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Via Electronic Mail

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Dear Attorneys Henneous, DeSisto, and Partington:

We write to inform you of the status of our investigation of the North Kingstown School Department ("District" or "NKSD"), pursuant to Title IV of the Civil Rights Act of 1964 ("Title IV"), 42 U.S.C. § 2000c et seq. As you know, the U.S. Attorney's Office for the District of Rhode Island ("USAO" or "United States") opened this investigation in December 2021, in response to complaints that the District failed to respond appropriately to reports of sex discrimination related to the conduct of Aaron Thomas, a former NKSD teacher and basketball coach.

Following our investigation, we have worked with you to review and provide feedback on the District's efforts to revise its anti-discrimination and harassment policies and procedures, its related trainings for staff and students, its plans for ensuring the effectiveness of those trainings, and its framework for ensuring future compliance. In light of those efforts, we are satisfied that the District has now implemented sufficient corrective actions to address the concerns we identified over the course of our investigation.

I. Background

Other entities have investigated the District's response to reports of Thomas' alleged misconduct, with one investigation conducted at the direction of the District by private attorney

TJC-001063

Matthew Oliverio¹, and another by retired Superior Court Judge Susan McGuirl, whom the North Kingstown Town Council commissioned to analyze the findings of Oliverio’s Phase 2 report. Mr. Oliverio’s and Judge McGuirl’s investigations focused on Thomas’s conduct, the District’s knowledge of that conduct, and its response. Each investigation independently concluded that: (1) as early as June 2017 and September 2018, the District was on notice of reports that Thomas met with partially undressed male students alone in his office; (2) during those meetings, Thomas engaged in unwanted contact with those students under the guise of conducting body fat testing; (3) the District failed to investigate the reports adequately and failed to monitor and oversee Thomas’s conduct after suggesting minimal changes to Thomas’s “fat test” protocols; and (4) additional students were subjected to Thomas’s sex-based harassment after the District was made aware of his misconduct.

Because District’s prior counsel represented to the United States that the District did not contest the findings of Oliverio’s Phase 2 Report, the focus of the USAO’s investigation shifted to reviewing the District’s policies and procedures for preventing, identifying, reporting, investigating, tracking, and resolving sex-based harassment and assessing how the District could improve its policies and procedures.

Our investigation included a two-day site visit on April 12-13, 2022, which involved interviews of administrators at each District middle school and North Kingstown High School, District employees involved in coaching or athletics, school psychologists, nurses, social workers, the Athletic Director, central office personnel including then-Interim Superintendent Waterman, the HR Director/Title IX Coordinator, the Director of Pupil Personnel Services, and members of the NKSD School Committee. These interviews were informed by our review of the District’s responses to an initial Request for Information, which included staff and student handbooks, policies for employees, and formal complaints of sex-based harassment and documents reflecting the District’s response to those complaints. During the course of our investigation, additional allegations regarding the reporting of, or response to, conduct that potentially implicates sex-based harassment of students by other District employees were brought to our attention. We reviewed documents the District produced related to those complaints as well.

Our investigation revealed that the District’s deficient responses to Thomas’ conduct were endemic of a broader failure to ensure that its schools implement the District’s harassment and reporting policies and procedures with fidelity. And, especially with respect to the Athletic Department, the District failed to implement sufficient policies, procedures, training, and oversight to protect students, particularly student-athletes, from sex-based harassment by faculty and coaches.

Our investigation also revealed that the District previously had no uniform approach to investigate allegations of sex-based harassment. The District’s practices for investigating and

¹ The District first retained Oliverio to conduct an independent investigation concerning complaints made by former students alleging inappropriate conduct on the part of Thomas. Oliverio released this report on June 18, 2021. The District retained Oliverio to further investigate the circumstances of when District officials learned about Thomas’ misconduct and how they responded to that information in a second report, dated March 14, 2022 (“Oliverio’s Phase 2 Report”).

documenting allegations of sex-based harassment varied, often on an ad hoc basis, depending on which administrator received the report and led the investigation. None of the employees responsible for investigating harassment complaints at the school-level or District-level had received any training from the District on how to investigate complaints of sex-based harassment and maintain relevant documentation. Furthermore, the Athletic Director investigated all complaints about athletic coaches, and those complaints rarely came to the attention of school administrators or District-level staff. When parents complained to administrators about the behavior of coaches, the administrators' records of the investigations were incomplete and disorganized.

