



U.S. Department of Justice

Office of Justice Programs

*Office for Civil Rights*

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Washington, D.C. 20531

March 23, 2012

CERTIFIED MAIL: RETURN RECEIPT REQUESTED

Stanley Sniff  
Sheriff-Coroner  
Riverside County Sheriff's Department  
4095 Lemon Street  
Riverside, CA 92501

Re: A.A.<sup>1</sup> v. Riverside County Sheriff's Dep't (10-OCR-0665)  
Investigative Findings

Dear Sheriff Sniff:

The Office for Civil Rights (OCR), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ) has completed its investigation into the above-referenced complaint of discrimination against the Riverside County Sheriff's Department (RCSD, Department, or Recipient). Below, you will find our investigative findings summarizing the results of the investigation. In short, the OCR finds that the RCSD did not engage in prohibited sex-based harassment or retaliation against A.A., although the OCR also concludes that the RCSD may lack effective measures to prevent and address discrimination against participants in its work-release program.

As you are aware, federal law prohibits services discrimination on the basis of race, color, religion, national origin, sex, disability, or age by recipients of federal financial assistance from the Office of Community Oriented Policing Services (COPS), the Office on Violence Against Women (OVW), the OJP, and OJP components. The OCR has administrative responsibility for investigating complaints alleging that a recipient of COPS, OVW, or OJP funds has violated Section 809(c) of the Omnibus Crime Control and Safe Streets Act of 1968 (Safe Streets Act), as amended, and its implementing regulations. As a recipient of COPS funding, the RCSD is subject to the OCR's jurisdiction.

**I. Procedural History and Jurisdiction**

On August 18, 2010, the Federal Coordination and Compliance Section (FCS), Civil Rights Division, DOJ received A.A.'s Complaint, which the FCS referred to the OCR on August 26, 2010.<sup>2</sup> A.A. participated in a work-release, community-corrections program administered by the

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<sup>1</sup> The OCR will use pseudonyms throughout this letter, which is a public document, to protect the identities of key individuals involved in the instant Complaint.

<sup>2</sup> In addition to filing this Complaint, A.A. filed a charge of discrimination with the U.S. Equal Employment Opportunity Commission against the RCSD, which she later withdrew.

RCSD. A.A. alleges that, between November 2009 and August 2010, the Department discriminated against her based on sex by subjecting her to harassment, and retaliated against her after she reported the existence of a hostile environment. During the relevant time period, the RCSD received COPS funding, which is subject to the Safe Streets Act. On July 29, 2011, the OCR notified the Department of A.A.'s Complaint and asked the Recipient to provide information regarding the Complainant's harassment and retaliation claims. On September 22, 2011, the Recipient responded to the OCR's information request.

After considering all of the evidence provided to the OCR by the parties, the OCR issues this Letter of Finding, which concludes, as discussed below, that the evidence supports the following findings: (1) the RCSD acted properly in responding to A.A.'s report of sexual harassment; and (2) the Department did not retaliate against A.A. In addition to these findings, the OCR concludes that the RCSD should consider taking additional steps to prevent and address discrimination against individuals, such as the Complainant, who participate in its work-release program.

## **II. Statement of Facts**

A.A. alleges that the RCSD subjected her to sexual harassment and retaliation while she participated in the Riverside County Sheriff's Labor Program (Labor Program or Program). In the following sections, the OCR describes the Labor Program and applicable policies, the Complainant's participation in the Program, the asserted creation of a hostile environment by A.A.'s job site supervisor, and the RCSD's response to A.A.'s harassment complaint.

### **A. Labor Program**

#### **1. Overview**

As part of its reentry efforts, the RCSD operates the Labor Program, which is a voluntary work-release program designed to provide low-risk participants the opportunity to complete their sentence in a non-custodial manner. The Sheriff directs the implementation of the Labor Program and administers the Program through his designees. The Riverside County Superior Court (Superior Court), which adjudicates adult criminal cases in Riverside County (County), decides, on a case-by-case basis, whether an individual may be eligible for participation in the Program. The Labor Program includes approximately 131 job sites, which are operated by what the RCSD calls "user agencies." Each month, approximately 1200 offenders participate in the Program. Prior to receiving an assignment, a participant meets with a Labor Program supervisor to determine the individual's suitability for a particular job site. According to the RCSD, the participants are not in the custody of the Program; they also are neither employees of the Department nor employed by the user agencies managing the job site to which they are assigned. They do not receive any of the employee benefits that may be provided to Recipient or user agency employees, such as a pension or other retirement benefits, health insurance or other

health benefits, vacation leave, life or disability insurance, or survivors' benefits. Even though Labor Program participants are not in the custody of the RCSD, Department employees still monitor whether offenders appropriately participate in the Program. If a participant violates any Labor Program term, rule, or instruction, the Department may terminate his or her participation in the Program and the individual must reappear before the Superior Court. In that instance, the participant may be remanded to custody for completion of his or her sentence.

The RCSD administers the Labor Program by entering into agreements with user agencies that allow them to rely on work-release participants. While these agencies monitor the day-to-day work performance of participants, the Labor Program is ultimately "responsible for ensuring a positive and safe environment for workers."<sup>3</sup> RCSD, Court Services Division Policy Manual, No. 603.05, Job Site Checks, at 1.<sup>4</sup> To ensure that the Labor Program operates effectively and efficiently, the RCSD conducts an initial consultation with each user agency, performs periodic checks of individual job sites, and reviews information on participant attendance. During an inspection of a job site, a Department civil field deputy completes a form that documents, among other things, whether the job site maintains a safe environment for participants and is in compliance with all Program policies and procedures. This inspection report requires RCSD supervisor review and approval. If a participant files a complaint with the RCSD about the Program, Department staff members are required to conduct a complete investigation of its allegations. *Id.* at 2; *see also id.* ("The finding shall be documented and appropriate action taken."). If a civil field deputy or supervisor fails to document or take action regarding a reported complaint, including one related to harassment, that employee is subject to discipline for failure to properly perform his or her duties.

