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OFFICE FOR CIVIL RIGHTS

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August 30, 2024

Dr. Marie Feagins
Superintendent
Memphis-Shelby County Schools
Memphis, Tennessee

Re: Memphis-Shelby County School District - OCR Docket Number 04-20-5001

Dear Dr. Feagins:

This letter is to advise you of the outcome of the above-referenced compliance review of the Memphis-Shelby County School District (District), which the U.S. Department of Education, Office for Civil Rights (OCR) initiated on March 12, 2020. This compliance review examined the District's handling of sexual assault cases, including incidents involving both student and staff sexual misconduct.

OCR conducted this compliance review pursuant to Title IX of the Education Amendments of 1972, 20 U.S.C. Sections 1681 et seq., and its implementing regulation at 34 C.F.R. Part 106 (Title IX), which prohibit discrimination on the basis of sex in any education program or activity operated by a recipient of federal financial assistance from the Department. Because the District is a recipient of federal financial assistance from the Department, OCR has jurisdictional authority to conduct this compliance review. Pursuant to Federal court orders, the Department is currently enjoined from enforcing the 2024 Title IX [Final Rule](#) in Tennessee. Pending further court orders, the Department's Title IX regulations, as amended in 2020 ([2020 Title IX regulations](#)) remain in effect in Tennessee. The Title IX regulation that was in effect for purposes of this compliance review can be found [here](#).

At this point in investigation, OCR has determined the District violated Title IX during the 2017-2018, 2018-2019, and 2019-2020 school years (the Review Period) and in addition OCR has identified a series of compliance concerns regarding the District's fulfillment of Title IX obligations. The District signed the enclosed Resolution Agreement (Agreement) to address the Title IX violations and concerns OCR identified. When fully implemented, the Agreement will resolve this compliance review.

Summary of Violations and Concerns

District documents reflect reports that teachers or substitute teachers sexually assaulted students in 7 incidents during the 2017-2018, 2018-2019, and 2019-2020 school years at all school levels – elementary, middle, and high school. District documents reflect 53 more cases of reported

staff-to-student sexual harassment, not including sexual assault, as well as a total of 88 cases of student-to-student sexual harassment during that time period. These same documents and witness interviews reflect clear District violations of Title IX in addition to raising serious separate concerns regarding the efficacy of the District response in satisfaction of Title IX.

OCR determined that the District violated Title IX as follows:

- The District did not have a designated Title IX Coordinator, as required by 34 C.F.R. Section 106.8(a), for substantial portions of the Review Period. In addition, District files and administrator interviews confirm that the District did not coordinate its response to reports of sexual harassment, including sexual assault, through its Title IX Coordinator, as Title IX requires: the Title IX Coordinator was not involved in the majority of sexual harassment files reviewed for this investigation. For example, the case files do not reflect any involvement from a Title IX Coordinator in the District’s response to any of the staff involved incidents.
- The District’s nondiscrimination statement and harassment policies did not comply with 34 C.F.R. Section 106.8(a).
- The District’s recordkeeping practices – including an absence of any file at all for the majority of the cases addressing sexual assault allegations as well as inconsistent reporting of the same data to OCR for purposes of the mandatory Civil Rights Data Collection (CRDC) in 2017-2018 and for this compliance review – did not fulfill the District’s Title IX obligation pursuant to 34 C.F.R. Section 106.71 to maintain records sufficient for the District itself or for OCR to make compliance determinations.

OCR also identified the following concern:

- District documentation produced to date suggests that the District did not respond either promptly or equitably to complaints of sexual assault of students during the 2018-2019 and 2019-2020 school years. In particular, District records reflect that the District generally did not assess whether a hostile environment existed for students and what remedies students may have needed as a result (e.g., counseling or course-related adjustments). In addition, the records reflect inconsistencies with interviews of complainant, respondent, and witnesses as well as inconsistent provision of notice to the parties and their families regarding investigations and their outcomes.

Because OCR identified both violations of Title IX and compliance concerns during its investigation of this compliance review, OCR determined that it was appropriate to resolve the allegations in this compliance review pursuant to Section 303(c) of the Case Processing Manual, which provides that a ‘mixed determination’ is appropriate for complaints with multiple allegations where the allegations will be resolved in different ways.

Methodology

OCR requested documentation regarding the District’s sexual misconduct cases for the 2017-2018, 2018-2019, and 2019-2020 school years. The District reported to OCR that during the

2017-2018 school year, it received reports of 24 staff-to-student cases and 390 student-to-student cases; during the 2018-2019 school year, it received reports of 24 staff-to-student cases and 380 student-to-student cases; and during the 2019-2020 school year, it received reports of 13 staff-to-student cases and 210 student-to-student cases.

OCR reviewed documentation regarding all 60 staff-to-student cases for the Review Period. For student-to-student cases, OCR focused on the two most recent years of the review period: 2018-2019 and 2019-2020. OCR selected 88 student-to-student cases across 22 schools for a file review. The selected files included: a) the 21 cases that the District characterized as sexual assault during the two years; b) all cases for each school with the highest number of student-to-student sexual harassment cases at its school level – elementary, middle, and high school; and c) four cases reported by schools that did not have cases in the first two categories. Of the 88 student-to-student cases selected for review, 66 cases across 16 schools did not have case files. The District provided case files for only seven of the 21 sexual assault cases.

OCR also reviewed the District's Title IX policies and grievance procedures, and documents related to employee training and other initiatives undertaken by the District to respond appropriately to and address complaints of sexual assault. The District's IX training materials are on its website at: [Training Resources](#).

OCR interviewed the District's 2018-2019 Title IX Coordinator, the 2019-2022 Title IX Coordinator; the Executive Director of the Office of Student Equity, Enrollment and Discipline; the Chief of Human Resources; a high school principal; a K-8 school principal; a middle school principal; and an elementary school assistant principal. The individual who served as Director of the Office of Professional Standards during the Review Period is no longer with the District and was not available for an interview.

