

## REPORT OF THE EXTERNAL INVESTIGATION

### **I. Introduction**

The Hamilton County Department of Education (“HCDE”) provides approximately 42,000 students with K-12 education.<sup>1</sup> Ooltewah High School (“OHS”) is one of the largest schools in Hamilton County, with approximately 1,600 students and 100 teachers and staff. During the 2015-2016 school year, Mr. Jim Jarvis served as principal for OHS. Ms. Stephanie Allen, Ms. Sylvia Hutsell and Mr. Wendell Weathers served as assistant principals for OHS.<sup>2</sup>

OHS has a vibrant athletics program consisting of boys’ baseball, basketball, soccer, cross country, and football; girls’ cheerleading, dance, basketball, soccer and softball; a swim team and track and field.

### **II. Appointment as External Investigator and Scope of Investigation**

#### **Appointment**

On December 22, 2015, a member of the OHS boys’ basketball team, with the assistance of two other members, assaulted a freshman player with a pool cue while on a team trip in Gatlinburg. As a result of the incident, on March 17, 2016, the HCDE School Board voted to retain me as an independent investigator to conduct a fair and impartial investigation into the following:

- Assess the climate of the OHS basketball program regarding the reporting and addressing of bullying, hazing and/or sexual harassment;
- Review OHS and HCDE policies and procedures to determine where, if any, deficiencies in communication or conflicts in policy may exist with respect to bullying, hazing and/or sexual harassment; and
- Review training for student-athletes and OHS athletics staff to determine where, if any, deficiencies exist with respect to bullying, hazing and/or sexual harassment.<sup>3</sup>

On March 22, 2016, the relationship was formalized.

During the investigation, I provided regular updates to the school board attorney, Scott Bennett. At the end of June, I provided the school board with my Preliminary Findings and Recommendations of the External Investigation before the completion of my investigation. The purpose behind submitting the preliminary findings early was to provide information to assist the HCDE in making any policy and personnel decisions for the upcoming 2016-2017 academic year. Those findings are incorporated into this report.

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<sup>1</sup> HCDE website.

<sup>2</sup> Mr. Jesse Nayadley previously served as one of the assistant principals. Mr. Nayadley was placed on administrative leave on January 14, 2016. Thereafter, Mr. Weathers served as assistant principal.

<sup>3</sup> During the course of my investigation, based on information received and as more fully explained in Section III of the Analysis & Factual Findings, I expanded the scope of the investigation into the OHS football program.

## Criminal Investigations

The Gatlinburg incident resulted in criminal charges brought against the assailants and certain adults who were on the trip. While some of the charges against the adults were resolved during the course of the investigation, one remains. In addition, the charges against the assailants remain.

My investigation is not a criminal investigation, and it is not a substitute for the pending criminal investigations. As part of my investigation, I reviewed interviews conducted by the Hamilton County Sheriff's Office ("HCSO"), the Department of Children's Services ("DCS"), and the transcript of the preliminary hearing for Mr. Andre Montgomery, Mr. Jesse Nayadley and Mr. Karl Williams on February 15, 2016 in the Juvenile Court of Hamilton County. As of the date of this report, despite numerous attempts, I have been unable to obtain copies of the police reports associated with the Gatlinburg incident, talk with Detective Rodney Burns in Sevier County, or talk with District Attorney Neil Pinkston in Hamilton County.

### **III. Overview of Methodology**

I independently identified, obtained and reviewed information relevant to the investigation. I determined the course of the investigation and selected individuals to interview. I did not advise the HCDE or OHS personnel of my selections or contents of the interviews. HCDE and OHS administrators and employees fully cooperated with requests for information and interviews.<sup>4</sup> I maintained all communications and documents related to the external review as privileged and confidential and in accordance with the Family Education Rights and Privacy Act.<sup>5</sup>

As part of my investigation, I spent the better part of seven (7) weeks at OHS conducting interviews. OHS administration were aware of the timing of some of my visits; however, on most occasions I arrived unannounced. The times of my arrival and departure varied and, as such, I was able to observe different parts of the school day. I observed the busiest times of the school day on many occasions: the beginning and ending, class changes and lunch. I also was at the school after hours when some of the extra-curricular activities were taking place. I independently walked the halls throughout the day and toured the school.

## Interviews

I interviewed 40 individuals, including OHS administrators, teachers and students, the parent or guardian of students<sup>6</sup> and HCDE administrators. I met with any third parties who contacted me and claimed to have information relevant to the investigation. A list of all interviewees is set forth in Addendum A. The interviews were conducted in-person at OHS, HCDE, law offices of

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<sup>4</sup> All HCDE and OHS personnel cooperated with a request for an interview with the exception of Mr. Montgomery, boys' head basketball coach, who declined to be interviewed through his counsel because of pending criminal charges.

<sup>5</sup> 20 U.S.C. §1232g; 34 CFR Part 99.

<sup>6</sup> Some parents or guardians provided written authorization for me to meet with their child without them present. The majority of students were interviewed with a parent or guardian present.

an attorney representing interviewees, my office or other locations convenient for interviewees. In some instances, I conducted follow-up interviews by phone.

Witnesses were advised of the scope of my review and asked to provide any relevant information: whether good, bad or neutral. Witnesses were requested to keep the contents of their interview confidential. Witnesses also were advised that the HCDE and OHS prohibit retaliation of any kind for participating in the investigation and that if they felt they were experiencing retaliation, to contact me. All witnesses were provided with my business card.

### **Documents**

I conducted an extensive review of the HCDE and OHS policies, procedures and training related to bullying, hazing and sexual harassment. I reviewed student disciplinary files of the assailants and employee personnel files of those involved in the Gatlinburg incident. A list of all documents reviewed is attached as Addendum B. I also reviewed applicable federal and state laws and regulations.

### **Standard of Review**

In accordance with federal law regarding claims of sexual harassment, I used “preponderance of the evidence” as the standard of proof in evaluating whether HCDE’s response to a complaint of sexual harassment was reasonably prompt.<sup>7</sup> The scope of my investigation included an analysis of whether a culture of hazing or bullying existed and OHS’s response to that culture, which falls outside of OCR’s guidance on a standard of review. For consistency, the same standard was applied in evaluating those matters as well.

### **Delays**

I conducted the majority of the witness interviews within a seven (7) week span in an effort to complete the interviews before school dismissed for summer break. Many of the witnesses were reluctant to participate, which ultimately caused unexpected delays in conducting interviews. For example, some witnesses declined to participate, but then changed their minds. Some witnesses agreed to participate and then did not show up for the interview. Some of those witnesses did subsequently reschedule.

Furthermore, I discovered additional witnesses to interview and documentation to review in early June, as more fully explained in Section V of the Analysis & Factual Findings, which delayed the completion of my investigation.

### **Terminology**

This report addresses issues related to bullying, hazing and sexual harassment. These terms are often used by the general public in imprecise ways and sometimes confused. In addition,

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<sup>7</sup> Office of Civil Rights, Dear Colleague Letter, April 11, 2011.

conduct that fits within one term also may fit into another (i.e. bullying may also be sexual harassment). Each is prohibited by applicable law and the HCDE and OHS policies.