Since the beginning of our investigation in December 2021, the District's leadership has changed many times. Three superintendents resigned or otherwise departed in less than one year, and other key District-level employees resigned, including the HR Director and Title IX Coordinator, the Director of Pupil and Personnel Services, the Athletic Director, the Chief Operating Officer, and the Director of Finance. Following an initial change in the District's leadership, you represented that the District's new leadership took additional steps to address the misconduct described in the Oliverio and McGuirl reports and to ensure the safety and security of all students going forward. We requested and reviewed information from the District about those steps via two additional Requests for Information. In September 2022, the District's counsel retained a consultant to advise on steps to bring the District into compliance with its obligation to address and prevent sex discrimination. In the late spring of 2023, the District retained a new consultant, Barton Gilman, to focus on implementation and training of the new anti-discrimination policy. We met with the consultants, along with the new Superintendent, and learned about the progress they have made thus far.

II. Legal Framework

Title IV is an authorization statute that, in the context of K-12 education, expressly gives the Attorney General the authority to address complaints that a child or children "are being deprived by a public school board of the equal protection of the laws" based on sex, race, color, national origin, or religion, in violation of their constitutional rights. 42 U.S.C. § 2000c-6(a)(1); *see also* Pub. L. No. 88-352, 78 Stat. 241 (1964). A school's failure to address a hostile educational environment created by sex-based harassment can impair students' ability to learn and thereby deprive them of the equal protection of the laws. *See Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246, 258 (2009); *See Lipsett v. Univ. of P.R.*, 864 F.2d 881, 896, 902 (1st Cir. 1988); *Doe v. Bradshaw*, 203 F.Supp.3d 168, 181 (D. Mass. 2016). A school discriminates based on sex when it is aware of sex-based harassment that creates a hostile educational environment "and fails adequately to respond." *See Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 290 (1998); *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 646-47 (1999); *Porto v. Town of Tewksbury*, 488 F.3d 67, 72 (1st Cir. 2007). When a school official "with authority to take corrective action" has notice of such harassment, *Gebser*, 524 U.S. at 290, the school must respond reasonably in light of known circumstances. *Davis*, 526 U.S. at 648. A failure to investigate reports of sex-based harassment constitutes an inadequate response, particularly when the harassment persists. *See Davis*, 526 U.S. at 654 (permitting a Title IX claim to move forward on allegations that the school district "made no effort whatsoever either to investigate or to put an end to the harassment").

Title IV contemplates that the federal government play an active role in helping public schools to achieve voluntary compliance with their obligation to maintain a nondiscriminatory educational environment for students. In the service of that goal, the statute requires that the United States notify school boards that students are being denied equal protection of the laws under the U.S. Constitution's Fourteenth Amendment and gives school boards a reasonable opportunity to address the conditions underlying a complaint received by the United States alleging such violations. *See* 42 U.S.C. § 2000c-6 (discussing the United States' pre-suit requirements); *see also United States v. Mass. Mar. Acad.*, 762 F.2d 142, 152 (1st Cir. 1985) (holding Title IV gives the Attorney General the right to proceed in a civil action to enforce a constitutional claim regarding denial of equal protection of the laws, including sex discrimination, a right which "continues until sex discrimination and the effects of past discrimination are erased").

III. Remedial Steps the District Has Taken

A. Investigations of Sex-Based Harassment Allegations

As discussed above, because the District's prior counsel conceded that the District failed in its response to, and prevention of, sex-based harassment, our investigation focused on the District's policies and procedures for preventing, identifying, reporting, investigating, tracking, and resolving sex-based harassment going forward.

We are pleased to see that the District has taken specific steps to ensure that sex-based harassment complaints are investigated appropriately and uniformly and to address the failures we identified in our investigation. In July 2023, the District's School Committee approved and adopted a non-discrimination policy. The District has now designated all principals and assistant principals at the high school and middle schools, as well as the Athletic Director, as the employees responsible for receiving and investigating all complaints of harassment and discrimination. The District has designated Stephanie Russo, the new HR and Title IX Director, and Robert Mezzanotte, the Assistant Superintendent, to coordinate and oversee all investigations of complaints. The District has created new forms, so that administrators are using the same forms to receive, investigate and track complaints.