Legal Standards

In conducting this compliance review and evaluating the District's compliance with Title IX, OCR applied the Title IX regulation in effect during the 2017-2018, 2018-2019, and 2019-2020 school years. Citations in this section are to this prior regulation, and the legal standards discussed below were in effect during the school years subject to this compliance review.

The Title IX regulation contains several procedural requirements, including a requirement that recipients designate at least one employee to coordinate the recipient's efforts to comply with Title IX, including the investigation of any complaint communicated to such recipient alleging its noncompliance with Title IX or any actions that Title IX would prohibit, 34 C.F.R. 106.8(a). In addition, the Title IX regulation requires recipients to publish a notice of nondiscrimination covering Title IX, and to adopt and publish procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any actions prohibited by Title IX and its implementing regulation. *See* 34 C.F.R. Section 106.9(a); *see also* 34 C.F.R. Section 106.8(b).

Sexual harassment is a form of sex discrimination prohibited by Title IX. 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 can create a hostile educational environment based on sex when the harassment is

sufficiently serious to deny or limit the individual’s ability to participate in or benefit from the recipient’s education program or activity.

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

When evaluating the extent of a recipient’s responsibilities if an employee sexually harassed a student, OCR considers if the employee engaged in sexual harassment in the context of carrying out their day-to-day job responsibilities for providing aid, benefits, or services to students that denies or limits a student’s ability to participate in or benefit from the school’s program on the basis of sex. This type of sexual harassment includes “quid pro quo” harassment, which occurs if a teacher or other employee conditions an educational decision or benefit on the student’s submission to unwelcome sexual conduct. Whether the student resists and suffers the threatened harm or submits and avoids the threatened harm, the student has been treated differently on the basis of sex.

The following factors are considered in determining whether an employee has engaged in harassment in the context of the employee’s provision of aid, benefits or services to students: 1) the type and degree of responsibility given to the employee, including both formal and informal authority, to provide aid, benefits, or services to students, to direct and control student conduct, or to discipline students generally; 2) the degree of influence the employee has over the particular student involved, including the circumstances in which the harassment took place; 3) where and when the harassment occurred; 4) the age and educational level of the student involved; and 5) as applicable, whether, in light of the student’s age and educational level and the way the school is run, it would be reasonable to believe that the employee was in a position of responsibility over the student, even if the employee was not. When an employee sexually harasses a student outside of their daily job responsibilities, OCR evaluates if the harassment created a hostile environment for the student, using the factors discussed above with respect to hostile environment harassment.

Under the Title IX regulation in effect for the time period examined in this review, when the recipient has actual or constructive notice of sexual harassment, it must take appropriate steps to investigate or otherwise determine what occurred, and it may be appropriate for a school to take interim measures prior to or during the investigation of a complaint. Interim measures are individualized services offered as appropriate to either or both the reporting and responding parties involved in an alleged incident of sexual misconduct. Interim measures include counseling, extensions of time or other course-related adjustments, modifications of work or class schedules, campus escort services, restrictions on contact between the parties, changes in work locations, leaves of absence, increased security, and monitoring of certain areas of campus,

and other similar accommodations. For instance, if a student alleges that he or she has been sexually assaulted by another student, the school may decide to place the students immediately in separate classes, pending the results of the school's investigation. Similarly, if the alleged harasser is a teacher, allowing the student to transfer to a different class may be appropriate.

If a recipient's investigation or other appropriate steps to determine what occurred identify staff-involved sexual harassment or student-involved harassment that creates a hostile environment, recipients are responsible for taking prompt and effective action to stop the harassment and prevent its recurrence. A recipient also may be responsible for remedying the effects of the harassment on the student or employee who was harassed.

Additionally, recipients should be aware that complaints of sexual harassment may be followed by retaliation by the person accused of the alleged harassment or individuals associated with the accused person. As part of the recipient's Title IX obligations, the recipient must have policies and procedures in place to protect against retaliatory harassment. At a minimum, recipients must ensure that complainants and their parents, if appropriate, know how to report any subsequent retaliation for having reported harassment, conduct follow-up inquiries to see if there have been any new incidents or any instances of retaliation, and respond promptly and effectively to address retaliatory harassment.

Facts

The District is the largest school district in the state of Tennessee enrolling over 100,000 students. The District serves these students across 77 elementary schools, 10 K-8 schools, 26 middle schools, 27 high schools, 56 charter schools, and 18 other types of schools.

In reviewing the District's compliance with Title IX and its implementing regulation during the Review Period, OCR analyzed whether the District had designated and provided notice of a Title IX Coordinator, issued notice that it does not discriminate on the basis of sex, and adopted and published grievance procedures providing for the prompt and equitable resolution of student complaints of sex discrimination, including harassment. OCR also examined the District's handling of individual complaints of sexual assault, the Title IX Office's role in Title IX responses handled by schools or other District offices, the Title IX training the District provided, and its Title IX recordkeeping procedures – including discrepancies that OCR found with respect to the District's submission to OCR's CRDC.

- **Title IX Coordinator**

During the Review Period, the District did not consistently have a Title IX Coordinator. For instance, the District reported to OCR that during 2017-2018 it did not have a Title IX Coordinator. The District then had a Title IX Coordinator from November 2018 through March 2019 (Title IX Coordinator 1). From March 2019 through July 2019, the District was again without a Title IX Coordinator. The District designated a Title IX Coordinator in July 2019 (Title IX Coordinator 2). At some point during Fall 2022, Title IX Coordinator 2 no longer was employed with the District. The District designated a new Title IX Coordinator during the pendency of this compliance review. The District's Title IX Office page on its website includes

the name, title, email address, physical address, and phone number for the new designated Title IX Coordinator.