For purposes of this report, these terms are described below. These definitions are not intended as full descriptions of the applicable law, regulations and policies, but merely as a point of reference for the reader. In some instances, these definitions are those prescribed by HCDE and therefore are noted as such and utilized in evaluating employee or student conduct within the report.<sup>8</sup>

1. **Sexual Harassment** is one type of discrimination based on gender. In a school setting, sexual harassment generally means unwelcome conduct or written, verbal or electronic communication where (a) sexual favors are threatened to be used as the basis for employment or academic decisions, (b) the conduct or communication unreasonably interferes with an individual's work performance or participation in an education program or activity, or (c) the conduct or communication has the purpose or effect of creating a hostile, intimidating or offensive academic environment. It includes, but does not require, unwanted physical contact.

Examples of prohibited sexual harassment can include verbal and electronic communications about a person's physical appearance or sexual activities, sexual innuendos and joking, sexually explicit photos and videos, and touching, including sexual assault and sexual violence.

The HCDE states that "harassment (sexual, racial, ethnic, religious) includes words, gestures, threats, or any other conduct that is severe, pervasive or persistent and creates a hostile environment that interferes with or limits a student's ability to participate in or benefit from services, activities, or opportunities offered by a school."<sup>9</sup> It states also that sexual offenses, which constitute major offenses resulting in short-term suspension or possible expulsion, are "conduct of a sexual or indecent nature towards another person that is accompanied by actual physical force."<sup>10</sup>

2. **Sexual assault** includes rape and other forms of non-consensual sexual contact.

3. **Title IX** refers to the Education Amendments Act of 1972. Although this federal law prohibits sex discrimination, sexual harassment, and sexual violence in the school's educational programs and activities, Title IX often is referred to for the requirement of gender equity in athletics' programs.

4. **Bullying** "always involves at least these three elements: (1) unwanted, aggressive behavior, (2) involving an actual or perceived imbalance of power, that is (3) repeated or

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<sup>8</sup> During the course of my investigation, HCDE approved Board Policy 6.304 – Student Discrimination, Harassment, Bullying, Cyber-Bullying and Hazing. For purposes of assessing employee and student conduct, I utilized the Code of Conduct and relevant policies in place at the time the incidents took place. In assessing the policies and procedures and making recommendations, I reviewed both the policies in place at the time of the incident and the revised policy.

<sup>9</sup> HCDE Code of Conduct.

<sup>10</sup> *Id.*

occurring over a period of time.”<sup>11</sup> Bullying is defined by the HCDE as “unwanted, aggressive, repeated behavior that involves a power imbalance and places a student in reasonable fear and causes a hostile education environment.”<sup>12</sup> A power imbalance may be real or perceived by the victim. Bullying can take many forms (both direct and indirect), such as hitting or punching, teasing or name-calling, intimidation through words or gestures, or social exclusion.

5. **Cyber-bullying** is defined by the HCDE as “bullying that takes place using electronic technology. Electronic technology includes devices and equipment such as cell phones, computers, and tablets, as well as communication tools including social media sites, text messages or emails, rumor sent by email or posted on social network sites, and embarrassing pictures, videos, websites or fake profiles.”<sup>13</sup>

6. **Hazing** is defined by the HCDE as “any act intended to or reasonably expected to have the effect of humiliating, intimidating or demeaning a student or endangering the mental or physical health of the student committed by an individual or group against a student in connection with pledging, being initiated into, affiliating with, holding office in, or maintaining membership in any organization affiliated with any school or program operated by the school district.”<sup>14</sup>

### *The Report*

I intentionally avoided ascribing specific statements and conduct to particular witnesses in the report to encourage candid interviews and to protect the identity of minors. I provided HCDE with relevant information regarding individual conduct that may justify further action.

To date, I still am attempting to follow up with some individuals who may have information relevant to the investigation. I also have outstanding requests that may contain information relevant to this investigation, such as reports requested from Sevier County Juvenile Court. I am submitting the report prior to completion of those interviews because I do not believe any information obtained from those individuals will substantively change my findings. As such, I reserve the right to supplement or amend this report at a later date, if necessary.

Any decision to prepare and submit the preliminary report and this final report has been at my sole discretion and a result of how information has been received and the investigation has unfolded. The timing and submission of this report during the election process is not intended to have any effect on that process and is merely coincidental. I have not been contacted by any

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<sup>11</sup> Civil Rights and Bullying Compliance FAQs by the Tennessee Department of Education, referencing the definition of bullying developed by Dan Olweus and used in the Olweus Bullying Prevention Program more fully discussed in Section V(a) of my Analysis & Factual Findings. The U.S. Department of Education Office of Civil Rights, through its interagency bullying-resource Web site, [www.stopbullying.gov](http://www.stopbullying.gov), defines bullying as “unwanted, aggressive behavior among school aged children that involves a real or perceived power imbalance. The behavior is repeated, or has the potential to be repeated, over time.”

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

board member and/or HCDE administrator attempting to influence how my investigation is conducted or when my findings are released.

## ANALYSIS & FACTUAL FINDINGS

### **I. The Culture of the 2015-2016 OHS Boys' Basketball Program**

#### **Overview of Program**

The OHS boys' basketball program is comprised of a freshmen, junior varsity ("JV") and varsity team. While the majority of freshmen play on the freshmen team, for the 2015-2016 season, four (4) freshmen were chosen to play on the varsity team.

Mr. Jesse Nayadley served as assistant principal and athletic director for OHS. Mr. Nayadley fully cooperated with the investigation.

Mr. Andre Montgomery served as the head coach of the JV and varsity boys' basketball teams as a paid employee. Mr. Montgomery declined to participate in the investigation through his attorney due to pending criminal charges.

Mr. Karl Williams served as an assistant coach of the JV and varsity boys' basketball teams as an unpaid volunteer. Mr. Williams declined to participate in the investigation through his attorney due to pending criminal charges.

Mr. Jeremy Robinson served as the coach for the freshmen boys' basketball team as an unpaid volunteer. Mr. Robinson declined to participate in the investigation.

There were thirty-two (32) players on the boys' basketball roster for the 2015-2016 season. Out of the thirty-two (32) players, nineteen (19) were freshmen, and four (4) of those freshmen played on the varsity team. Of the remaining upperclassmen, nine (9) made the trip to Gatlinburg where the incident at issue occurred.

I attempted to interview all of the players listed on the basketball roster. Fifteen (15) players' parent or guardian agreed to allow their son to participate in the investigation. Two (2) declined to participate in the investigation, and the remaining players' parent or guardian could not be reached, despite repeated attempts.

In addition to interviews, I toured the boys' basketball locker room and coaches' offices.