## 2. Sexual harassment prevention

### a. *Policies applicable to Labor Program user agencies*

The RCSD gives user agencies an information pamphlet that describes a job site supervisor's responsibilities. In addition to covering basic information about the supervisor's role in monitoring participant performance, it emphasizes the importance of preventing sexual harassment and appropriately handling related allegations:

User agencies shall not engage in any conduct with the Labor Program inmates that may bring discredit, ridicule, embarrassment or potential legal liability to the Sheriff's Department or the

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<sup>3</sup> Even though the RCSD acknowledges its duty to protect participants, the Department requires participants to sign a liability waiver form, which seeks to disclaim responsibility on the part of the Recipient for "injuries of any type incurred at a job site." RCSD, Waiver of Liability Form.

<sup>4</sup> All court services personnel, including employees administering the Labor Program, receive a copy of the Department's Court Services Division Policy Manual.

County of Riverside. Sexual harassment is a major concern and will not be condoned or tolerated. If a user agency suspects or confirms any form of sexual harassment or misconduct of an employee, they shall notify the Labor Program staff immediately. A thorough investigation shall be conducted by the user agency. The Sheriff's Labor Program Supervisor may also have a parallel investigation conducted regarding the incident. If the User Agency is found to have violated program rules, the agency will be expelled from any further Labor Program participation.

Sheriff's Court Services Labor Program, Jobsite Supervisor's Responsibilities, at 2. The pamphlet also includes a copy of the County's sexual harassment policy, which prohibits sexual harassment in employment but does not expressly address harassment against non-employees, such as Labor Program participants. User agency representatives, including those from the Jurupa Area Recreation and Park District (Jurupa), where the Complainant alleges she was harassed, must sign a form acknowledging receipt of this sexual harassment policy. On March 25, 2009, Jurupa representatives, including the supervisor who allegedly harassed A.A., signed such an acknowledgement form.<sup>5</sup> The RCSD does not provide training to user agencies on any applicable policies, such as those related to sexual harassment or retaliation, governing Labor Program participants.

b. *Policies applicable to RCSD employees*

The RCSD provides extensive information to its employees on Department policies and procedures regarding sexual harassment in the workplace. New Department employees receive a General Orders manual that includes a section on sexual harassment. Each employee signs a form acknowledging that he or she received the manual and will become familiar with its requirements. The General Orders manual is supplemented by a County sexual harassment and nondiscrimination policy. These written materials concern employment-related harassment and do not expressly address conduct between RCSD personnel and members of the public, beneficiaries, or program participants, such as offenders involved in the Labor Program. During their annual performance evaluation, employees attest that they reviewed the Department and County sexual harassment policies. In addition to distributing the County harassment policy to employees, the Recipient ensures that the County Human Resource Department trains personnel on issues related to harassment and discrimination. Department employees sign documentation acknowledging that they participated in this training. The RCSD also provides in-house employee training on sexual harassment and posts literature on discrimination, including harassment, in conspicuous locations within its facilities.

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<sup>5</sup> Jurupa also has a personnel manual that prohibits its employees from engaging in sexual harassment and on-the-job sexual activity.

c. *Complaint process for members of the public*

The RCSD has a policy that governs complaints filed by the public regarding Department policy, procedure, or personnel. The policy establishes procedures for receiving, investigating, and resolving such complaints and confers authority on the RCSD Administrative Investigations Unit to oversee the complaint process. Under the Department's governing protocol, any Department employee may receive a complaint and a person may file a complaint in person, by telephone, through a letter, or online. For complaints that fall within the scope of this policy, the Recipient emphasizes the importance of promptly and efficiently resolving them. The policy does not expressly cover allegations that Recipient employees engaged in sex-based discrimination against members of the public, nor does it address complaints involving third parties, such as individuals who administer RCSD programs or activities like the Labor Program. The policy also does not describe how the complaint process is communicated to members of the public or to Department personnel. In practice, the Department distributes this policy to all new employees and requires them to sign a form acknowledging receipt of and familiarity with its contents. To inform the public about the complaint process, the Recipient posts, in publicly accessible areas within its facilities, materials that describe its complaint procedure and enable a person to file a citizen report. The RCSD also includes information on its Web site on how a person can file a complaint with the Department.

3. Informing Labor Program participants of anti-harassment policy and available complaint mechanisms

The RCSD does not provide any materials to Labor Program participants that describe their right to participate in the Program free from sexual harassment. Even though the Department fails to distribute literature to Program participants on this topic, in its response to the OCR's information request, the Department explains that it encourages participants to ask questions related to the Labor Program and to contact Program personnel about any problems associated with their assignment. To facilitate such communications, the Program gives participants the telephone numbers for Program supervisors. A participant can also submit a written complaint to the Recipient, either under that person's name or anonymously. In addition, a participant can report misconduct to his or her job site supervisor, the presiding Superior Court judge, a member of a local law enforcement agency, or the OCR. Despite the availability of these avenues for filing a sexual harassment complaint, the Department does not have a clear written protocol for communicating this information to Program participants. For instance, while the Court Services Division Policy Manual describes what information should be conveyed to a Labor Program participant during the orientation process, it does not require RCSD employees to provide information to participants about how to file a harassment complaint regarding the Program. *Compare* RCSD, Court Services Division Policy Manual, No. 603.02, Worker Job Assignment (silent regarding complaint process), *with* Work Release Rules and Regulations ("I understand if I have any questions about my work program, I must contact the Work Release Office.").