Title IX Coordinator 1 told OCR that she was hired to coordinate and monitor the District's compliance with Title IX. She stated that the District's intention was to concentrate Title IX compliance into one office. She stated that upon assuming the role, she completed several external training modules on Title IX and attended Title IX trainings offered by the Chief General Counsel for the District. She also stated that she did not receive any training on the District's Title IX policies and procedures. She stated that she independently reviewed the relevant policies and procedures.

Title IX Coordinator 2 told OCR that upon assuming the role in July 2019, she completed a beginner external training and then took an advanced course during the summer of 2021. She stated that she also received training on how Title IX applied in the K-12 environment and helped to write Title IX policies to bring the District into compliance with Title IX. She stated that she completed annual trainings from a second external source.

Title IX Coordinator 2 stated that she oversaw the formal complaint and grievance policy; oversaw the individuals responsible for decision making and the appellate process; ensured employees and students knew how to report incidents; when incidents were reported, determined whether the incidents were appropriate to be processed under the Title IX procedures; ensured supportive measures were offered and maintained, regardless of whether or not the formal complaint process was initiated; if the formal complaint process proceeded, ensured the process was followed in accordance with the District's policy; ensured employees were trained properly; and ensured employees knew what Title IX required, with a focus on trying to prevent sex discrimination before it occurred.

The District provided written notice of the person(s) responsible for coordinating its efforts to comply with and carry out its responsibilities under Title IX. The District's 2018-2019 and 2019-2020 student-parent handbooks included a non-discrimination statement and a sexual harassment policy, Policy 6046 Harassment, Sexual Harassment, Discrimination, Intimidation, Bullying or Cyberbullying (Policy 6046); both items in the student-parent handbooks identified a Federal Rights Coordinator as the contact person for students, who was responsible for addressing complaints alleging discrimination on the basis of sex. Policy 6046, last revised 7/28/2020, identifies the responsible person as the Title IX Coordinator, and provides contact information but does not provide the coordinator's name.

- **Notice of Nondiscrimination**

The District had a notice of nondiscrimination in effect during the Review Period. The District's notice of nondiscrimination is identified as School Board Policy 1009 (Policy 1009), last revised 6/30/2020. In a section regarding Title IX, Policy 1009 states the District prohibits discrimination on the basis of sex in its educational programs and activities and the prohibition extends to employment in, and admission to, District programs and activities. The statement identifies the District's Federal Rights Coordinators as the contact persons for students or employees who believe they had been subjected to sex discrimination. At the end of Policy 1009, is the title, mailing address and telephone numbers for the Federal Rights Coordinators; the

policy does not identify the persons by name. The policy does not state that inquiries may be referred to OCR's Assistant Secretary.

- **Harassment Policies and Grievance Procedures**

The District had a harassment policy and grievance procedure in effect during the Review Period. District Policy 6046, updated in October 2016, stated the District would not tolerate conduct that was: aimed at defining a student in a sexual manner; impugned a student's character based on allegations of sexual promiscuity; or motivated by sex, sexual orientation or gender identity or expression, as well as other listed bases. The policy stated students who experienced harassment, or their parents, should report the incidents to the principal or building administrator, and the policy required staff to forward reports that they received to the principal or building level administrator immediately but no later than within 24 hours of the expressed concern. Policy 6046 required that if a student reported harassment, the principal or designee would notify the student's parent or guardian regarding the reported conduct and the availability of counseling and support services. The policy required the principal or designee to initiate an investigation within 48 hours of receiving a report and complete the investigation within 20 calendar days of receiving the report. The policy required initiation of corrective or disciplinary action against a student offender if the allegations were substantiated and stated that a substantiated charge against an employee could result in disciplinary action up to termination. Policy 6046 required the principal or designee to meet with the "complainant" and the parent or guardian to advise them of the findings and whether the District took corrective or disciplinary action.

A student subjected to discipline under Policy 6046 could appeal the discipline as specified in the District's disciplinary policies and procedures. A complainant or victim was permitted to appeal to the Federal Rights Coordinator for students and if dissatisfied with the decision of the Federal Rights Coordinator, could appeal to the Superintendent. The policy permitted employees to appeal a discipline decision by contacting the Federal Rights Coordinator for employees.

Policy 6046 prohibited retaliation against any person who reported harassment, intimidation bullying or cyberbullying or participated in an investigation. Employees were subject to disciplinary action up to and including termination and students were subject to discipline pursuant to the District's discipline policy.

Policy 6046 outlined in its accompanying Administrative Rules and Regulation prevention training for school counselors and staff as well as training for students. It also described support services available for victims of harassment, bullying, intimidation, and cyber-bullying as well as interventions and targeted discipline for alleged bullies.

The District's Student Conduct policy (Policy 6022) also included reporting procedures for sexual harassment complaints. Policy 6022 was included in the student-parent handbook. It stated any student or parent/legal guardian who believed a student experienced student-to-student discrimination or sexual harassment should report it to a teacher, counselor, or principal immediately. If the report was made to a teacher or counselor, he or she was to notify the principal immediately.

Policy 6022 included five categories of offenses ranging from A to E. Category A offenses were the highest ranked offenses, classified as “State Zero Tolerance Offenses”. Policy 6022 identified sexual harassment as well as other forms of harassment under protected categories as a Category D offense under the District’s discipline policy. The penalties for Category D offenses included parent-principal conference, before/after school detention or Saturday school, in-school suspension, and out-of-school suspension.

- **Title IX Office’s Role in Responses to Sexual Harassment Reports**

Generally, District witnesses confirmed that during the Review Period, students could report sexual harassment to school staff members, who were required to convey any report to the school administration. Witness testimony did not reflect that school administrators consistently provided the Title IX Coordinator notice of complaints as they were submitted. While one school administrator said that upon receiving complaints she notified the Title IX Coordinator immediately, another administrator said that not all cases of harassment were required to be reported to the Title IX Office and she would send more serious cases to the Title IX office; a third administrator stated that the school would report Title IX complaints to the District if it were a criminal matter but not as a matter of routine.