### Culture<sup>15</sup> of Hazing Prior to the Gatlinburg Incident

I found that a culture of hazing existed on the varsity basketball team prior to the Gatlinburg incident. This conclusion is based on my interviews of players and a review of the HSCO and DCS interviews that revealed the following:

- Nine (9) players stated that “racking in” or the “freshmen rack” occurred on the basketball team prior to the Gatlinburg incident.<sup>16</sup> “Racking in” is described as upperclassmen turning off the lights in the locker room, grabbing a freshman player and punching him with fists from the neck down, without the intention of causing injury. One player stated that the older players would lock or block both locker room doors before turning the lights off. Players stated that the purpose was to bring the freshmen onto the varsity team or “the big leagues.” One player stated that they were “hit hard to the point you want to fight.” Accounts stated that it lasted 20 to 30 seconds.
- Of the players who did not have personal knowledge of “the rack,” they did observe the lights out in the locker room.
- Freshmen varsity players stated that “racking in” began when the football season ended and the assailants began practicing with the basketball team. Prior to the assailants joining the team for practices, players stated that it was openly discussed as something that would happen to them.
- Freshmen varsity players stated that “racking in” happened more than once from November 22 until December 22. While reports on frequency varied from once a week to three times a week, there is no disputing it happened on more than one occasion.
- Although freshmen varsity team players were the main target, some members of the freshmen basketball team reported that it also happened to them.
- There is no disputing that the main assailants were the three players involved in the Gatlinburg incident; however, there were reports of other upperclassmen participating. This information was provided to the school board attorney for disposition.
- Three upperclassmen stated that the “freshmen rack” happened to them when they were freshmen.

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<sup>15</sup> Merriam-Webster Learner’s Dictionary defines culture as “a way of thinking, behaving, or working that exists in a place or organization.” It further states that culture is “the set of shared attitudes, values, goals and practices that characterizes an institution or organization.”

<sup>16</sup> One parent stated that “racking in” is a gang term and is therefore an inappropriate term to use to describe this behavior. Enough players, however, recognized and used the term to describe the behavior that it is appropriate to use in this context.

The HCDE Code of Conduct defines hazing as “any act intended to or reasonably expected to have the effect of humiliating, intimidating or demeaning a student or endangering the mental or physical health of the student committed by an individual or group against a student in connection with pledging, being initiated into, affiliating with, holding office in, or maintaining membership in any organization affiliated with any school or program operated by the school district.” The behavior described as “racking in” fits this definition of hazing in that it had the possible effect of intimidating the freshmen players in connection with being affiliated with the varsity team. The majority of the players interviewed stated that they did not know the definition of hazing prior to the Gatlinburg incident, but they did understand bullying. Many players described “racking in” as horseplay or “boys being boys.” This description is indicative of a desensitization and minimization of the behavior and a lack of education on what conduct constitutes hazing.

### *Culture of Bullying Prior to the Gatlinburg Incident*

I find that a culture of bullying existed on the 2015-2016 boys’ basketball varsity team prior to the Gatlinburg incident. In making this determination, my analysis was based on the definition referenced on the Tennessee Department of Education’s website and utilized in the training received by HCDE and OHS administrators and staff,<sup>17</sup> which states:

“Several definitions of bullying exist, but bullying always involves at least these elements (1) unwanted, aggressive behavior, (2) involving an actual or perceived imbalance of power, that is (3) repeated or occurring over a period of time.”<sup>18</sup>

“Racking in” meets these elements.

First, while many students described “racking in” as horseplay, at least one of the freshmen subjected to it stated that he did not want it to occur. Players did not report the behavior because they did not want to be a “snitch” and they did not want it to get worse. Several targeted players described it as more of a game, while others were confused between whether it was a game or whether they were in fear of it happening to them. Part of “racking in” was the element of surprise, leaving targeted players in a constant state of apprehension regarding when it may occur.

Second, incidents always involved several upperclassmen, who were bigger and stronger by virtue of their age and maturity, targeting one freshman. Ultimately, it was commonly known and accepted that it would occur, and freshmen therefore accepted it as part of being on the team.

Finally, it was reported that the “rack” repeatedly occurred over an approximate four (4) week period.

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<sup>17</sup> See Section V(a) of my Analysis & Factual Findings for a discussion of the training.

<sup>18</sup> Tennessee Department of Education website Bullying FAQs, citing the definition of bullying developed by Dan Olweus and used in the Olweus Bullying Prevention Program.



Despite receiving training and education on bullying at OHS, many players did not recognize it as bullying at the time that it occurred. In hindsight, however, they stated that they believed that the behavior did constitute bullying.

I had difficulty determining whether the conduct rose to the level of bullying as defined by Tennessee law and the HCDE Code of Conduct. Tennessee Code Annotated § 49-6-4502 includes in its definition of bullying a requirement that it “substantially interfere with a student’s educational benefits, opportunities or performance.” The Sample Bullying and Harassment Policy provided for Tennessee school districts by the Tennessee Department of Education also includes this element in its definition. Thus, the HCDE definition incorporates this language in its definition of bullying as well.

None of the freshmen subjected to “racking in” reported being physically injured. I also did not find any obvious indications during my interviews that the targeted players suffered academically or socially as a result of the “rack” specifically, given that school transfers and other issues may solely have been attributable to the Gatlinburg incident. Although I was unable to easily identify an immediate negative impact on the victims’ educational environment, my review was during a limited window of time. Any future impact is impossible to predict. Ultimately, the behavior created an environment within the school that had the potential to interfere with the victims’ educational environment. Moreover, there is a high likelihood that the behavior would have continued had the Gatlinburg incident not happened.

### **Knowledge of Coaches/Administrators of Culture**

#### **a. Coach and Administrator Backgrounds**

OHS parents, players and administrators described Mr. Montgomery as a good coach and employee. Players considered him a mentor and/or father-figure and felt that he always had their best interests at heart. Mr. Montgomery utilized his own money to buy players dinner, help with tournament costs and often would drive them home from practice. Mr. Montgomery expected the players to act with integrity and instilled in the players that they were a family as members of the basketball team and should treat each other as such. Some accounts of Mr. Montgomery by players, however, were of him behaving more as a friend than an authority figure.

Players also described Mr. Williams, who served as a volunteer, as a mentor and/or father-figure. They considered him the disciplinarian of the two coaches and stated that he reinforced the same philosophy as Mr. Montgomery.

Administrators and staff described Mr. Nayadley as a good athletic director and employee who was committed to OHS. Colleagues said that he brought more structure to the athletics’ program, evidenced through a Coaches Manual that he created and implemented. He often stayed after hours to assist with beautification of the school, such as hanging blinds. He maintained a high standard for student athletes. Athletes who got in trouble at school, for example, could not circumvent detention due to practice and instead had to serve school detention plus any other discipline through their team as a result of being late and/or missing practice.

b. Finding

Although I could not substantiate that Mr. Montgomery or Mr. Williams were aware of the hazing and bullying, they certainly were aware of excessive horseplay. It is undisputed that Mr. Montgomery and Mr. Williams had the best interests of their players at heart and that they took measures to address the horseplay. These measures included an exercise referred to as running suicides, running during practice, push-ups, squats and other physical activity. Despite these efforts, racking in and horseplay continued. Therefore, those efforts were not effective at addressing the behavior. Thus, other measures, such as benching a player or suspension, should have been considered.