**B. A.A.'s Initial Participation in the Labor Program**

1. Assignment at Jurupa

A.A. was convicted in Superior Court on several misdemeanor charges. In lieu of confinement, the Superior Court referred her to the Labor Program. Consistent with its protocol, the RCSD conducted an initial consultation with the Complainant. A.A. states that the Labor Program did not give her any information regarding the Program's sexual harassment policy or procedures for reporting inappropriate conduct that may occur at a job site. After this assessment, the Department assigned A.A. to work for Jurupa. The Complainant generally worked at Jurupa one day a week, for eight hours, from November 2009 until May 2010.<sup>6</sup> Her duties consisted primarily of cleaning and maintaining public parks and facilities. A.A. typically worked with a team of six paid Jurupa employees and another Labor Program participant. A.A. and a female Jurupa employee were the only two women working at the job sites during the relevant period. Park Maintenance Supervisor B.B. (a Jurupa employee) and the work team's supervisor (another Jurupa employee) periodically visited the work sites. B.B. was the most senior Jurupa official at the job sites and had supervisory authority over all assigned Jurupa employees and Labor Program participants.

2. A.A.'s interactions with Jurupa supervisor B.B.

In support of her harassment claim, A.A. primarily focuses on three alleged instances when B.B. inappropriately touched her. According to the Complainant, the first incident occurred a few weeks after A.A. began working at Jurupa on November 10, 2009. While B.B. was at the job site, A.A. asked him if there was a restroom she could use. The closest available facility was in a nearby community building. B.B. unlocked the restroom for A.A. and waited for her in the hallway. When she came out, he kissed her on the lips. A.A. pushed him away, stating "No, not here."<sup>7</sup> In response to this allegation, B.B. denies that he touched A.A. or otherwise acted inappropriately.

The second incident allegedly occurred on May 11, 2010, while A.A. accompanied B.B. on a work-related errand to a Home Depot store. Waiting in the check-out line of the store, B.B. called out the name of an employee with whom he was acquainted. Then, as nearby employees and customers watched, he placed his arm around A.A.'s waist and moved in to kiss her on the mouth. This time, A.A. turned away and avoided his kiss. This incident was particularly embarrassing for A.A. because her boyfriend was a contractor who frequently shopped at that

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<sup>6</sup> Jurupa did not receive federal financial assistance from the DOJ during this time period.

<sup>7</sup> A.A. states that she made this comment because she wanted him to stop; she was uncomfortable and not interested in his sexual advance.

Home Depot and was acquainted with many of the employees and regular customers. In response to this allegation, B.B. denies that he acted as described by A.A.

The third time that, according to A.A., B.B. inappropriately touched her was on May 18, 2010, which turned out to be her last day working at Jurupa. A.A. had been painting and needed to access the restroom to wash out her paintbrush. She asked B.B. to unlock the woman's restroom but he refused, directing her to use the unlocked men's restroom instead. A.A. did not feel comfortable with this instruction and went to a male Jurupa employee for help. She asked him to see if B.B. would follow her into the restroom. If he did, the employee was to wait for a moment and then come in after them. A.A. then entered the restroom and B.B. followed. After a brief delay, he approached her and placed his hands on her breasts and buttocks, saying "We gotta find a way to help each other out." At that moment, the Jurupa employee called in from outside the restroom, which prompted B.B. to draw away from A.A. In response to this allegation, B.B. denies that he touched A.A. or otherwise acted inappropriately.<sup>8</sup>

Because A.A. was participating in a court-ordered work-release program, she did not feel comfortable reporting incidents of sexual harassment because she was worried that it could affect the status of her probation and that, if she could not continue with the Program, she would be placed in confinement. She did, however, discuss B.B.'s conduct toward her with several Jurupa employees. On Tuesday, May 18, after the Complainant's unwanted encounter with B.B. earlier that day, these employees informed their supervisor about the problem. This work-team supervisor approached the Complainant and told her that he learned that B.B. may have acted inappropriately toward her. At that point, A.A. provided detailed information to him about B.B.'s conduct.

### **C. RCSD's Response to A.A.'s Harassment Complaint**

#### **1. Initial response**

Two days after A.A.'s conversation with the work-team supervisor, on Thursday, May 20, 2010, the Complainant notified RCSD Labor Program personnel of B.B.'s alleged harassment of her.<sup>9</sup> After A.A. recounted her allegations, an RCSD sergeant asked her to come to the Labor Program office and to bring an unsigned statement regarding the offensive incidents. A.A. declined to provide a statement because she wanted to consult with counsel, although she went to the Program office and spoke to two Department correctional deputies about her complaint. After A.A. left the office, a correctional deputy contacted the Complainant on her mobile phone and

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<sup>8</sup> In stark contrast to A.A.'s account of events, B.B. contends that the Complainant initiated inappropriate interactions with him. During Jurupa's investigation of A.A.'s allegations, B.B. informed Jurupa that the Complainant exposed her breasts to him and asked the question, "Are these fake or real?" He also asserts that A.A. propositioned him to engage in sexual behavior.

<sup>9</sup> This is the first harassment complaint about B.B. that the Recipient received from any Labor Program participant.

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asked her to provide a written statement on Monday, May 24. Ultimately, A.A. submitted a complaint statement on Friday, May 28.

A Labor Program representative also asked Jurupa to prepare and submit an incident report to the Program regarding the alleged hostile environment. Several times after this initial request, Program personnel followed up with Jurupa to determine the status of its review of the harassment allegations. After receiving information about A.A.'s complaint, Jurupa conducted an internal investigation, which revealed that B.B. failed to disclose that he was a convicted felon with an outstanding arrest warrant. Based in part on this newly discovered information, on September 14, 2010, Jurupa terminated B.B.'s employment.

## 2. Job site reassignments

When the Complainant spoke with the two correctional deputies in late May, she repeatedly asked whether she could continue to participate in the Program. She also expressed a preference to work at a job site that only included female participants. In response to this request, Program personnel formally reassigned her to the Norco Public Works job site, where she would be monitored by a female supervisor, and notified her that her start date would be June 1. According to the Department, after the Program reassigned A.A. to this job site, the Norco Public Works supervisor informed the Program that A.A. was absent on several occasions, and as a result the job site would no longer rely on her services. In contrast to this account, the Complainant asserts that, when she attempted to report for duty at the new assignment, her point of contact was not in the office and she could not communicate with the user agency for another three weeks. When she finally made contact, a job site representative informed her that the agency was over-staffed and did not have a position for her.