District and School level administrators told OCR that the school administration was responsible for the first level of investigation of reports of student-to-student harassment. One administrator said that while she conducted the investigation, the Title IX office served in an advisory role during the process. A District administrator told OCR that the school administration was responsible for sending the results of the school investigation to the Title IX Office, and when there was a Title IX Coordinator in place that individual reviewed investigation results to determine whether there was a violation of Title IX. When the Title IX Coordinator was not in place, the Office of Student, Equity, Enrollment and Discipline reviewed the investigation results and determined whether there was a violation of Title IX.

While multiple witnesses said that schools handled investigations of Title IX complaints involving students accused of sexual harassment, Title IX Coordinator 1, who was in the position for four months during the Review Period, told OCR that she was responsible for investigating all student Title IX complaints. However, she only recalled having investigated one complaint, and said she also recalled receiving a parent phone call that did not result in a full investigation because she moved into a new role at the District.

Title IX Coordinator 2 explained that during the 2019-2020 school year, the District was focused on developing better policies and procedures, so “maybe” she did not have as much involvement in cases that year. The District’s files that OCR reviewed, and summarized below, do not reflect that Title IX Coordinator 2 received notice of reported Title IX incidents.

The District’s Chief of Human Resources told OCR that Title IX complaints involving employees are reported to the Office of Professional Standards. She stated that the Office of Labor Relations is responsible for performing any employee-related Title IX investigations. She stated that an investigator makes a determination based on the evidence and then the report is sent to a review team to determine the appropriate discipline of the employee.

- **Recordkeeping Regarding Title IX Complaints**

The District provided documentation related to all complaints of staff-to-student sexual harassment or assault. However, the categories of documents varied; the extent of documentation also varied, with some files containing as few as two pages. While some files included interview summaries or other documentation of interviews of one or more parties or witnesses, the files did not consistently show whether the District conducted an investigation or the types of information gathered when an investigation did occur. With regard to the seven complaints that the District characterized as sexual assaults, only two case files include an investigative report; two others include a complaint disposition form; and two files include an outcome letter to the employee.

With regard to cases of student-to-student harassment, there was witness testimony that school administrators were required to document statements in writing and during 2018-2019, school administrators prepared paper forms, which they would scan and send to the District's discipline office. Witnesses also said that school administrators were required to report each incident through an electronic data system, which could provide some information about incidents even in the absence of a paper file. Based upon witness testimony, it was not clear whether administrators were entering information solely in an electronic discipline database or whether there was also a separate Title IX database. For example, one administrator discussed a requirement to complete and upload forms into a data system upon receipt of a complaint and said that the information was also documented in the discipline system, which could be accessed by the District's Office of Student Equity, Enrollment and Discipline.

The District had case files for only 22 of the 88 student-to-student incidents that OCR selected for review. The 66 missing case files were for cases from 16 of the 26 schools involved. Fifty-one (51) of the missing case files were for cases that occurred during the 2018-2019 school year and 15 missing case files were for cases that occurred during the 2019-2020 school year. The District had no case files for the majority of the cases the District identified as sexual assaults: files for 9 out of 12 cases that the District identified as sexual assaults for the 2018-2019 school year were missing, and 5 out of 9 cases that the District identified as sexual assaults for the 2019-2020 school year were missing.

In addition to the District identification of files involving sexual assault, OCR also identified nine files, which the District had not identified, that involved conduct such as inappropriate touching in an intimate area, which would qualify as sexual assault. OCR added these files for review.

The 22 selected student-to-student incidents with files (Peer Incidents) were reported across 17 schools. The information in the files was often limited and most documents were discipline related. For seven sexual assault files, the files consisted of one or two pages and the types of documents in those files varied; for example, one file contained a teacher's statement about a report from students and an administrator's statement about that teacher relaying the report, while another file contained only a copy of a stay away agreement signed by a student. Files with more documentation nonetheless generally provided incomplete information about matters such as which staff members took action to respond to incidents, how they responded, or what they communicated to the parties or their parents. For example, the file for a case involving one student allegedly touching another in his private area contained a teacher's email about how she

first learned of the incident, statements from the parties and a student witness and a long-term removal notice to the accused student's parents, but did not reflect who conducted the student interviews or what other contact, if any, staff had with the student who experienced the assault or with his parents.

Similarly, there was limited documentation in the six files regarding incidents that did not involve sexual assault. Two files consisted of only one page: one of those files contained only a teacher's narrative discussion about an accused student typing inappropriate language into a calculator and the other contained only an administrator's undated narrative explanation of why, based upon the reports of the accused student and witnesses, the accused student's misconduct did not constitute sexual harassment. The four remaining files contained varying types of discipline-related documents such as referrals and notices of out-of-school suspensions. Only two files contained completed statements from a party; one of those files included a statement from the student who experienced harassment and the other included a statement from the accused student.

Also related to the District's recordkeeping, OCR noted a discrepancy between data the District reported for the CRDC for the 2017-2018 school year and the data the District provided OCR in response to its data request for this compliance review. As noted above, the District's data submission to OCR for the 2017-2018 school year, shows 390 student-to-student complaints, including 388 complaints of sexual harassment and two complaints of sexual assault. The data submission to OCR also includes 24 reports of staff-to student incidents – including three complaints of staff-to-student sexual assault – during the 2017-2018 school year. The combined total number of reports according to the data submission to OCR was 414, including 5 sexual assaults. The District's CRDC submission shows that during the 2017-2018 school year, the District received 352 allegations of harassment or bullying on the basis of sex and an additional 51 reports of harassment or bullying on the basis of sexual orientation, totaling 403 reports. The CRDC report reflects that the District received 43 allegations of sexual assault (other than rape) during 2017-2018. The CRDC does not distinguish between student-to-student and staff-to-student incidents.