Students interviewed by the HCSO, DCS and me, who were either the subject of or had direct knowledge of “racking in,” stated that they never told coaches or administration about it. Regardless, based on the accounts, it is difficult to believe that, at a minimum, Mr. Montgomery was not aware of excessive horseplay occurring in the locker room. The following information supports a high likelihood of this knowledge:

- Mr. Montgomery’s office was adjacent to the boys’ locker room. It is unlikely that he would not hear the players banging around in the locker room, given the proximity of his office and the fact that they were separated by only a wall. One player stated that you could hear the players banging around in the locker room from outside the door.
- One player reported that Mr. Montgomery walked in several times when the lights were off, turned them on and told the team to knock it off.
- One player stated that they were disciplined by Mr. Montgomery and Mr. Williams for “the rack” and had to run suicides.
- Players reported that they often spoke about “the rack” in front of the coaches.
- Mr. Montgomery bought the players a TV for the locker room. Due to excessive horseplay, the TV was broken, and parents had to pay for the damage.
- School dismissed at 2:15 p.m. The freshmen began practice at 2:30 p.m., immediately after dismissal. The JV and varsity practice did not start until 4:00 p.m. because of Mr. Williams’ work schedule. From 2:30 p.m. until 4:00 p.m., the players were therefore in study hall with Mr. Montgomery. Players described instances of little to no supervision in study hall. One instance, for example, involved two players getting into a heated verbal altercation.

**Culture of Bullying and Hazing Prior to the 2015-2016 Season**

I was unable to conclude whether a culture of bullying or hazing targeted at varsity freshmen players existed in the basketball program prior to the 2015-2016 season without expanding my investigation; however, it is highly likely that it did. Three (3) upperclassmen interviewed were

subjected to “racking in” as freshmen, which leads me to conclude it happened for at least three seasons under Mr. Montgomery. Any other accounts that it occurred were rumors or hearsay that could not be substantiated through my interviews of current players. To substantiate that information, I would need to interview former OHS basketball players.

### **Culture of Sexual Harassment Prior to the Gatlinburg Incident**

The HCDE Code of Conduct states that “harassment (sexual, racial, ethnic, religious) includes words, gestures, threats, or any other conduct that is severe, pervasive or persistent and creates a hostile environment that interferes with or limits a student’s ability to participate in or benefit from services, activities, or opportunities offered by a school.” I did not find that a culture of sexual harassment existed in the basketball program prior to the Gatlinburg incident. The only account of misconduct discovered during my investigation was “racking in,” which does not constitute sexual harassment. Because I did not find any other incidents of sexual harassment involving the basketball team, there was no evidence that school officials were deliberately indifferent to a culture within the program.

## **II. Gatlinburg and the Response of OHS and Central Office**

### **Overview**

Thirteen (13) players and three (3) chaperones went to the tournament in Gatlinburg. All of the freshmen who attended, with the exception of the physically injured victim, who declined to participate through his attorney, participated in the investigation. Of the remaining players on the trip, one (1) player declined to participate through his attorney and one refused to participate through his mother, who has a personal relationship with one of the coaches. I was unable to reach the three assailants. For players who did not participate in the investigation, I reviewed their HCSO and DCS interviews for information.

### **General Timeline of Events**

The team arrived in Gatlinburg on December 19<sup>th</sup>. That evening, the four (4) freshmen players were dunked in the hot tub by upperclassmen. On December 20<sup>th</sup>, an upperclassman, with the assistance of two other players, poked two freshmen on the rectum, over clothing, with a pool cue. They did not sustain physical injuries. On December 21<sup>st</sup>, another freshman player was subjected to the same treatment. On December 22<sup>nd</sup>, the fourth freshman was subjected to the same treatment and, in this instance, sustained physical injuries that required hospitalization. During the early hours of December 23<sup>rd</sup> the assailants were driven back to Chattanooga. That morning, at 11:30 a.m., the team played its last game in the tournament. Immediately after the game the team returned to Chattanooga.

### **Conduct of the Assailants**

It is undisputed that the players were wrestling and engaging in horseplay at the cabin during the trip, including dunking four (4) freshmen in the hot tub. It is also undisputed that all four (4) freshmen were subjected to the pool cue, with one resulting in serious physical injuries.

The placement of the pool cue on the players' rectums was not an accident. The assailant intended to place the cue in that location. While the players did not believe that any of the assailants intended to physically injure anyone, this was not a case of the main assailant poking other areas of the players' bodies and the cue slipping and hitting that area instead. Therefore, the assailants had the intent to bully, haze and sexually harass the victims.

I did not find any evidence that the HCDE or OHS administrators knew or should have known that these incidents would occur. Despite the fact that the incidents occurred over the course of three nights, none of the players in Gatlinburg told school officials or their parents. Additionally, there was no prior culture of sexual harassment on the basketball team, and the assailants had no prior history of reported similar conduct. While I found that Mr. Montgomery failed to take appropriate measures to address the excessive horseplay within the basketball program prior to the Gatlinburg incident, it is unlikely there was any way for Mr. Montgomery to know that the behavior would escalate to such an extreme.

#### *Response of Coaches and Administrators*

##### a. Physically Injured Freshman

With respect to the freshman who was physically injured, I found that the HCDE satisfied its Title IX obligations in its response. Mr. Montgomery and the other adults present in the cabin took immediate action to identify and eliminate the hostile environment and address its effects once on notice. Mr. Montgomery attempted to ascertain what happened, promptly sought medical care for the victim, and quickly notified his family. Once the police became involved, the coaches followed directives, kept the assailants separate from the victim pursuant to the detective's recommendations, and ultimately drove the assailants back to Chattanooga in the early morning hours of December 23rd. Mr. Montgomery also notified Mr. Nayadley that evening with current information. Thereafter, OHS suspended all three assailants.

##### b. Remaining Freshmen

I found that the pool cue incidents involving the remaining freshmen constituted hazing and bullying. It was a part of being brought onto the varsity team, specifically targeted at freshmen, and each freshman was held down by two upperclassmen.

I found that the incidents also constituted sexual harassment. I was unable to interview the assailants, but it is reasonable to assume that the conduct was sexual in nature, given the intended placement of the pool cue. The contact was unwanted, offensive and had the purpose or effect of intimidation and embarrassment. The victims had responses indicative of victims of sexual harassment that can be characterized as shame, anger, embarrassment, confusion, humiliation and disgust. Although the incident occurred only once with each freshman and the contact was over the clothing, it involved contact with an intimate body part with an object that can be used as a weapon. Also, as already noted, on each occasion the freshman victim was grabbed and held down by two players.

I found that Mr. Jarvis and Mr. Nayadley failed to take appropriate measures to address the effects of the incidents with the other freshmen once on notice because they did not notify the families of the freshmen and allowed the team play the next day. Mr. Jarvis and Mr. Nayadley did not violate any HCDE or OHS policies or procedures; however, this does not obviate their responsibilities as administrators to exercise appropriate judgment and take necessary measures to ensure the mental and physical well-being of the players who were the target of bullying, hazing and sexual harassment.

Both Mr. Jarvis and Mr. Nayadley received training on bullying, which includes identifying and responding appropriately to the behavior. Much of the behavior covered in the training on bullying also encompasses behavior that constitutes sex- and gender-based harassment. Thus, even though the training may not have delineated between the HCDE's Title IX obligations and obligations in responding to bullying, it included the necessary information to inform them, as administrators, of how to address those behaviors.