On or about June 28, 2010, the Labor Program reassigned A.A. to the Robert Presley Detention Center Docks job site. Her start date was scheduled for July 6, 2010; however, she did not appear at the site. A.A. notes that this assignment would have involved working in the laundry facilities at the local jail. According to her, assignment to this job site is reserved for those Program participants who are considered dangerous or otherwise require heightened supervision during their work release. In A.A.'s opinion, she was assigned to this duty in retaliation for reporting the incidents of sexual harassment or, as discussed below, for failing to cooperate with RCSD officers who pressured her to file a criminal complaint against B.B.

## 3. Criminal investigation of B.B.

When A.A. submitted her complaint statement on May 28, Program personnel advised her to file a formal police report with the RCSD Jurupa Valley Station. According to the Complainant, Labor Program personnel were unreasonably persistent in their request that she pursue criminal charges against B.B. When she asked one Department employee if she had to press charges, the person responded, "No, but you should." On June 2, 2010, A.A. went to the Jurupa Valley



Station to provide a criminal statement in support of her allegations, which set in motion the Department's criminal investigation of B.B.'s alleged misconduct. A deputy sheriff and an investigator interviewed the Complainant about her allegations. According to A.A., these individuals said that they were going to "prepare her for what was going to happen in court" by questioning her credibility and alleging that she had acquiesced to B.B.'s advances. During the course of this interview, A.A. acknowledged that she had used methamphetamine earlier that day, in violation of her probation, and, according to the RCSD, exhibited various symptoms, including certain behavioral patterns, consistent with someone who is under the influence of a controlled substance.

Once the Complainant admitted to using an illicit substance, and given her symptoms of drug use, the RCSD conducted an under-the-influence drug evaluation and booked her until she became sober. According to A.A., the officers instructed her to put her hands behind her back as if in handcuffs, escorted her out of the police station through the main entrance, placed her in a squad car, drove her to the back of the building, moved her to a holding area, and administered a urine test. After a deputy sheriff informed A.A. of her *Miranda* rights, the Complainant again admitted that she smoked methamphetamine earlier that day. The drug test results confirmed that the Complainant was under the influence of a controlled substance. Given her use of an illicit drug, the RCSD concluded that it would be inadvisable to obtain her statement at that time, although the investigator encouraged A.A. to provide a statement when she was sober. Ultimately, the Complainant declined to pursue any criminal charge against B.B. or to provide a formal statement in connection with her interactions with B.B.

4. A.A.'s completion of work-release obligations

Based on the Complainant's use of methamphetamine while on probation, the RCSD submitted an out-of-custody report to the County Office of the District Attorney, which filed criminal charges against her. Given the urinalysis results, the Superior Court conducted a hearing to determine whether A.A. was in violation of her probation obligations. At the hearing, A.A. faced the possibility of incarceration because she failed a drug test and did not satisfactorily complete the work-release program. The court recognized, however, that A.A.'s allegations of sexual harassment during the course of the work-release program constituted extenuating circumstances. The court arranged for her to complete her work-release obligations at the Riverside Animal Shelter, which is another user agency participating in the Labor Program. A.A. satisfied the terms of her probation in May 2011.

**III. Findings Regarding Alleged Violations of the Safe Streets Act**

A.A. alleges that the RCSD violated the Safe Streets Act because it engaged in sex-based harassment and retaliation against her. Specifically, she claims that: (1) her supervisor at Jurupa subjected her to persistent sexual harassment, which the Department failed to address in an appropriate manner; and (2) the Department retaliated against her after she complained about the

inappropriate behavior. The OCR addresses each claim in turn.

**A. Complainant's Harassment Claim**

A.A. asserts that B.B. subjected her to a hostile environment during her assignment at Jurupa and that, as a result, the RCSD violated the Safe Streets Act.

1. Categorizing A.A.'s claim

As a condition of receiving federal financial assistance authorized by the Safe Streets Act, a recipient is prohibited from engaging in discriminatory conduct, such as disparate treatment, harassment, or retaliation, in its employment practices and in its provision of services. 42 U.S.C. § 3789d(c)(1) (2006). In evaluating the merits of a complainant's sexual harassment claim under the Act, it is important to identify whether she challenges the recipient's employment or services practices because each claim requires the application of a separate legal test. When a complainant-as-employee asserts that she was subjected to a sexually hostile environment in the workplace, the OCR evaluates her Safe Streets Act claim consistent with Title VII of the Civil Rights Act of 1964. 28 C.F.R. § 42.203(c) (2011). If, however, a complainant-as-beneficiary alleges sexual harassment in connection with the receipt of a specific service or benefit, the OCR, as explained below, relies on both analogous caselaw decided under Title IX of the Education Amendments of 1972 (Title IX) and guidance issued by the Office for Civil Rights, U.S. Department of Education interpreting Title IX in the context of administrative enforcement actions. These sources of authority use standards that are tailored to protect beneficiaries receiving particular services or benefits.

Given the differing standards under Title VII and Title IX, it is important, at the outset of any discussion related to A.A.'s harassment claim, to identify whether the complained-of conduct arises in the context of employment or the provision of services and benefits. The OCR construes A.A.'s Complaint as raising allegations that she was harassed as a beneficiary of services and benefits from the RCSD, but not as an employee of the Recipient. The RCSD operates its Labor Program for probationers referred to it by the Superior Court. In connection with this Program, the Department provides several benefits to participants: it makes arrangements with job sites to provide appropriate assignments; it interviews participants to determine their suitability for a particular site; and it provides a safe environment for all participants. Through its Labor Program, which allowed A.A. to satisfy the terms of her probation and to avoid incarceration, the RCSD provided services and benefits to A.A. as a beneficiary. As a result, it had an obligation under the Safe Streets Act to ensure that A.A. received those services and benefits free from discrimination.