- **Responses to Staff-to-Student Complaints**

Of the 60 reported staff-to-student cases examined during the Review Period, seven involved sexual assault. The reports alleged that teachers or substitute teachers sexually assaulted students at all school levels – elementary, middle, and high school. The District's remaining 53 cases included a number of reported incidents of sexual harassment, including inappropriate touching and inappropriate relationships between District staff members and students; four cases involved sexual relationships with students and four involved inappropriate touching of students' private areas, which qualifies as sexual assault.

The case files do not reflect any involvement from a Title IX Coordinator in the District's response to any of the incidents, including during periods when the District had a designated Title IX Coordinator. Instead, the District's Department of Employee Relations (Employee Relations) handled the cases. Title IX Coordinator 1 told OCR that if any employees had been involved in cases during her tenure, she would have worked in collaboration with the Human Resources Department, but she stated there were no situations involving employees. However,

the data provided by the District shows that there were 27 staff-to-student harassment cases during the tenure of the two Title IX Coordinators combined, including 15 cases during Title IX Coordinator 1's tenure. Title IX Coordinator 2 stated that the Title IX Office, about the time of the OCR interview in September 2022, started collaborating with the Human Resources Department regarding employee complaints but did not previously have any involvement.

The staff-to-student case files generally showed that Employee Relations approached the cases primarily as personnel matters, focusing on whether the accused employee violated a school board ethics rule or engaged in conduct that implicated state laws regarding education, rather than on whether there was a potential Title IX violation or the effects of an incident upon the student. As an example, in one findings letter, after noting that a substitute teacher accused of inappropriate physical contact with a student had faced a similar accusation while assigned to a different District school, an Employee Relations Advisor concluded that the substitute teacher had violated school board policy relating to staff ethics and had demonstrated improper conduct, but did not explicitly state whether the District concluded that the substitute had engaged in sexual harassment or other sexual misconduct. While the file reflects that following the earlier accusation, the administrator of that school blocked the substitute from serving at her school, nothing in the file shows the District met its Title IX obligations.

District files reflect inconsistent investigation practices, with some files reflecting interview summaries for staff members but not the complainant or student and other files reflecting District reliance on law enforcement or child protective services investigations – which investigate issues not covered by Title IX – rather than District Title IX investigations. In addition to the inconsistencies reflected in the files, none reflected complete investigations sufficient to fulfill the District's Title IX obligations, including the obligation to determine whether a hostile environment existed that needed to be remedied.

The case files showed resolution times that ranged from 1 day to 201 days; the investigation of the sexual assault of several elementary school students took six months and the case that was resolved in 201 days involved an alleged inappropriate teacher relationship with a high school student. Further, for the seven sexual assault cases, while there are outcome letters to the employee for two cases, the files did not include evidence that the students who alleged the assaults were notified of the investigative outcome. Except for one case, there was no evidence of the District's offer of interim measures to students and the information the District provided did not show instances of offering students a remedy after the District apparently found that staff engaged in the alleged conduct.

Staff-to-Student Examples of Concern

- File 1

In one case, a [redacted content] female student reported that a male [redacted content] teacher touched her [redacted content] and put his knee on her [redacted content] while she was using his computer in the classroom. Employee Relations investigated the complaint. During the pendency of Employee Relations' investigation, the District banned the [redacted content] teacher from all District school locations and advised him not to [redacted content] by school

principals. The District also reported the allegations to the Department of Children Services and the Memphis Police Department.

Employee Relations completed its investigation of the complaint in 32 days. The case file contains written statements from the student, the [redacted content] teacher, and student witnesses, as well as documentation regarding a prior similar allegation of [redacted content] touching made by a male student at another District school against the same [redacted content] teacher nine months earlier. Based upon the investigation into the female student's complaint, an Employee Relations [redacted content] issued a letter which concluded that, based on a preponderance of the evidence, the [redacted content] teacher had violated school board policy relating to staff ethics and had demonstrated improper conduct. The letter did not explicitly state whether the District concluded that the [redacted content] had engaged in sexual harassment or other sexual misconduct. The District immediately terminated the [redacted content] teacher's employment based on the investigation results. However, the case file does not indicate whether any interim relief, if needed, was provided to the student or if she was notified of the outcome of the investigation.

- File 2

In another case, the mother of a [redacted content] male student reported to her son's high school that a female teacher was having a sexual relationship with her son. On the date of receipt of the complaint, the District placed the teacher on administrative leave with pay pending the outcome of the investigation and prohibited her from entering any District property. The District also reported the allegations of an inappropriate sexual relationship to the Department of Children Services and to the Memphis Police Department, both of which arrived at the school the following day to meet with District officials, the student, and his mother to begin their respective investigations. The teacher was [redacted content].

Employee Relations initiated an investigation and issued an internal confidential investigation report within three days of the complaint report date. However, the report does not detail the District's investigative process, such as the witnesses interviewed (the file does contain witness summaries related to a prior investigation of the teacher's sexual harassment of the same student), any documentation reviewed, the standard of review applied, or the conclusion of the investigation, aside from the District's referral of the case to the Department of Children Services and the Memphis Police Department. Although the case file contains a written statement from the teacher, there is no evidence that the District interviewed the student or obtained a written statement from him. The evidence is also unclear as to whether the parties were notified of the outcome of the investigation, aside from notice to the teacher of her termination. District documentation shows that Employee Relations had investigated the same female teacher for a prior allegation of sexual harassment of a student. Employee Relations determined that they could not substantiate the prior report that the teacher engaged in unethical behavior.

- File 3

This case involved a male elementary-school teacher who encouraged a [redacted content] male student to [redacted content] in his empty classroom while watching the teacher's [redacted content]. The teacher also allegedly showed [redacted content] to the students in his classes

during class time and encouraged the boys and the girls to touch each other inappropriately in class. In addition, the teacher allegedly invited boys to come to his empty classroom to watch [redacted content] while he took photos of them and their private parts and posted the photos on a [redacted content] website.