B. Monitoring and Oversight

During our investigation, District-level personnel admitted that the District did not resolve all harassment complaints consistent with its own policies and procedures, and expressed that District staff needed further training and oversight to rectify the problem. All of the District employees we interviewed acknowledged that the Athletic Department could benefit from more structure and oversight, and some suggested that the District conduct evaluations and surveys of the coaches. Our investigation revealed little to no meaningful oversight of the Athletic Department, especially with respect to the hiring of Athletic Department staff and evaluating during the hiring process their suitability for working directly with students.

Over the past six months, the District has taken significant steps to address monitoring and oversight gaps. For example, the District restructured the Athletic Department, which included requiring the Athletic Director to report directly to, and meet biweekly with, the

Superintendent. All athletic coaches, including volunteer coaches, must complete background checks and training, which includes training on appropriate boundaries. The District's consultants trained all principals and assistant principals on how to appropriately conduct investigations, and trained the Superintendent, Assistant Superintendent, and HR Director on oversight of school-level administrators' investigations.

C. Prevention of Future Sex-Based Harassment of Students

Despite more than a year of ongoing media attention, public reports commissioned by the District's School Committee and the Town Council, and contiguous state and federal investigations, our investigation revealed that the District initially failed to take sufficient steps to prevent sex-based harassment of students by faculty. This failure was exacerbated by the District's considerable leadership turn-over. During our investigation, many interviewees stated that it would be beneficial for students and faculty to receive training on appropriate boundaries and how to identify sex-based harassment, as well as multiple options for ways to report it. While the District's former Title IX Coordinator had delivered a presentation to students and staff at the high school and middle schools in the spring of 2022, before our on-site visit, that presentation consisted of 6 slides and lasted for less than 20 minutes. Everyone we interviewed concurred that the focus of the training was "how to report," and there was insufficient information on what constitutes sex-based harassment, sex discrimination, and inappropriate behavior. Moreover, the District did not include any non-teacher athletic coaches in this barebones Title IX training.

We are pleased to see that, as of the 2023-24 school year, the District now employs a permanent Superintendent, Kenneth Duva, as well as a permanent Assistant Superintendent, HR Director/Title IX Coordinator, Athletic Director, Chief Operating Officer, and Director of Pupil and Personnel Services. We are hopeful that a new stability and continuity among the District's leadership team will improve and strengthen the District's ability to prevent sex-based harassment from recurring.

Starting in August 2023, District's consultants provided training on the new anti-discrimination policy to all students in grades 6 through 12, all faculty and staff at the middle schools and high school, all athletic coaches, and all student-athletes. We have reviewed the contents of those trainings, and found the revised trainings all included essential information about the revised policies, clear instructions on how and when to report concerns and to whom, and real-life scenarios to help participants understand appropriate boundaries and how to identify and report harassment and discrimination. The District has now posted all reporting forms and training videos on the District's website, available at <https://www.nksd.net/o/nksd/page/nkstaysafe>, and our understanding is that the District intends to conduct training evaluations and additional school climate surveys, to increase transparency, generate data on measurable outcomes, and improve the District's response to allegations of sex-based harassment.

IV. Conclusion

In light of the actions the District has taken, we now consider this matter resolved. Nevertheless, the District must of course continue to comply with the federal civil rights laws

and the U.S. Constitution's equal protection guarantee. Therefore, the closure of our investigation and conclusion of our monitoring does not preclude future enforcement action by the United States. We also note that our investigation did not involve, and this resolution letter does not address, any additional obligations the District may be required to meet under Rhode Island state law. We thank you for your cooperation in this matter. If you have any questions, please contact Amy Romero at (401) 709-5010 or Amy.Romero@usdoj.gov.

Sincerely,

ZACHARY A. CUNHA
United States Attorney



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Cc: Deputy Chief Jonathan Newton, Educational Opportunities Section
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