The OCR recognizes that a complainant may be able to establish that she suffered discrimination as both a beneficiary and an employee. Here, however, any employment-related harassment claim is foreclosed by the facts pled in A.A.'s Complaint. In evaluating whether a complainant

can assert an employment discrimination claim, the Ninth Circuit and the U.S. Equal Employment Opportunity Commission (EEOC) evaluate the primary purpose of that individual's relationship to the respondent. When the respondent exercises control over the complainant because of her participation in the criminal justice system, it is especially difficult to establish the existence of an employee-employer relationship. *See Hale v. Arizona*, 993 F.2d 1387, 1393 (9th Cir. 1993) (emphasizing that a department of corrections' control over a prisoner "does not stem from any remunerative relationship or bargained-for exchange of labor for consideration, but from incarceration itself");<sup>10</sup> EEOC Compl. Man. ch. 2, *available at* <http://www.eeoc.gov/policy/docs/threshold.html>. A.A. participated in a program established by the RCSD and operated under the direction of Recipient officials for the sole purpose of completing the court-imposed terms of her probation. The RCSD did not compensate her in connection with the Program, nor did it give her benefits provided to Recipient employees, such as a pension or other retirement benefits, health insurance or other health benefits, vacation leave, life or disability insurance, or survivors' benefits. Pursuant to the terms of probation entered by the Superior Court, the Department monitored the Complainant's participation in the Labor Program and reserved the ability to remand her to custody if she failed to comply with the terms, rules, or instructions of the Program. Because her participation in the Labor Program was merely an incident of her probation, the OCR concludes that she was not an employee of the RCSD.

2. Analytical framework of a beneficiary's harassment claim against a recipient

Having identified the precise nature of the Complainant's harassment claim, the OCR next describes the legal test for evaluating the merits of this cause of action under the Safe Streets Act. There is a dearth of caselaw in the Ninth Circuit applying the Safe Streets Act to a beneficiary's hostile environment claim. As a result, to inform its analysis, the OCR relies on pertinent caselaw applying Title IX. We look to this statute for guidance for three reasons. *First*, the Safe Streets Act contains nondiscrimination language that is similar to the protections against sex discrimination contained in Title IX, which, like the Safe Streets Act, only applies to recipients of federal financial assistance.<sup>11</sup> Notably, the prohibitions against sex discrimination

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<sup>10</sup> In *Hale*, the Ninth Circuit held that inmates are not employees under the Fair Labor Standards Act (FLSA). 993 F.2d at 1395; *see also Burlison v. California*, 83 F.3d 311, 313-14 (9th Cir. 1996) (inmates not covered by FLSA, even though they received certain employment-related benefits and protections under state law). The EEOC, looking to the FLSA for guidance, adopts a similarly narrow construction of Title VII as applied to offenders. *See* EEOC Dec. No. 86-7, 1986 WL 38836 (Apr. 18, 1986). Even though the EEOC is disinclined to recognize an employment relationship between an offender and, for instance, a sheriff's department, it recognizes that such a department could be liable under Title VII if it uses an improper criterion, such as an offender's sex, in making work-release assignments. A.A. does not assert any such theory against the RCSD.

<sup>11</sup> The nondiscrimination provision of the Safe Streets Act provides in pertinent part that:

No person in any State shall on the ground of race, color, religion, national origin, or sex be excluded from participation in, be denied the benefits of, or be

in both the Safe Streets Act<sup>12</sup> and Title IX<sup>13</sup> were modeled on similar protections against race, color, and national origin discrimination contained in Title VI, which strengthens the OCR's conclusion that, as to claims of sex-based discrimination, Title IX and the Safe Streets Act extend the same civil rights guarantees to beneficiaries.<sup>14</sup> *Second*, the DOJ relies on one set of regulations to describe a recipient's civil rights obligations under both the Safe Streets Act and Title IX. *See* 28 C.F.R. pt. 42, subpt. D; *see also id.* § 42.201. In describing the protections afforded individuals, the regulations identify prohibited behavior without drawing distinctions between either of these statutes, providing further support for the OCR's reliance on Title IX in construing the instant Safe Streets Act cause of action. *Third*, there is a well-developed body of judicial decisions construing beneficiary harassment claims under Title IX. Even though courts have had little occasion to apply the Safe Streets Act to a hostile environment theory, they routinely evaluate whether a recipient, such as a school, violated Title IX by subjecting a beneficiary, such as a student, to impermissible, sex-based harassment. *See, e.g., Gebser v. Lago Vista Ind. Sch. Dist.*, 524 U.S. 274, 277 (1998); *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629, 632 (1999). This authority, coupled with guidance from the U.S. Department of Education, is especially helpful in evaluating whether the evidence establishes that the RCSD subjected A.A. to a sex-based hostile environment. Given all of these considerations, the OCR relies on Title IX cases and federal agency guidance on administrative enforcement to evaluate the

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subjected to discrimination under or denied employment in connection with any programs or activity funded in whole or in part with funds made available under this title.

42 U.S.C. § 3789d(c)(1). The nondiscrimination provision of Title IX provides in pertinent part that:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

20 U.S.C. § 1681(a) (2006).

<sup>12</sup> *See* H.R. Rep. No. 93-249, at 7 (1973); 119 Cong. Rec. 20,097 (June 18, 1973) (statement of Rep. Edward Hutchinson); *id.* at 22,075 (June 28, 1973) (statement of Sen. Jacob Javits).

<sup>13</sup> *Cannon v. Univ. of Chicago*, 441 U.S. 677, 694-95 (1979).

<sup>14</sup> Title VI's nondiscrimination provision provides in pertinent part that:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

42 U.S.C. § 2000d (2006). Because the Safe Streets Act's civil rights protections were patterned after those contained in Title VI, the OCR concludes that both statutes provide the same types of protections to individuals.

