vote Date: February ____, 2017

Ayes:

Nays: