



PALO ALTO UNIFIED SCHOOL DISTRICT
HUMAN RESOURCE CENTER
25 CHURCHILL AVENUE
PALO ALTO, CALIFORNIA 94306
(650) 329-3958

To: Kimberly Diorio, Principal, Palo Alto High School
From: Anne Brown, Interim Assistant Superintendent, Human Resources
Date: January 11, 2018
Re: Letter of Reprimand

In November of 2016, you failed to provide a Complainant in a Title IX incident with the full range of procedural options available under Title IX, state law, Board policy and administrative regulations. Specifically, it was determined through the Cozen investigation that under your leadership:

- The Principal/designee did not inform the Complainant and their parent/guardian of the resolution options under the UCP, including the right to file a written complaint, as required by AR 1312.3 (the UCP) and AR 5145.3 (Nondiscrimination/Harassment).
- School administrators did not use trauma-informed or effective investigation practices
- School administrators participated in law enforcement interviews, but did not maintain formal documentation as required by Board policy
- School administrators did not conduct a thorough interview of either the Complainant or Respondent that would allow the School to evaluate issues of consent, the potential impact of a power differential between the parties based on age, grade or status, or the welcomeness of the conduct;
- The School did not interview all relevant witnesses (including the first witness to whom the Complainant disclosed)
- The School relied upon written summaries from witnesses (a student and staff members), rather than conducting interviews
- The School did not gather available documentary evidence (text messages)
- The School did not create an investigation report or maintain detailed records of the investigation in a central place
- There is no indication that the School evaluated or assessed the complaint for the potential of pattern conduct by the Respondent
- The School did not conclude the initial investigation or reach a determination, by a preponderance of the evidence, as to whether the underlying conduct violated Title IX, the Education Code or Board policy
- The School did not synthesize or critically analyze the available information to evaluate the totality of the circumstances, welcomeness, the severity of the reported conduct, or whether the conduct created a hostile environment or otherwise interfered with the Complainant's education

These actions are in violation of Administrative Regulations/Board Policies 1312.3 and 5145.3, as well as Board Policy 5145.7.

Failure to meet the legal requirements of Title IX does not provide complainants with their legal rights under the law.

Effective immediately, you are to follow all Title IX procedures and processes as outlined in Board Policy. To assist you in correcting this conduct, I offer the following suggestions:

- Review the Title IX procedures as outlined in the PowerPoint Presentation from the 9/19/17 training, KEEPING OUR STUDENTS SAFE: Title IX, Our Responsibility, and Follow-Up Administrator Training with your administrative staff.
- Reference and share with your administrative staff the Title IX Resources: Digital Binder, when a Title IX complaint has been made, including the Administrator's Checklist. If you have any questions meet with the district's Title IX Coordinator for support and guidance.
- Develop a clearly identified site-based flowchart of responsibilities and communication regarding all Title IX investigations. The Principal must be identified as the first person with whom to report received complaints as well as scheduled updates during the investigation process.
- Ensure all staff attends annual mandated Title IX trainings.
- Maintain centralized records for all investigations and discipline
- Routinely update school administrative staff on all disciplinary actions and investigations

A copy of this letter will be placed in your personnel file ten days from the date of the letter. Prior to that, you may prepare a written response, which will be attached to this document when placed in your file.

Sincerely,



Anne Brown
Interim Assistant Superintendent, Human Resources



1/10/18



PALO ALTO SENIOR HIGH SCHOOL

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(650) 329-3701 Fax: (650) 329-3753

Kimberly Diorio
Principal

PAUSD
JAN 2 9 REC'D
HUMAN RESOURCES

January 29, 2018

To: Ann Brown, Interim Assistant Superintendent, Human Resources
From: Kimberly Diorio, Principal, Palo Alto High School
Re: Response to Letter of Reprimand

Thank you for the opportunity to respond to the Letter of Reprimand ("Letter"). As a Palo Alto Unified School District ("District") administrator, I understand the Letter is a preliminary step in the progressive discipline process. Accordingly, I believe a response is necessary to clarify and/or contextualize the allegations and directives. Please understand that I accept the counseling in the spirit in which it was provided and will continue to implement not only your suggestions, but also those set forth in the Cozen, O'Connor report dated October 18, 2017 ("Cozen report") to ensure Title IX compliance.

Since the Letter specifically references the Cozen investigation, the report must be addressed to understand its findings.

I. THE COZEN REPORT

A. Executive Summary

The Executive Summary states in relevant part:

"[T]he Title IX report in question concerned a fall 2016 report by a Palo Alto High School (PAHS or the School) student (the Complainant). In the fall semester of the 2016-2017 academic year, the Complainant reported a Title IX-related incident to members of the PAHS administration. PAHS employees immediately reported the incident to the Palo Alto Police Department and, later that evening, to Santa Clara County Child Protective Services. The School also notified the complainant's family, conducted an initial investigation into the incident, imposed interim and ongoing remedial and supportive measures for the Complainant and, within several days of the report, imposed protective measures and disciplinary action against the Respondent, another PAHS student. In short, the School took immediate steps to respond to the reported conduct, care for the welfare of both students, and ensure that external authorities were notified in accordance with state law."

The executive summary was complementary of the School's response to the Title IX-related incident.

B. Findings and Observations

1. Systemic observations

Under subsection B. 1., entitled, "Systematic Observations" the Cozen report states in relevant part:

"While this engagement was limited to a close look at the District's response to a specific report, we are able to offer systematic observations about the coordination and integration of Title IX, state law and Board policy compliance functions at the District level... In light of these provisions, the facts gathered in our review, we find that the Superintendent and the Title IX Coordinator failed to exercise sufficient oversight of the District's compliance responsibilities under Title IX, state law and Board policy. This lack of oversight is particularly concerning given the context at the time, which involved an ongoing OCR investigation where the District and in particular, PAHS was subject to a several year inquiry into how they responded to Title IX complaints."

- The Title IX Coordinator did not exercise sufficient supervision and centralized oversight over the District's Title IX responsibilities as it relates to the investigation and resolution of Title IX-related reports, but instead deferred the site-level response;
- The District did not coordinate and integrate the application of federal law and guidance, state law and Board policies in its response to reported Title IX conduct;
- With the exception of Board policies and Administrative Regulations, the District did not maintain written or formally developed protocols at the site level for consistent institutional response to each Title IX report, identification of appropriate steps and application of law, guidance and policy;
- The District maintained insufficient documentation and centralized record-keeping, required under both Title IX and Board policy. The lack of sufficient documentation and centralized record keeping impacted the Title IX Coordinator's ability to effectively track and monitor patterns, climate and culture. (Cozen report, p. 19)

2. Observations Related to the Specific Response

Under subsection B. 2., entitled, "Observations Related to the Specific Response to this Title IX Report-," the Cozen report states in relevant part:

a. Internal Reporting

"With respect to the District's response to the report that is subject to review, we find that staff and administrators promptly reported the incident within the structure at the School and District. This internal reporting was consistent with Title IX, which requires that responsible employee share all reports of a sexual and gender-based harassment and violence with the Title IX Coordinator and with the requirements of the UCP, BP/AR 1312.3, which requires the receiving administrator to forward the report to the principal/designee and the Title IX Coordinator (the District Compliance Officer). These steps also demonstrated immediate responsiveness to the information as it was unfolding." (Cozen

report, p. 20)

b. External Reporting

“We find that staff and administrators at the School promptly reported the incident externally. This external reporting was consistent with state law requirements under CANRA and BP/AR 5141.4.” (Cozen report, p. 21)

c. Centralized Oversight and Determination of Appropriate Response

“We find that the Title IX Coordinator did not exercise oversight or supervision of the District’s response to this report, but instead deferred to the administrators on-site to investigate and evaluate the appropriate institutional response. As outlined above, once on notice, the District had an independent obligation to investigate or otherwise determine what occurred in light of its Title IX obligation to resolve all complaints promptly and equitably and provide a safe and nondiscriminatory environment for all students.” (Cozen report, p. 21)

Specifically, we find the following:

As detailed further below, however, we observed that the Assistant Principal 1 repeatedly took the initiative to inquire whether she should offer the Complainant and/or their parent/guardian information about the UCP;

- Within days of the report by the Complainant, Assistant Principal 1 raised the issue with the Title IX coordinator, who informed her that her outside counsel, no UCP or “Title IX launch” was warranted;
- At a training in early December 2016, Assistant Principal 1 approached outside counsel to again inquire about the applicability of the UCP and was told none was needed; and
- Upon learning of the Complainant’s Potential Withdrawal from the District in Mid-December, Assistant Principal 1 Contacted the Title IX Coordinator and again asked if the school should be offering the complainant or their parent/guardian the UCP. (Cozen report, p. 22)

d. Investigation

“Along with the failure to offer or pursue the UCP in this matter, we find that the District failed to conduct an investigation as required by Title IX, the Education Code and the UCP. Similarly, the UCP states that “[t]he District Compliance Officer shall initiate an impartial investigation.” Under the UCP, Title IX Coordinator (District’s Compliance Officer) is required to: provide the complainant with the opportunity to describe the incident, identify witnesses and provide other evidence and information; interview individuals who have relevant information including the Respondent, witnesses and anyone mention is having relevant information; review any records, notes or statements related to the complainant and prepare a written report of the findings. Here, none of these steps occurred. While there was an initial investigation at the site level, this does not constitute a formal investigation under the UCP.” (Cozen report, p. 23)