After receiving a report of the male elementary teacher's conduct from two female students in the teacher's class, the District contacted law enforcement, who interviewed numerous students and staff at the school. The District also placed the teacher on administrative leave with pay pending the outcome of the investigation and prohibited him from entering any District property until the completion of the investigation. However, aside from information about law enforcement's criminal investigation, the case file does not contain an investigative report or notification to the parties of the outcome, about any District investigation. The case file also does not indicate whether the District provided the students with any interim measures. The case file does not show any involvement of a Title IX Coordinator, only that of Employee Relations. The teacher later resigned his employment with the District. He was subsequently indicted for soliciting sexual exploitation of a minor and sentenced to 30 days in jail and four years of probation.

- File 4

In a case involving a [redacted content] male student, the male student reported to an assistant principal that he had an inappropriate relationship with a female teacher. The assistant principal reported it to the principal who then reported it to Employee Relations. The teacher was placed on administrative leave for about [redacted content] pending an investigation. Witness statements were taken, including a written statement from the male student who stated that he did not remember fully what occurred, a teacher assistant, student witnesses, and the female teacher. The matter was also reported to the Department of Children's Services. The Department of Children's Services notified the District 201 days after the report against the female teacher that the teacher had been identified as the alleged perpetrator in a substantiated investigative report. Eleven days after the Department of Children's Services notification, the District advised the teacher that her employment contract would not be renewed. The case file does not contain an investigative report from the District or notification to the parties of the outcome of the District's investigation aside from notice to the teacher of her termination. There is no evidence in the file regarding interim measures for the male student or other students who witnessed the conduct.

- File 5

This case involved a male elementary school teacher who [redacted content] of male students [redacted content] the male students, and [redacted content] without permission. Employee Relations initiated an investigation. The file includes an interview from the person who reported the male teacher as well as an investigation report. The Department of Children's Services and law enforcement were notified. The teacher was placed on paid administrative leave pending the investigation. The teacher was indicted for sexual battery as it related to one student; the allegations regarding other students were unsubstantiated. The teacher resigned and the investigation closed after six months. There is no evidence in the file regarding interim measures for the students. The case file does not show any involvement of a Title IX Coordinator.

Responses to Student-to-Student Complaints

OCR's review of documents regarding the 22 Peer Incidents showed that nine incidents that the District identified as sexual harassment involved students engaging in unwelcomed touching of other students in intimate areas; OCR discusses the seven cases that the District identified as sexual assault together with these nine instances of unwelcome touching as sixteen sexual assault incidents.

School staff investigated fourteen of the sixteen sexual assault incidents. Five of the files did not indicate when the investigation started; thirteen case files show evidence that the respondent was informed of the allegations, while three did not; eight files did not show that District staff interviewed the complainant, respondent, or witnesses and two additional files did not show that the complainant was interviewed; while seven case files did not include a date of the outcome of the investigation, seven case files showed resolution times that ranged from zero days to nine days; notice of the outcome to both parties was indicated in only three case files and is unknown for the remaining 13 files; there was an investigation report in only four files; there is evidence of an offer of interim measures such as no contact orders and a change in homeroom in only nine of the 16 files; other actions taken include discipline of the respondent in ten instances; only one file referenced a support plan for a student whose report was substantiated through the District's process; there is no evidence of appeal rights provided; and while thirteen of the cases were reported at a point that the District had a Title IX Coordinator, in only one case is there evidence that the Title IX Coordinator was notified.

Regarding the incidents that did not involve sexual assault, a narrative in one file described an investigation that included interviews of the parties and witnesses, but the file did not include witness statements, contemporaneous notes or similar documentation of the witness interviews. No other files reflected that staff obtained evidence from both parties; one reflected that staff took a statement from the student who experienced harassment; and two files reflected that staff obtained information from the accused student (in one file, the notice of suspension states that the accused student admitted making the comment described in the referral; the other file included the statement of the accused student). While one file included a stay away agreement, the remaining files did not have information about separation of students involved in an incident following the accused student's return to school from a suspension. Three files reflected that the District would offer counseling to the accused student and one of those files also reflected that the District would monitor the accused student's conduct upon his return from a suspension; there was no information about prevention measures in the other two files concerning situations that staff deemed to constitute sexual harassment (in one case, the administrator concluded that the accused student engaged in misconduct that did not constitute sexual harassment). The files did not include information about counseling or other measures directed toward any student who experienced sexual harassment. The files did not show that the District determined whether a hostile environment existed that needed to be remedied.

Student-to-Student Examples of Concern

- File 1

A female high school student reported to school staff that a male student took a picture of her [redacted content] and showed it to other students. The school staff person notified an

administrator. The administrator investigated the matter by interviewing the parties and witnesses. The male student, who admitted the conduct, received a [redacted content]. He was also invited to attend a group counseling session. The male student's parent was notified and there were several attempts to reach the female student's parent. There is no evidence of interim measures provided to the female student and no evidence that the Title IX Office was notified.

- File 2

A female middle school student reported that since the first week of school, a male student had been touching her [redacted content], even after she repeatedly told him to stop. The male student told her that he would tell everyone that she was lying if she told anyone. The male student was [redacted content]. Although the [redacted content] reflects that several students witnessed his conduct, the case file does not include interview notes, witness statements, other documentation of witness interviews or a letter of finding. The only documents provided are a [redacted content] and a [redacted content]. There is no record of interim or supportive measures provided and no evidence that the Title IX Office was notified.