Complainant's Safe Streets Act harassment claim.<sup>15</sup>

Sexual harassment is a form of discrimination under the Safe Streets Act. *See Franklin v. Gwinnett County Pub. Sch.*, 503 U.S. 60, 75 (1992). For a work-release participant seeking equitable relief to prevail under a harassment theory, the evidence must be sufficient enough to satisfy the following three elements: (1) the harassing conduct was sufficiently serious to deny or limit the individual's ability to participate in or benefit from the work-release program; (2) the recipient knew or reasonably should have known about the harassment; and (3) the recipient failed to take appropriate responsive action. *See* U.S. Dep't of Educ., Office for Civ. Rts., Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties 10-14 (Jan. 2001), *available at* <http://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf>.<sup>16</sup> This standard applies to all hostile environment claims, regardless of whether they involve employees or third parties, as long as the recipient has authority to remedy the complained-of harassment. *See id.* Under this analytical framework, the evidence must establish that the RCSD is liable for the asserted harassment A.A. experienced while assigned to the Jurupa job sites.

### 3. A.A.'s claim

As described above, A.A. alleges that she was subjected to repeated incidents of sexually inappropriate conduct committed by B.B. Assuming, without deciding, that B.B. engaged in sexual misconduct that was sufficiently serious to deny or limit A.A.'s ability to participate in a work-release program, the OCR analyzes whether the RCSD responded in an appropriate manner to incidents of which it knew or should have known. Because the RCSD's response to A.A.'s complaint was reasonable, the Recipient did not violate A.A.'s rights under the Safe Streets Act.<sup>17</sup>

Before evaluating the propriety of the RCSD's conduct, the OCR must identify the scope of the RCSD's duty to respond to the Complainant's hostile environment. The record shows that A.A. provided actual notice to the RCSD of B.B.'s asserted misconduct in May 2010. Because there is no evidence that the RCSD reasonably should have been aware of any harassment before this date, the OCR evaluates whether the RCSD acted appropriately once it received information

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<sup>15</sup> There is no suggestion in A.A.'s Complaint that the RCSD's asserted misconduct involved an education program within the scope of Title IX.

<sup>16</sup> Recently, the DOJ applied a similar legal standard to claims of student-on-student harassment arising under Title IV of the Civil Rights Act of 1964 and Title IX. *See* Tehachapi Unified Sch. Dist., OCR Case No. 09-11-1031, DOJ Case No. DJ 169-11E-38, Letter of Finding 2-3, 16 (U.S. Dep't of Justice and U.S. Dep't of Educ. June 30, 2011), *available at* <http://www.justice.gov/crt/about/edu/documents/tehachapiletter.pdf>

<sup>17</sup> Because the OCR concludes that the RCSD acted appropriately, it is not necessary to make a formal finding on the first element of the harassment test, which would involve a careful weighing of the conflicting accounts of A.A. and B.B. regarding their interactions with each other.

from A.A. about B.B.'s behavior. In reviewing the totality of the RCSD's efforts to respond to A.A.'s complaint involving B.B., even accepting the Complainant's allegations regarding her interactions with the investigating officers, the OCR finds that the RCSD took timely and appropriate steps to investigate her allegations involving B.B. We also find that the RCSD took prompt and effective steps reasonably calculated to end any harassment against A.A. and to prevent the harassment from reoccurring. As such, the RCSD acted consistent with its obligations under the Safe Streets Act.

*First*, consistent with A.A.'s request, the Department promptly removed A.A. from the Jurupa assignment. On May 20, 2010, the Complainant notified the Recipient that B.B. sexually harassed her. After receiving this report, the RCSD ensured that the Complainant no longer interacted with B.B. Less than two weeks after she reported her allegations and requested reassignment, the RCSD reassigned A.A. to another job site, which was managed by a female supervisor. While the parties dispute what precipitated the Complainant's removal from this second assignment, A.A. does not contend that the Department acted improperly in making the initial decision to reassign her from Jurupa to Norco Public Works. *Second*, the RCSD made a concerted effort to investigate A.A.'s claims and to explore possible sanctions against B.B. It sought information from Jurupa about the Complainant's interactions with B.B. and repeatedly asked Jurupa to provide updates on the status of its internal investigation and the preparation of an incident report. On several occasions, the RCSD also encouraged A.A. (1) to provide additional details to the Department about the alleged harassment, (2) to file a formal police report, and (3) to pursue criminal charges against B.B. All of these facts, viewed collectively, demonstrate that the Recipient appropriately responded to the information it received regarding B.B.'s harassment of A.A. and sought to ensure that the Complainant would no longer be subjected to third-party misconduct.<sup>18</sup>

Because the RCSD acted promptly and appropriately in responding to the Complainant's allegations, the evidence is not sufficient to support a harassment claim against it under the Safe Streets Act.

## **B. Complainant's Retaliation Claim**

In addition to her hostile environment claim, A.A. asserts that the RCSD retaliated against her for complaining about B.B.'s inappropriate behavior.

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<sup>18</sup> A.A. alleges that the RCSD's response to her complaint was deliberately hostile. Such an assertion is unavailing. As an initial matter, a recipient has no obligation to respond to a complaint in a way that satisfies the complainant. *Oden v. N. Marianas College*, 440 F.3d 1085, 1089 (9th Cir. 2006). Moreover, the facts, viewed in the light most favorable to the Complainant, show that the Department did not act unreasonably. While the Recipient certainly may have been aggressive in conducting its criminal investigation of B.B., as reflected by its tactics in questioning A.A., the OCR does not fault the RCSD for its efforts to evaluate whether B.B.'s interactions with A.A. constituted criminal misconduct.