e. Written Notice of Outcome

"Contrary to the findings of Title IX, the Education Code and the UCP, the District did not provide the Complainant or Respondent with written notice of the outcome." (Cozen report, p. 24)

f. Interim Measures

"Consistent with the requirements of Title IX, the Education Code and the UCP, we find that this School provided reasonably available and appropriate interim measures designed to facilitate the Complainant's access to educational opportunities. The School provided remedial measures for the Complainant, including counseling, scheduling accommodations and took action to enforce the provisions of a Temporary Restraining Order issued against the Respondent. The School also provided interim protective measures for the Respondent, including provision prohibiting the Respondent from communicating with the Complainant, ensuring that they had no classes together or in the same building, and limiting the Respondent's participation in certain campus activities. In addition, the School provided interim support measures for the Respondent." (Cozen report, p. 25)

g. Sanctions

The School imposed disciplinary action against the Respondent for related conduct with Complainant (pre-date of this incident) although not for the specific conduct at issue in the reported incident." (Cozen report, p. 25)

On behalf of my staff, we are gratified that the Cozen report acknowledges that the School was immediately responsive and legally compliant with regard to our internal and external reporting requirements. Additionally, we are pleased that the Cozen report underscores that the School implemented interim measures and sanctions that were sensitive to the students' safety, needs, and legal rights. However, the Cozen report also finds ongoing systemic deficiencies at the District level for several years predating not only the specific instances at issue, but also my leadership at Palo Alto High School ("School"). Furthermore, the School operated within the District structure and at the direction of the Title IX Coordinator, who inappropriately deferred her responsibility to site level personnel. Despite repeated and direct questioning about the School's responsibilities, my staff and I were informed by not only the Title IX coordinator, but also outside counsel that the School's response did not indicate Title IX. School staff followed directions not wishing to defy the District structure or act in an insubordinate manner. The findings on page 23 of the Cozen report, referenced in the Letter, were not presented as School failures, but instead to demonstrate that the School's investigation did not constitute a "formal investigation under the UCP." (Cozen report, p. 23; see also subsection d. above.) I respectfully submit that the Letter should also so reflect.

II. THE SPECIFIC ALLEGATIONS

The Letter lists eleven (11) allegations which almost identically mirror those on pages 23-24 of the Cozen report. However, it critical to note that the Cozen report contextualizes those findings with the following preamble: "Assistant Principal 1 took appropriate initial steps to triage and identify the nature of the concerns raised by the Complainant, but the District did not conduct a thorough, informed, or reliable investigation required by Title IX, state law and Board policy:⁶⁴ " Footnote 64 reads, "We note that unless designated by the Title IX Coordinator under the UCP, who is not the Assistant Principal's role to conduct a further investigation." (Cozen report, p. 23)" The Title IX

coordinator did not designate Assistant Principal 1 to conduct an investigation under the UCP. Similarly, the Cozen report concludes its observations about the School on page 24 by stating, “[I]n sum, the *District* failed to fulfill its obligation under Title IX, the Education Code, and Board policy to conduct an investigation into conduct as reported by the Complainant. (*Emphasis added*). (Cozen report, p. 24). This is additional support that the findings on page 23-24 were not criticisms of the School’s response, but an explanation that the School’s response was not a substitute for a “formal investigation.”

Each allegation will be addressed separately.

- The Principal/designee did not inform the Complainant and their parent/guardian of the resolution options under the UCP, including the right to a written complaint, as required by AR 1312.3 (the UCP) and AR 5145.3 (Nondiscrimination/Harassment).

As was set forth above, School staff and I repeatedly inquired not only of the Title IX coordinator, but also outside counsel and were told that neither UCP procedures nor a “Title IX launch” were warranted. Specifically, on or about October 18, 2016, I was informed by Dr. Holly Wade that District Council, Dora Dome, concluded that no Title IX investigation was warranted. Accordingly, the complainant was not provided resolution options under the UCP by School staff. I was never informed by District staff that my response was inappropriate.

- School administrators did not use trauma-informed or effective investigative practices (see also Cozen report, p. 23).

BP 1312.3 requires, “The Superintendent or designee provide training to District staff to ensure awareness and knowledge of current law and related requirements, including the steps and timeline specified in BP/AR 1312.3.” (See Cozen report, A-34). The School did not receive either trauma informed or effective investigation practices until May 24, 2017, which was after the incident in October 2016. This compliance training was requested by the school site at the time.