- File 3

According to a [redacted content], a male student at the same middle school as above, was seen on video forcing a female student into the boys' bathroom. The [redacted content] states that the student "then went into the girls' bathroom, pulled her out, and touched her [redacted content] outside of her clothes." The document does not clarify whether the female student in the girls' bathroom is the female student who was involved in the incident in the boys' bathroom. In what appears to be a third incident three days later, the same male student put his hand down a female student's pants. He was then [redacted content]. Other than reviewing video footage of the first incident, there is no evidence that the school investigated the first two incidents, as the files do not contain any interview notes, witness statements, letters of finding, or related documents. Nor is there evidence regarding whether staff's review of the video was in response to a report about the male student's conduct or that after reviewing the video footage, staff took immediate steps to prevent further incidents. Also, there is no evidence that the school disciplined the male student regarding the first two incidents or provided any interim measures for the female student. There is no evidence that the school investigated the third incident, as the only documents provided are a [redacted content] and a [redacted content]. There is no evidence that the Title IX Office was notified.

- File 4

At another middle school, two female school students [redacted content], so it protruded from a male student's pants while he was [redacted content]. A substitute teacher reported the incident to an administrator. The administrator went to the classroom that same day and questioned students in the class about the incident. The female students admitted to their actions and were [redacted content]. The male student was immediately sent to the [redacted content] office but did not want to discuss the incident. The parents of all three students were notified. The male student was moved to a different class with permission from his parent. The female students were not allowed to have contact with the male student. There is no evidence that the Title IX Office was notified.

- File 5

The District received a report that a male student at an elementary school touched a female student [redacted content] and the same female student touched the male student in his [redacted content]. The incidents happened the day before they were reported and were categorized as sexual harassment. The students' parents were notified the same day that the District received the report and a stay away agreement was put in place for both students. The students' teachers were notified that they should keep the students away from each other. There is no evidence of an investigation. There is no evidence that the Title IX Office was notified.

- File 6

Information from the District showed that at an elementary school, 12 different students (schoolmates) verbally harassed a male student on multiple days across at least two months. On one day, ten schoolmates called the student [redacted content] and District notes show that the student's parent reported the harassment the same day. The parent stated that she had requested a bullying investigation the previous school year and was requesting an additional investigation during that current school year. The District's notes regarding the parent's report states that the [redacted content] investigated the matter. The [redacted content] spoke with each of the schoolmates to provide one-on-one counseling on sexual harassment; the schoolmates were taken to the office where an administrator questioned them and informed them that the behavior was not acceptable and the schoolmates were given a [redacted content] and told that if the behavior continued, out-of-school suspension would be issued. The parents of the schoolmates were notified. Five days later, the same male student was again called [redacted content] by another student, and the same actions from the [redacted content] and the administrator were taken. Two months later, another student told the same male student to [redacted content]; this student also received one-on-one counseling on sexual harassment. There is no evidence that counseling or other measures were provided to the harassed male student or that the Title IX office was notified of the incidents. A former school administrator told OCR that she learned that the incidents stemmed from the previous school year, opened an investigation and determined that it was a valid complaint. There were no case files for any of the reported incidents; the District captured the information in its electronic data system.

- File 7

In a separate incident involving a different male student at the same elementary school referenced above, one schoolmate yelled out to another schoolmate that the male student was [redacted content]. The male student's parent reported the harassment the following month after the winter break. The District's notes state that the [redacted content] investigated the matter and an administrator alerted all teachers about the incident. The District's notes state that the consequences for the two schoolmates included one-on-one counseling on sexual harassment, parent conference, and a [redacted content]. The District's notes also state that the [redacted content] stated that the school had previously, during fall 2018, conducted three sessions on Sexual Harassment and Bullying for that specific grade at the school and advised that if the behavior continued, out-of-school suspension would be issued. There is no evidence that interim measures were provided to the harassed male student. There is also no evidence that the Title IX office was notified.

- File 8

A male student at a K-8 school reported to school staff that another male student touched him on [redacted content] and [redacted content] while involved in a group activity; he also reported that the male student touched [redacted content] when they were lined up to go to the restroom. School staff reported the incident to a school administrator the same day. The two male students and a student witness provided written statements. The student who engaged in the harassment received a [redacted content] on the same day the incident was reported. There is no evidence that counseling or other measures were provided to either student. There is also no evidence that the Title IX office was notified.

Analysis

OCR determined the District violated Title IX’s requirement for a nondiscrimination statement. Policy 1009 in effect during the Review Period identified the District’s Federal Rights Coordinators as the contact persons for students or employees who believed they had been subjected to sex discrimination, but it did not identify the persons by name or OCR’s Assistant Secretary, as required by the Title IX regulation at 34 C.F.R. Section 106.8(a).

And while Policy 6046 in effect during the Review Period stated students or parents of students who experienced harassment should report the incidents to the principal or building administrator, and Policy 6022 stated students or parent/legal guardians who believed a student experienced student-to-student discrimination or sexual harassment should report it to a teacher, counselor, or principal, the policies did not list a Title IX Coordinator as a contact person or identify the person responsible for coordinating the District’s efforts to comply with and carry out its Title IX responsibilities, as required by the Title IX regulation at 34 C.F.R. Section 106.8(a). The District’s nondiscrimination statement and harassment policy have been updated. They now include the term “Title IX Coordinator” and list a physical address, email address and telephone number for the position; however, the nondiscrimination notice does not refer to OCR and the statement and policy do not include the name of an individual who handles Title IX inquiries, as required.

OCR determined the District violated Title IX by not designating a Title IX Coordinator at different points during the Review Period. Specifically, during the 2017-2018 school year, the District did not have a Title IX Coordinator and during the 2018-2019 school year, the District only had a designated Title IX Coordinator for four months. OCR found that even when an individual was designated, the individual did not in fact coordinate the District’s efforts under Title IX. This compliance review showed that the Title IX Coordinator was not involved in and had no oversight over any complaints involving staff incidents with students. Rather, these complaints were handled solely as employment matters and investigated by the District’s Employee Relations office.