During the early morning hours on December 23<sup>rd</sup>, Mr. Montgomery and Mr. Nayadley became aware that prior pool cue incidents had occurred with the other freshmen in Gatlinburg with no resulting physical injuries. One of them was

believed . . . .<sup>19</sup> Mr. Nayadley had a close relationship with the coaches and trusted them to handle the situation appropriately. As a result, Mr. Nayadley did not contact the families of the other two freshmen to inform them of what occurred.<sup>20</sup> Mr. Montgomery stayed at the injured victim's side, leaving Mr. Nayadley as the most senior administrator in Gatlinburg to make the decision to notify families. One of the two families did not learn about what happened until after the team played in the tournament and were thirty minutes outside of Chattanooga on their way home. She only learned about it then because she contacted Mr. Williams to find out how the game went. The mother of the other player did not learn about it until her son told her when they were back in Chattanooga.<sup>21</sup> Those families were therefore unable to make an informed decision on the well-being of their child and whether they wanted to come and get their sons from Gatlinburg. One mother expressed that had she known what happened, she would have immediately gone to Gatlinburg and brought her son home.

Mr. Jarvis was the ultimate decision-maker on playing in the tournament the morning after the incident occurred. His decision largely was influenced by the reports he received from Mr. Nayadley. Mr. Nayadley felt the players were ready to play and wanted to play. None of the players interviewed stated that they wanted to play. One player described the team as "sluggish." They were tired from a long and stressful evening, and their minds were with the injured victim.

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<sup>19</sup> Mr. Nayadley did not stay in the same cabin as the team because he was attending the tournament as a parent of a player. Cell service was poor which made it difficult to make phone calls. Thus, the best way to contact someone was via text.

<sup>20</sup> Mr. Nayadley may have reported the pool cue incident to one of the freshman's parents; however, I could not verify this information with that parent.

<sup>21</sup> Some of the players stated that they did not tell their parents what was going on after the incident occurred with the injured player that night because police were at the cabin and they were unsure what they were allowed to talk about to other people.

In allowing the team to play, Mr. Jarvis rationalized that the remaining players should not be punished for the conduct of three. Had the team come back from Gatlinburg and an investigation commenced into the culture of the program, OHS would have discovered that hazing and bullying were occurring in the locker room and that additional upperclassmen were involved in hazing and bullying. While I do not know what discipline would have been appropriate for those players had this been discovered in January, there certainly was evidence of behavior that would rise to the level of a disciplinary infraction that was not considered.

Mr. Nayadley informed Mr. Steve Holmes<sup>22</sup> from Central Office that he would ensure the boys were physically and mentally ready to play in the tournament. Mr. Nayadley stated that in making this determination, he observed the boys warming up, and they were “getting after it.” Every player interviewed, however, said that they were worn out and confused as to why they were playing. Mr. Nayadley also spoke to the players, although there were mixed accounts as to whether that occurred before or after the game. The players, with the exception of one, said that Mr. Nayadley did not talk to them until after they played. The player that stated he spoke to them prior to the game said that he told them “let’s finish the game out” as they were getting their shoes on to play. Regardless of when Mr. Nayadley spoke with the team, ultimately it was clear to the team that they were going to play despite what had occurred. In having the team play, Mr. Nayadley ran the risk of sending a message to the freshmen players that the conduct was acceptable.

When Mr. Nayadley spoke to the team, he told them that the behavior was not acceptable and that the three assailants would be kicked off the team. Mr. Nayadley pulled each freshman aside to tell them the conduct would not be tolerated. He told the players that he would talk with their parents about what occurred.

By not immediately contacting the families and in allowing the team to play, Mr. Jarvis and Mr. Nayadley failed to take appropriate measures to address the effects of the hazing, bullying and sexual harassment of the freshmen players.

c. After the Gatlinburg Incident

All of the players’ parents on the basketball team that I spoke with expressed frustration at the lack of response from OHS and the HCDE after the Gatlinburg incident. While some of the boys were not subjected to hazing, bullying and/or sexual harassment, they did witness a traumatic event, and thereafter, their season was cancelled, which had a profound impact on them. Someone from OHS or HCDE should have reached out to these families to extend support. One guidance counselor did talk with a few of the boys that he had a relationship with, to let them know he was available if they needed to talk. By in large, though, there was no concerted, organized effort to reach out to families.

I relayed this information to Mr. Bennett, who attempted to convince Mr. Jarvis of the necessity of speaking to these families. I also spoke to Mr. Jarvis and attempted to explain the need. Mr. Jarvis failed to understand the need to reach out to these families because “there was only one

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<sup>22</sup> Mr. Holmes is the secondary operations director for the HCDE.

victim that he was aware of.” When I explained that many students have transferred, are in need of counseling services and so on, Mr. Jarvis continued to be unable to understand why parents should be contacted unless he had news for them regarding the upcoming basketball season. Ultimately efforts with Mr. Jarvis were exhausted, and the Title IX Coordinator began reaching out to the families.

### **III. The Culture of the 2015-2016 OHS’ Football Program**

#### **Overview**

I expanded my investigation into the OHS football program due to the following:

1. Several players stated that “racking in” began when the football season ended and the three assailants began practicing with the basketball team;
2. One assailant, in his interview with HCSO and DCS, stated that it happened to him on the football team; and
3. Students stated that they heard rumors that it occurred in football.

The football program has a freshmen, JV and varsity team. Mr. Mac Bryan serves as the head coach of the JV and varsity teams. Mr. Doug Greene and Mr. J.D. Dunbar serve as paid assistant coaches. All of the coaches fully cooperated with the investigation.

There were over 100 students on the OHS football roster during the 2015-2016 season. In the interest of time, I attempted to contact the parent or guardian of all sophomores on the football team because, as the youngest members of the varsity team, they would have been the most likely subjects of hazing and/or bullying. There were thirty-one (31) sophomores on the roster and two (2) more identified through interviews. Only four (4) of those players agreed to participate.<sup>23</sup> The remaining parents or guardians of the players would not allow their sons to participate in the investigation or could not be reached despite repeated attempts. There were a few basketball players I interviewed who also played football, which enabled me to confirm certain information about the program.

Both the lack of participation in the investigation and the fact that two players declined to participate through attorneys was surprising. Of those I did interview, I asked why players were unwilling to participate. I also asked parents or guardians I spoke with by phone why they were unwilling to allow their sons to participate. Ultimately, I deduced from these conversations that the unwillingness was a result of frustration over the negative depiction of OHS in the media, parents feeling confident that their son had not been subjected to similar conduct based on conversations with their son about the Gatlinburg incident, parents not wanting to subject their children to an interview, concern that the behavior of the assailants would be attributed to the football program, and a belief that the investigation was a “witch hunt.” I did not receive any information indicating a fear of retaliation.

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<sup>23</sup> Two (2) of those players were the assailants in the Gatlinburg incident therefore I was unable to interview them.

In addition to witness interviews, I toured the locker room area for both the freshmen and varsity football teams as well as the practice fields.

### **Finding**

I did not find that a culture of hazing, bullying or sexual harassment existed in the football program during the 2015-2016 football season. Although I was unable to interview a significant number of sophomore players on the team, the credibility of the players that I did interview, the consistency of statements regarding the program from players, parents and coaches, and the following information supports this finding:

- The freshmen team is kept entirely separate from the JV and varsity teams. They maintain separate locker rooms, practice times, and schedules. This is by design as Coach Bryan's philosophy is that freshmen are not mature enough physically or emotionally to practice or interact with upperclassmen.
- The varsity team practice starts at 2:30. The coaches are mindful of not allowing players to have any free time between the end of school and the start of practice. Players cannot access the locker room to get ready for practice until it is unlocked by a football coach who is then around to supervise. At the end of practice, players again cannot access the locker room until it is unlocked by a coach. Two coaches are always assigned to the locker room after practice. Coach Bryan and Coach Greene have offices in the locker room.
- Players and coaches reported that Coach Bryan and his staff maintain a strict program, and players are held to a high standard. If a player gets in trouble at school, engages in horseplay, is tardy for practice, is reported as having behavior issues in the classroom, etc., they are subject to "afternoon delights"<sup>24</sup> led by Coach Dunbar.
- Through grad focus,<sup>25</sup> the coaches have made it a point to discuss current events involving athletes and sexual misconduct or other social issues that may affect them.

Based on the foregoing, there was no direct evidence of a culture of hazing, bullying, or sexual harassment. The structure of the football program does not support such conduct occurring in the presence of coaching staff. Freshmen are intentionally kept completely separate from the JV and varsity teams. They have separate locker rooms and practice on different fields. Players always are supervised, and the coaches do not tolerate horseplay or conduct that could lead to

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<sup>24</sup> Afternoon delights consist of running drills and other exercises in addition to practice.

<sup>25</sup> HCDE students who are in exceptional education and under an Individualized Education Plan (IEP) must receive a certain amount of direct instruction each week. Each school has discretion in how to provide this instruction. OHS chose to create grad focus which is a block that meets three times a week for the non-IEP students. Through grad focus, students may elect coursework ranging from art to foreign language. OHS also utilized this time for coaches to have time with student athletes in a classroom setting while they were in season. During that time, the football program provided cyber-bullying training through i-SAFE, ACT prep and had students write about current events. Although the football players who are not in exceptional education do not participate, the majority of the players are in grad focus.



fights among teammates. Thus, when conduct occurs that has the potential to escalate, it is dealt with quickly and effectively.

#### **IV. Other Issues**

During my investigation, I discovered other operational issues that I provided to Mr. Bennett for disposition.

#### **V. OHS Policies, Procedures & Educational Programs Regarding Bullying, Hazing and Sexual Harassment**

##### **Bullying**

###### **a. Overview**

The HCDE mandates bullying training for all teachers and staff. Each school has discretion on the implementation of training and then must report back to the Central Office.

One option provided to the schools within the HCDE is training through the Olweus Bullying and Prevention Program (“OBPP”). OBPP “prevents or reduces bullying in elementary, middle, and junior high schools” and “deals with bullying at the schoolwide, classroom, individual and community levels.”<sup>26</sup> OBPP is research validated, and recognized by the U.S. Department of Education.<sup>27</sup>

Ms. Karen Glenn serves as the STARS<sup>28</sup> Director for HCDE. In that role, she provides Olweus training for the schools and oversees school climate. Each school that opts to utilize Olweus training can work with Ms. Glenn to initiate training specific to their school. First, schools implement a student survey to assess school climate. Then, based on the result of the survey, a core team receives initial training and discusses implementation of the school-wide training. Although the training elements are the same, each school can modify training to reflect their own culture. Ms. Glenn’s Olweus training provides in-depth instruction on identifying, preventing and responding to bullying. It also discusses the relationship to other civil rights’ violations, such as discrimination and sex- and gender-based harassment.

OHS utilized Olweus training and worked with Ms. Glenn prior to the 2015-2016 school year. Data from the 2014-2015 surveys was presented to the eight OHS staff members identified as the core team during their full day of training. In August 2015, the entire staff at OHS was trained during teacher in-service. As a result of the core team’s analysis of the culture at OHS, they developed “Give a Hoot” posters to raise awareness and prevention of bullying. They also created anti-bullying posters that were prominently displayed in every classroom and throughout

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<sup>26</sup> Olweus Bullying Prevention Program Brochure.

<sup>27</sup> HCDE website.

<sup>28</sup> Students Taking a Right Stand (STARS) “is a school-based program dedicated to strengthening the learning environment by addressing social issues such as bullying and substance abuse.” STARS website. One program offered is Olweus training.

the building. Staff were also given quick-tip intervention cards with specific procedures for responding to observed bullying behavior. In addition, OHS teachers taught at least three lessons on an aspect of bullying or other behavior that could negatively affect students throughout the school year. Ms. Glenn stated that the training at OHS was among the best received trainings of all of the schools she worked with that year.

In addition to Olweus training, OHS utilized training provided through STARS for its students. OHS identified twelve (12) students<sup>29</sup> who were considered “change agents” to attend one day training on school climate that included bullying awareness and prevention. At the end of the training, the group created a plan to combat prevalent issues including bullying and raise awareness at OHS for its students. Included in their prevention efforts were PSA announcements giving encouraging quotes of the day, making an effort to sit with students sitting alone at lunch, and acknowledging students for positive actions. OHS students also visited elementary schools promoting the “Kindness Matters” campaign for 5<sup>th</sup> graders and participated in the multi-school Youth Conference for middle school students encouraging positive behavior.

At the end of the academic year, STARS commended OHS on their work in an email to administrators and staff who led the program.

Finally, the HCDE mandates training on cyber-bullying for all students through a program called i-SAFE. This program provides educators with age-appropriate, grade specific e-Safety curriculum and includes professional development for instructors. OHS provided i-SAFE to its students in wellness or grad focus and tracked students who have completed the curriculum.

#### b. Finding

The HCDE has made significant efforts to combat bullying. Olweus training is thorough and tailored to meet each school’s specific culture and climate. Statistics on bullying are collected each year by Ms. Glenn and reported to the Office of Civil Rights. Ms. Glenn also administers climate surveys for each school for parents, teachers and students. The results of the surveys are shared with school administration so that needs are identified and goals established for strengthening the school learning environment.

As noted, all schools are not required to utilize Olweus training. I could not find a consistent mechanism in place to ensure those schools provide sufficient training to staff; thus I cannot say that all schools are receiving adequate training in this regard.

OHS has gone above and beyond HCDE mandate in its efforts to combat bullying. OHS provided robust bullying training for all of its teachers and participated in STARS for its students. OHS’s efforts are evident throughout the school grounds with posters and pamphlets.

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<sup>29</sup> Three (3) of the twelve (12) students were football players.

## Hazing

I found that the HCDE and OHS efforts towards training on hazing are deficient. Although the Code of Conduct addresses hazing, students do not understand what actions might constitute hazing, which demonstrates a lack of education in this area. It appeared some of the OHS administrators had a “that doesn’t happen here” approach to hazing and failed to see the value in proactive measures through education and training for staff, teachers and students.

## Sexual Harassment

### a. Overview

I encountered significant difficulty in determining what efforts were being made with respect to HCDE meeting its Title IX obligations. I first interviewed the designated Title IX Coordinator, Ms. Marsha Drake, as well as other HCDE administrators. My initial determination was that very little was being done by the HCDE to meet its obligations based on these interviews. It was only after I spoke with Mr. Bennett about these issues that I learned that Ms. Glenn was doing a lot of work that would satisfy some of the HCDE’s Title IX obligations. This discovery was very concerning because, if it was difficult for me to find out this information, it certainly would be difficult for a parent or student to locate.

### b. Analysis

The Office of Civil Rights states the HCDE “must designate at least one employee to coordinate their efforts to comply with and carry out their responsibilities under Title IX . . . . These designated employees are generally referred to as Title IX coordinators.”<sup>30</sup> The HCDE designated a Title IX coordinator, Ms. Drake.