- Administrators participated in law enforcement interviews, but did not maintain formal documentation as required by Board policy (see also Cozen report, p. 23).

The Cozen report stated, “... The District did not maintain written or formally develop protocols at the site level for consistent institutional response to each Title IX report, identification of appropriate steps and application of law, guidance and policy. The District maintained insufficient documentation and centralized record-keeping, required under oath Title IX and Board policy. The lack of sufficient documentation and centralized record keeping impacted the Title IX Coordinator’s ability to effectively track and monitor patterns, climate and culture.” The School’s maintenance of formal documentation was consistent with District procedure. This is consistent with the Cozen report’s determination that the site investigation was not a “formal investigation” under the UCP.

- School administrators did not conduct a thorough investigation of either the Complainant or Respondent though it would allow the School to evaluate issues of consent, the potential impact of a power differential between the parties based on age, grade or status, or the welcomeness of the conduct (See also, Cozen report, p. 23).

Please incorporate above responses as they are pertinent to the allegation.

- The school did not interview all relevant witnesses (including the first witness to whom the Complainant disclosed). (See also, Cozen report, p. 23)

Please incorporate above responses as they are pertinent to the allegation.

- The School relied upon written summaries from witnesses (a student and staff members), rather than conducting interviews. (See also, Cozen report, p. 23)

Please incorporate above responses as they are pertinent to the allegation.

- The School did not gather available documentary evidence (text messages). (See also Cozen report, p. 23)

Please incorporate the above responses as they are pertinent to the allegation.

- The School did not create an investigation report or maintain detailed records of the investigation in the central place. (See also, Cozen report, p. 24)

This observation in the Cozen report was accompanied by footnote 66 which stated, "The Title IX coordinator prepared a draft of an after-the-fact memo to file in late March 2017, purporting to classify the site level inquiry as a "District Initiated UCP" handled at the site level. This does not comport with UCP requirements and, in fact, the District initiated UCP based on the oral complaint was by the Complainant's parent/guardian received 6 days after this draft memo." Again, the Cozen report specifically finds fault with the Title IX Coordinator, and not site level staff. Please incorporate the above responses as they are also pertinent to the allegation.

- There is no indication that the School evaluated or assessed the complaint for the potential of pattern conduct by the Respondent. (See also, Cozen report, p. 24)

Please incorporate the above responses as they are pertinent to the allegation.

- The School did not conclude the initial investigation or reach a determination, by a preponderance of evidence, as to whether the underlying conduct violated Title IX, the Education Code or Board policy. (See also, Cozen report, p. 24)

Please incorporate the above responses as they are pertinent to the allegation.

- The School did not synthesize or critically analyze the available information to evaluate the totality of the circumstances, welcome this, the severity of the reported conduct, or whether the conduct created a hostile environment or otherwise interfered with the Complainant's education. (See also, Cozen report, p. 24)

It is important to note that the Cozen report presented this finding as a subordinate finding to explain that further steps that should have been taken to complete an initial investigation. The Cozen report neither states that the initial investigation was the responsibility of the School, nor absolves the District from completing a "formal investigation under the UCP." Please incorporate the above responses as

they are pertinent to the allegation.

III. CONCLUSION

Simply put, the Cozen report is replete with multiple determinations that that the District had deficient policies, protocols and implementation. Outside counsel and the Title IX coordinator provided erroneous information to the School making it impossible to comply with the letter of Title IX. The Cozen report found that although the School responded admirably, our initial investigation did not constitute a "formal investigation under the UCP." Respectfully, pursuant to BP/AR 1312.2, that was the purview of the Title IX Coordinator. School staff should not be held personally or professionally responsible for implementing District office directives.

In terms of the suggestions you offered to assist in making sure we are following all Title IX processes and procedures, I am pleased to report that Palo Alto High School has already fulfilled all of your suggested specific action items. It should be noted that our administrative team has established internal structures and improved communication, and we are pleased to work in partnership with our new Title IX Coordinator moving forward. Should you need more information, I'd be happy to provide you with the specific details as to how we have already addressed and/or implemented your suggestions.

The District's Title IX struggles have been a sad chapter in an otherwise successful story. The District's reputation has been harmed and careers have ended. I understand that in an institution such as ours, we share our successes as well as our failures. The Cozen report made it acutely evident that without training, communication, and accountability the system can break down. I wish to offer my services in whatever capacity possible to work with site level staff and/or the District office to improve our Title IX delivery system. Now, more than ever, our students deserve better.

Sincerely,



Kimberly Diorio
Principal, Palo Alto High School