With regard to periods when the District had a Title IX Coordinator, while at least one administrator recalled receiving advice from the Title IX Coordinator, the data provided to OCR as well as administrator testimony to OCR revealed inconsistent information sharing with the Title IX Coordinator and does not reflect that administrators who investigated Title IX complaints generally worked in coordination and communication with the Title IX Coordinator.

The data thus does not show that Title IX Coordinators were in a position to assure consistent practices and standards in handling investigations. In addition, the District lacked a system for accessing school-specific records to allow the Title IX Coordinator to monitor and review – or coordinate – District responses to possible or confirmed sexual harassment. Witnesses referenced electronic data systems, but based on some witness statements, it appeared that the system for which schools were most consistent in entering data was a discipline system, rather than a database designed to capture all of the information that would be needed to fully assess schools' responses to sexual harassment or assault reports. In addition, in light of the recordkeeping gaps noted through OCR's review of the files, the Title IX Coordinators could not have been in a position to review who investigators interviewed, what witnesses said, how schools sought to prevent recurrence of incidents or what measures school staff took to provide to students who experienced harassment measures such as counseling, course-related adjustments or other individualized services. As of the date of this letter, the District does not have a Title IX Coordinator and continues with the hiring process to fill the Title IX Coordinator position.

The Title IX regulation at 34 C.F.R. Section 106.71 requires that recipients “keep such records . . . containing such information, as the responsible Department official or . . . designee may determine to be necessary to enable him [or her] to ascertain whether the recipient has complied or is complying with this part.” OCR has determined that the District's incomplete recordkeeping resulted in inadequate documentation of its investigations. For example, case files did not consistently show documentation of interviews with complainants, respondents, and witnesses, or other documentation considered. The incomplete recordkeeping hindered the District's ability to identify potential problems and track its compliance with Title IX. The District could produce only 22 out of 88 student-to-student incidents that OCR selected for file review. The files that the District produced had little content beyond basic discipline information and most were missing witness statements, investigative outcomes, or in some cases any indication that an investigation was conducted. For the remaining 66 cases, the available information was limited to data extracted from a data system – possibly a discipline system. Additionally, the discrepancy between the data the District reported to OCR for the CRDC, and the data reported to OCR in the context of this compliance review, reflect the District's poor recordkeeping. The District's lack of adequate recordkeeping prevented the District from explaining the data discrepancy.

Further, in OCR's evaluation of whether a District's response to sexual harassment comports with Title IX, OCR examines whether the District provides notice of the outcome of the complaint to the parties. For the cases reviewed, District records did not always reflect notice to the party who experienced harassment or assault or notice of the outcome of an investigation. In most instances, there was no notice to the complainant of the outcome of an investigation; the respondent received notice of the outcome by way of discipline for students and termination of employment or other employment consequences for staff. OCR also examines whether the District responds promptly to complaints. OCR is concerned that District records did not always reflect the date of an investigation or the date of conclusion, which made it difficult to determine whether the District responded promptly. We note that one staff-to-student case involving an elementary school student took six months to complete. For less than half of the student-to-student case files reviewed, the District responded promptly; however, it was difficult to determine whether the District responded promptly to the remaining incidents because the date

of the investigation, if any, and the outcome were not provided. OCR is concerned that District files did not show that the District assessed whether a hostile environment for students had been created; the files did show there was limited provision of interim measures for students who reported incidents of sexual harassment or sexual assault, and students accused of such conduct. For the reasons stated above, OCR is concerned about the equitable treatment of parties during the District's response to Title IX complaints.

As noted above, the District expressed an interest in resolving this compliance review. The attached Resolution Agreement (Agreement) will, when fully implemented, resolve the issues identified above. The Agreement requires the District to do the following:

- Adopt and publish a compliant notice of nondiscrimination.
- Designate, train, and publicize the contact information for, its Title IX Coordinator(s).
- Revise all policies that describe the District's response to sexual harassment to ensure the policies are compliant with the requirements of Title IX and consistent with each other.
- Review all complaints of student and staff involved sexual assault during the 2022-2023 and 2023-2024 school years to ensure each complaint was resolved in compliance with Title IX, and if not, offer appropriate remedies.
- Conduct training on the Title IX process and its revised grievance procedures for District staff.
- Develop or revise its procedure for documenting or tracking complaints of sexual assault, including the steps taken as part of the District's investigation into such complaints.
- Conduct a survey of students and parents to determine if the District needs to take additional steps to address sexual harassment in its schools, with OCR approval for any next steps.
- Develop a plan (Plan) to ensure timely submission of complete and accurate data to the CRDC in the future and ensure that all employees who are responsible for reporting data to the CRDC receive instructions regarding how to report data to the CRDC in accordance with the Plan.

OCR will monitor the District's implementation of the Agreement until the District is in compliance with the terms of the Agreement and the statute and regulations at issue in this compliance review.

Conclusion

This concludes OCR's compliance review of the District. 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 duly authorized OCR officials and made available to the public. This

letter should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter.

Please be advised that the District may not harass, coerce, intimidate, discriminate, or otherwise retaliate against any individual because he or she has filed a complaint with the District or with OCR, or participated in any complaint resolution process. If this happens, the individual subjected to such treatment may file a complaint alleging such treatment.

Under the Freedom of Information Act (FOIA), it may be necessary to release this document and related correspondence and records, upon request. If we receive such a request, we will seek to protect, to the extent provided by law, personally identifiable information could reasonably be expected to constitute an unwarranted invasion of personal privacy.

For questions about this letter, or about implementation of the Agreement, please contact Vahn Wagner, Senior Attorney, by telephone at (202) 987-1819 or by e-mail at Vahn.Wagner@ed.gov or Wendy Gatlin, Compliance Team Leader, at (202) 987-1875.

Sincerely,

/s/

Sterling R. Thomas
Regional Director
Atlanta Office