1. Analytical framework

Consistent with judicial interpretations of Title IX and Title VI of the Civil Rights Act of 1964, the OCR recognizes that the Safe Streets Act contains an implicit prohibition against retaliation. *See generally* 42 U.S.C. § 3789d(c)(1); 28 C.F.R. pt. 42, subpt. D, app. A; *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 174 (2005) (recognizing a cause of action for retaliation under Title IX); *Thomas v. Los Rios Community Coll. Dist.*, 58 F. App'x 700, 701 (9th Cir. 2003) (same as to Title VI). To establish a retaliation claim, the evidence must demonstrate (1) involvement in a protected activity by the complainant, (2) a materially adverse action taken against her, and (3) a causal link between the two. *Doe v. Univ. of Pac.*, No. Civ. S-09-764 FCD/KJN, 2010 U.S. Dist. LEXIS 130099, at \*53-\*54 (E.D. Cal. Dec. 8, 2010). The complainant's claim is subject to the three-step burden-shifting analysis adopted by the Supreme Court in *McDonnell Douglas Corp. v. Greene*, 411 U.S. 792 (1973). First, the evidence must establish a *prima facie* case of retaliation. If there is sufficient evidence to satisfy this initial burden of production, the recipient must present a legitimate, non-discriminatory explanation for the challenged behavior. Finally, if the recipient meets this burden, the evidence must show that the reason is pretextual to sustain the claim. At this last stage, the evidence must show that the recipient's proffered justification was false and that retaliation was the actual reason for the materially adverse action. *Doe*, 2010 U.S. Dist. LEXIS 130099, at \*54; *see also Tex. Dep't of Cmty. Affairs v. Burdine*, 450 U.S. 248, 256 (1981) (pretext can be established either directly by showing that a discriminatory reason more likely motivated the recipient or indirectly by showing that the recipient's proffered explanation is unworthy of credence).

2. A.A.'s prima facie case

There is sufficient evidence to satisfy the first prong of the *prima facie* test; however, there is insufficient evidence to establish the second or third elements, and as a result A.A.'s retaliation claim fails.

a. Protected activity

A complainant engages in a protected activity if she expresses opposition to inappropriate sex-based conduct through informal complaint mechanisms. *Ray v. Henderson*, 217 F.3d 1234, 1240 n.3 (9th Cir. 2000). A complainant may also be protected if she addresses her complaint about sexual harassment to a third party, provided that the responsible agency knows about the complaint. *See EEOC v. Dinuba Med. Clinic*, 222 F.3d 580, 586 (9th Cir. 2000) (employees subjected to sexual harassment participated in protected opposition by filing criminal charges against the harasser). A.A. complained of B.B.'s inappropriate behavior to her Jurupa work-team supervisor and to the RCSD. Thus, A.A.'s conduct satisfies the "protected activity"

standard.<sup>19</sup>

b. *Materially adverse action*

Despite the sufficiency of the evidence to satisfy the first prong of the *prima facie* test, the evidence fails to establish that the RCSD subjected A.A. to a materially adverse action. To support a retaliation claim, a complainant must show that the recipient took a tangible action against her, which is an act that “well might have dissuaded a reasonable [person] from making or supporting a charge of discrimination.” *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006). In support of this element of her claim, A.A. suggests that the RCSD subjected her to two tangible actions, each of which purportedly had a materially adverse effect on her: (1) the RCSD reassigned the Complainant to the Robert Presley Detention Center Docks job site; and (2) the RCSD unduly pressured the Complainant to participate in its investigation of her complaint. Neither of these occurrences rises to the level of a materially adverse action.

*First*, A.A.’s reassignment from Jurupa did not impose any tangible harm or injury on her. Rather, as explained above, the Labor Program made meaningful efforts – including its reassignment of the Complainant to the detention center job site – to ensure that A.A. could continue to participate in the Program. Initially, in response to her request, personnel reassigned her to a job site where she reported to a female supervisor. Despite this effort to accommodate the Complainant, for reasons that are disputed by the parties, the Norco Public Works job site notified the Labor Program that it was not amenable to A.A.’s participation in its operations. Again, in an apparent effort to assist A.A., Program personnel reassigned her to another job site. The evidence does not establish that these transfers represented an objective change for the worse in her situation, rather than a mere subjective belief that the different assignment was less preferred. *See Lee v. Potter*, Case No. C 07-254 SBA, 2008 U.S. Dist. LEXIS 76841, at \*26 (N.D. Cal. Oct. 1, 2008), *aff’d*, 358 F. App’x 966 (9th Cir. 2009), *cert. denied*, 130 S. Ct. 3398 (2010). For instance, A.A. does not show that these reassignments constrained her ability to complete her probation. Instead, the record supports the conclusion that the Labor Program, rather than being punitive, gave A.A. multiple opportunities to satisfy the court-imposed conditions of her probation. Demonstrating such flexibility would not dissuade a reasonable probationer from making or supporting a harassment complaint. *See White*, 548 U.S. at 69-70; *Molina v. Phoenix Union High Sch. Dist.*, No. CIV 05-0751-PHX-SMM, 2007 U.S. Dist. LEXIS 35567, at \*28 (D. Ariz. May 14, 2007) (dismissing retaliation claim because plaintiff’s placement on administrative leave during an external investigation was not a materially adverse action).

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<sup>19</sup> The Complainant’s decision not to file a formal criminal complaint against B.B. does not constitute protected activity. While a person can assert a retaliation claim based on their participation in a proceeding that evaluates the merits of a harassment claim, an individual’s voluntary decision not to participate in an investigation, such as the one conducted by the RCSD, is not protected activity under the Safe Streets Act. *See Williams v. West*, No. 98-2937, 1998 U.S. App. LEXIS 32653, at \*3, \*9-\*11 (7th Cir. Dec. 23, 1998) (plaintiff’s refusal to file an equal employment opportunity complaint regarding alleged sexual harassment not protected activity under Title VII).