The Title IX coordinator must have the “qualifications, training, authority and time” to address all complaints throughout the school district implicating Title IX.<sup>31</sup> Ms. Drake has not received adequate training on Title IX. She also has a host of responsibilities outside of those as a Title IX coordinator. Thus, the HCDE designated her as coordinator without the consideration of the appropriate infrastructure, support and training.

The Title IX coordinator is “responsible for coordinating the school district’s responses to all complaints involving possible sex discrimination. This includes monitoring outcomes, identifying and addressing any patterns, and assessing effects on the campus climate.”<sup>32</sup> Although Ms. Drake serves as the Title IX coordinator, many of these responsibilities are being carried out by Ms. Glenn.<sup>33</sup> In addition, Ms. Drake was unaware that Ms. Glenn was carrying out these duties.

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<sup>30</sup> Office of Civil Rights, Dear Colleague Letter on Title IX Coordinators, April 24, 2015.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> The climate surveys utilized by Ms. Glenn assess climate on a variety of issues, but fall short with respect to sexual misconduct. Ms. Glenn does collect data from each school that includes information regarding reports of bullying based on sex or gender.

Under Title IX, the HCDE is required to provide mandatory training for staff and students. HCDE training efforts are as follows:

- Annually, all of the HCDE administration and staff must acknowledge review of the Harassment/Sexual Harassment and Discrimination Board Policy. There is no accompanying training.
- The schools utilizing Olweus training also receive training on conduct that constitutes sex-and gender-based harassment, including how to respond to these incidents once a student or school official is on notice of the conduct.
- In 2015, Ms. Glenn provided an exercise for the HCDE administration to further illustrate the interplay between bullying and other civil rights violations, including sex- and gender-based harassment.

The HCDE needs to further bolster any existing training to include HCDE's Title IX obligations and mandate such training for all students and staff. In addition, the HCDE needs to ensure those schools which do not opt to utilize Olweus training are providing adequate training which satisfies its Title IX obligations.

The HCDE is required to ensure that all "persons involved in implementing . . . grievance procedures must have training or experience in handling complaints of sexual harassment and sexual violence." I did not find evidence that building administrators, who are tasked with investigating reports, receive training or experience in these matters. Likewise, I did not find evidence that other administrators involved in the process receive training or have experience in these matters. While many of them may have gone through adequate training, there is no tracking mechanism in place to ensure that it occurs.

Finally, under Title IX, the HCDE is required to provide a prompt and equitable response to complaints, support complainants through the provision of interim measures, take action to identify and eliminate a hostile education environment, prevent its recurrence, and address its effects for individual complainants and the broader school community.<sup>34</sup> The HCDE is making efforts in this regard; however, they are disjointed and therefore difficult to ascertain. They are being undertaken by Ms. Glenn, who is not the designated Title IX coordinator, and funneled up through building administrators who have not been adequately trained on the HCDE's Title IX obligations. As a result, it is difficult to determine whether the HCDE is satisfying its obligations in this regard.

#### c. Finding

I found that the HCDE's and OHS's efforts towards training on sex-and gender-based harassment, including obligations of the school district in responding to those complaints under Title IX, are inadequate in some areas, disjointed in others and overall in need of improvement. The issues that I have discovered in this regard did not impact Mr. Montgomery's ability to

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<sup>34</sup> Office of Civil Rights, Dear Colleague Letter, April 4, 2011.

appropriately respond to the injured freshman in Gatlinburg; however, they are issues that must be addressed to ensure overall compliance by the HCDE with Title IX going forward.

## **VI. OHS**

As I previously noted, I spent the better part of seven (7) weeks at OHS with unfettered access to the school. The environment at OHS is a positive one, and there certainly is more good than bad happening within the school. Teachers I spoke to were dedicated to their profession and students and had profound loyalty to the school.<sup>35</sup> Students also spoke very highly of their experience at OHS, including the students who were in Gatlinburg. Students and teachers alike felt that the media's depiction of the school was unfair and that the Gatlinburg incident was an isolated incident which was not an accurate reflection of the school or its athletics' program. My observations during my time there were consistent with these sentiments.

### **RECOMMENDATIONS**

During the course of my investigation, new policies and procedures were adopted, which may include some of these recommendations. Also, because training efforts are disjointed, some of the following recommendations may be in place, but difficult to ascertain. Finally, my recommendations should not be construed as meaning that had these recommendations been implemented prior to the Gatlinburg incident, the actions taken in Gatlinburg would not have occurred.

#### **Training and Education**

1. Provide and mandate training to all HCDE and school administrators that includes:
  - a. HCDE's Title IX obligations;
  - b. How to identify and address bullying, hazing, sex- and gender-based harassment ("prohibited behavior");
  - c. The proper reporting structure once personnel are on notice of prohibited behavior; and
  - d. Repercussions for failure to report incidents of prohibited behavior.
  
2. Provide and mandate training and education to HCDE staff and teachers regarding prohibited behavior. Consider providing this training to all school sites during teacher in-service at the beginning of the school year. This training includes:
  - a. HCDE's Title IX obligations;
  - b. How to identify and address prohibited behavior;
  - c. Where to report prohibited behavior once on notice of it; and
  - d. Repercussions for failure to report incidents of prohibited behavior.

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<sup>35</sup> I was directed to contact teachers who may have felt differently about the school environment and administration. I attempted to interview those individuals but was unsuccessful despite repeated attempts.

3. Expand educational efforts on bullying and cyber-bullying for students to also include education on hazing and sex- and gender-based harassment.
4. Provide bystander training for students and establish a student peer-based leadership program. Consider programs such as Step Up! to assist with these efforts.

**HCDE's Title IX obligations**

5. Clarify the roles and responsibilities of Ms. Karen Glenn and Ms. Marsha Drake and make any necessary changes to appropriately designate a Title IX coordinator for the HCDE.
6. Properly resource the Title IX coordinator to be able to implement policies, procedures and practices, which include:
  - a. Appointing deputy Title IX coordinators at each school site for intake, support and case management. These may already be contemplated under the newly adopted policy as building administrators and/or school officials;
  - b. Providing appropriate training opportunities for the Title IX coordinator and deputy Title IX coordinators; and
  - c. Provide appropriate support and authority for the Title IX coordinator and deputy Title IX coordinators to implement necessary interim measures for complainants.
7. Appropriately train any building administrator and/or school official designated for investigating matters involving sexual harassment to ensure adequate, reliable and impartial investigation of complaints. Training should be trauma-informed and include information regarding conducting an investigation during a pending criminal investigation.
8. Ensure that all forms of resolution to disciplinary matters implicating Title IX are clearly documented to demonstrate actions were taken to eliminate a hostile education environment, prevent its recurrence and address its effects on the complainant and the school community. Maintain appropriate complaint logs and records of all reports and steps taken to eliminate, prevent and address the effects of the prohibited conduct.
9. Train guidance counselors on available and comprehensive victim services to all students affected by sexual harassment or sexual violence. Consider designating an "on call" guidance counselor at each site to assist victims when needed.
10. Train all School Resource Officers on the HCDE Title IX obligations.
11. Train the HCDE school board on the HCDE's Title IX obligations.

12. Review disciplinary and grievance procedures to ensure they are consistent with the law and guidance. This may include modifications to the newly adopted policy, or the establishment of a complainant's bill of rights, which includes:
  - a. A time frame for all major stages of the procedures including the time frame within which (1) the school will conduct a full investigation of the complaint; (2) both parties receive a response regarding the outcome of the complaint; and (3) the parties may file an appeal. The policy also should provide that both parties will receive periodic status updates;
  - b. Clarifying that throughout the investigation, including any hearing, the parties must have an equal opportunity to present relevant witnesses and other evidence. The complainant and respondent must be afforded similar and timely access to any information used at a hearing;
  - c. Notifying both parties, in writing, of the outcome of the complaint and appeal concurrently, to the extent allowed by law; and
  - d. Notifying a complainant of the right to file a criminal complaint.
13. Conduct a review of all disciplinary matters implicating Title IX since 2011; create a log of those instances and how they were handled; and engage in any remedial efforts deemed necessary as a result of the review.
14. Conduct appropriate periodic climate surveys or assessments to evaluate the effectiveness of these measures.

### *Athletics*

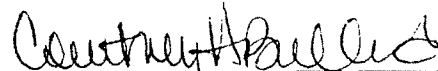
15. Ensure that all athletics' personnel, including volunteer coaches, are appropriately trained on an annual basis regarding Title IX obligations, hazing and bullying.
16. Create and maintain a zero tolerance culture for prohibited behavior that includes consistent enforcement and discipline within athletics at OHS.
17. Establish a registration process for volunteer coaches maintained in a centralized location that includes a system for volunteer coaches to acknowledge training on hazing, bullying, and sex- and gender-based harassment, school-sponsored overnight travel procedures and protocol, and mandatory reporting.
18. Create standards for volunteer coaches in line with those expected of stipend coaches.
19. Clarify the roles and responsibilities of Athletic Directors in handling reports of prohibited behavior within athletics.

### *Other*

20. Ensure accountability for failures to report by HCDE employees.

21. Develop procedures and protocol for addressing incidents of prohibited behavior that occur on school-sponsored overnight trips. Identify decision-makers for notifying parents, returning home early, and cancelling games.
22. Provide detailed periodic reports to the school board regarding the implementation of these recommendations.

Respectfully submitted,



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Courtney H. Bullard  
Spears, Moore, Rebman & Williams, P.C.



## Addendum A

1. Student A and parent(s)
2. Student B and parent(s)
3. Student C and parent(s)
4. Student D and parent(s)
5. Student E
6. Student F and parent(s)
7. Student G and parent(s)
8. Student H
9. Student I
10. Student J
11. Student K and parent(s)
12. Student L
13. Student M
14. Student N
15. Student O and parent(s)
16. Student P and parent
17. Student Q
18. Student R
19. Student S
20. Matthew Henson
21. Ken Buchanan
22. Jensen Morgan
23. Rocky Chavis
24. Jesse Nayadley
25. Jim Jarvis
26. Sylvia Hutsell
27. Chris Brown
28. Stephanie Allen
29. Wendell Weathers
30. Lee McDade
31. Wayne Rich
32. Doug Greene
33. Donald Mullins
34. James (J.D.) Dunbar
35. Steve Holmes
36. Mac Bryan
37. Marsha Drake
38. Grey Briggs
39. Officer Nathan Sampley
40. Karen Glenn

## ADDENDUM B

1.	HCDE Policies & Procedures
2.	HCDE Revised Board Policy 6.304
3.	HCDE Training on Abuse Reporting Procedures 4.14.16
4.	2015-2016 HCDE School Calendar
5.	HCDE High School Administrative Policy & Procedure Manuals
6.	HCDE Volunteer Form
7.	2015-2016 HCDE Hardship Report
8.	HCDE Bullying Policies
9.	2015-2016 HCDE Bullying Compliance Report for OCR
10.	HCDE Form Elementary, Middle and High School Climate Surveys
11.	HCDE Non-Faculty Volunteer Coach Procedures for Setup
12.	HCDE Secondary School Counselor Manual
13.	HCDE Form Request for Early Approval for Field Experience
14.	HCDE Consent for Athletic Participation and Medical Care
15.	HCDE Disciplinary Referral Form
16.	HCDE Parent Complaint Form
17.	TN Department of Education Civil Rights and Bullying Compliance FAQs
18.	Tennessee Department of Education Sample Bullying and Harassment Policy
19.	stopbullying.gov website
20.	Personnel Records of Avery Rollins, Jesse Nayadley and Andre Montgomery
21.	Transcript from the Preliminary Hearing for Karl Williams, Andre Montgomery and Allard Nayadley in the Juvenile Court of Hamilton County
22.	Timeline of events from Steve Holmes
23.	Bullying and Prevention Training for HCDE Assistant Principals Powerpoint 9.2014
24.	2015 Dear Colleague Training Activity for Assistant Principals 9.9.14
25.	Bullying Is Not Tolerated (B.I.N.T.) Investigation Form
26.	OHS Teacher Contact List
27.	OHS Web Page
28.	OHS Map
29.	OHS Hardship Transfers
30.	2015-2016 OHS Boys' Basketball Roster
31.	2015-2016 OHS Boys' Basketball Schedule
32.	Smoky Mountain Classic Basketball Schedule 2015
33.	2016 Chattanooga Elite Roster
34.	2015-2016 OHS Football Roster
35.	2015-2016 OHS Football Schedule
36.	OHS Student Handbook 2015-2016
37.	OHS Faculty Handbook 2015-2016
38.	OHS Coaching Handbook 2015
39.	OHS Student Handbook 2014-2015
40.	OHS Code of Acceptable Behavior and Discipline
41.	OHS Registration Packet

42.	OHS i-SAFE Curriculum Materials OHS Participation Request 12.7.15
43.	General Demographics of Specific OHS Students
44.	Fall 2015 Class Schedules of Victims and Assailants
45.	Meeting Notes re: Gatlinburg 1.4.16
46.	Disciplinary records of assailants
47.	Olweus Pamphlet
48.	Olweus Bullying and Prevention Program Brochure
49.	OHS Olweus/STARS Bullying Prevention Brochure
50.	OHS OASIS curriculum materials
51.	Email from Gregory Gwen to administrators and staff re: STARS
52.	OHS 2013 Tennessee School Climate Survey Past 30-day Personal Alcohol, Tobacco, and Other Drug Use Prevalence
53.	OHS 2013 Parent Survey
54.	OHS 2013 Teacher Survey
55.	OHS Tennessee S3 Student Survey School Summary 2013-2014
56.	OHS Sign-in Sheet for Initial Core Training
57.	OHS Olweus Core Team Powerpoint Presentation 11.11.14
58.	OHS Expectation Poster – Rules on Bullying
59.	OHS Thanks for Giving a Hoot Bullying Poster
60.	OHS On the Spot Bullying Intervention Cards
61.	OHS Olweus Staff Training Powerpoint Presentation 8.7.15
62.	OHS Sign-in Staff Training 8.7.15
63.	STARS website
64.	HCSO and DCS Interviews (12) of Nayadley, Jarvis, Montgomery, victims and witnesses
65.	Newspaper Articles from 12/30/15 – 07/01/16