*Second*, the RCSD's method of investigating the Complainant's harassment allegations does not constitute a tangible action against her. From the outset of learning about A.A.'s harassment claim, the RCSD took action to respond appropriately to the Complainant as both a participant in the Labor Program and as a potential crime victim. As explained in the fact section above, the Recipient made a concerted effort to protect A.A. from B.B. and to obtain information from Jurupa about the merits of her claims. It also encouraged the Complainant to file a criminal complaint against B.B. and to participate in a criminal investigation of his asserted misconduct. In response to this request, A.A. elected to appear at the RCSD Jurupa Valley Station and voluntarily agreed to provide information to Department personnel in response to their questions. We acknowledge that the RCSD may have questioned A.A. in an aggressive manner and otherwise acted zealously during its encounters with her at the station. Given the record before the OCR, however, we decline to second-guess the Department's investigative techniques and find that it did not subject A.A. to a materially adverse action.<sup>20</sup> See *Rademakers v. Scott*, Case No. 2:07-cv-718, 2009 U.S. Dist. LEXIS 103572, at \*5, \*11 (M.D. Fla. Jan. 22, 2009) (noting that conducting an investigation into alleged impropriety, even one that is alleged to be a "sham," is not a tangible action), *aff'd*, 350 F. App'x 408 (11th Cir. 2009).

c. *Causation*

Even if we determined that the Complainant identified a materially adverse action, the OCR would still conclude that her retaliation claim fails because there is insufficient evidence that A.A.'s protected activity caused any subsequent harm. To establish this third element of the retaliation test, the evidence must show that A.A.'s complaint of harassment on May 20, 2010, caused the RCSD to retaliate against her when it conducted its investigation or when it reassigned her to a different location. At the outset, it is important to note that retaliation is not proven merely by showing that a recipient took an adverse action against a complainant after learning of her protected activity. See *Entler v. Leonard*, No. C11-5081 RBL/KLS, 2011 U.S. Dist. LEXIS 109822, at \*11 (W.D. Wash. July 19, 2011) (noting that "timing alone cannot establish retaliation"). Rather, it is important to evaluate the overall circumstances of the alleged retaliation. Under the Safe Streets Act, it is incumbent upon any recipient to conduct a prompt investigation of alleged discrimination, including harassment, and to remedy any instances of discrimination. See Letter of Finding, *infra* Section IV.B.1. It is precisely these obligations that the RCSD sought to satisfy in responding to the Complainant's allegations. Consistent with these general responsibilities, and as explained above in Section III.A.3., the RCSD took several concrete steps to evaluate the merits of the Complainant's allegations and to protect her from further harm. Given the overall circumstances, the OCR concludes that the Recipient did not

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<sup>20</sup> While A.A. agreed to provide a statement to representatives of the RCSD, she made the unfortunate decision of doing so while under the influence of a controlled substance, which prompted the Department to pursue sanctions against her. This misconduct on the part of the Complainant does not support her retaliation claim against the Recipient.

retaliate against A.A. because she complained of harassment.

Because the evidence we examined is insufficient to satisfy A.A.'s *prima facie* burden of production, the OCR finds that the RCSD did not violate the Safe Streets Act's prohibition against retaliation.

#### **IV. RCSD's Methods of Administering Its Labor Program**

The RCSD has taken several steps to ensure that participants in its Labor Program can fulfill the terms of their court-imposed probation without fear of discrimination, including sexual harassment or retaliation.<sup>21</sup> While these efforts are meaningful and important, the OCR is concerned that the Department has not fully implemented effective systems, policies, and procedures to mitigate the risk of services discrimination occurring in its Labor Program, which each year assigns approximately 14,400 participants to approximately 131 job sites throughout the County. Because of several deficiencies, the Recipient's operation of the Program could have a discriminatory effect on participants based on their membership in a protected class. To bolster its efforts to protect the civil rights of Program participants, the Department should (1) expand its services nondiscrimination policy and complaint procedures, (2) provide additional ways for a Labor Program participant to report discrimination, including harassment and retaliation, (3) develop a civil rights training program on services discrimination for employees and third parties, (4) provide information on nondiscrimination to participants, and (5) strengthen its efforts to protect individuals from retaliation.<sup>22</sup> These suggested prophylactic measures are not burdensome and would not require substantial RCSD resources.

##### **A. Overview of Applicable Standards**

When an entity receives federal financial assistance subject to the Safe Streets Act, it has an obligation to ensure that members of the public, beneficiaries, and participants in all of its programs and activities receive services and benefits free from discrimination based on race,

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<sup>21</sup> In its response to the OCR's information request, the RCSD intimates that, because Labor Program participants are not in the Department's custody and are not employed by the Department or a user agency during their work-release assignment, the Recipient is not responsible for preventing discrimination against them. We disagree. As an initial matter, in Section IV.A. of the Letter of Finding, the OCR reiterates that a recipient has obligations under the Safe Streets Act to protect participants from discriminatory acts of an employee or a third party, such as a user agency. Moreover, the RCSD's oversight of user agencies belies any argument that it is not responsible for the treatment of participants during the performance of their work-release assignments. For instance, the Department notifies user agencies that they must immediately inform the Labor Program of any sexual harassment at a job site, requires user agency employees to acknowledge receipt of the County's sexual harassment policy, conducts periodic job site inspections, and requires Department employees to take appropriate action in response to any reported complaint involving a Program participant.

<sup>22</sup> While the OCR limits these recommendations to the RCSD's Labor Program, we encourage the Recipient to apply them to its other services and programs, which are also subject to the Safe Streets Act.

color, national origin, religion, or sex.<sup>23</sup> 42 U.S.C. § 3789d(c)(1). In enforcing this nondiscrimination provision, the OCR ensures that a recipient, in providing any services or benefits, does not utilize “methods of administration which have the effect of subjecting individuals to discrimination” based on their membership in a protected class. 28 C.F.R. § 42.203(e). Under this provision, the OCR encourages covered recipients to implement systems, policies, and procedures that prevent services discrimination and provide an effective process for addressing civil rights complaints.

In describing the scope of a recipient's obligations to protect the civil rights of members of the public, beneficiaries, and participants, it is helpful to revisit the Safe Streets Act's broad nondiscrimination provision. As a recipient of federal financial assistance subject to this Act, an entity agrees that it will not engage in services discrimination “in connection with any programs or activity funded in whole or in part with [Safe Streets Act] funds.” 42 U.S.C. § 3789d(c)(1). The statutory phrase “programs or activity” is defined broadly by the Act's implementing regulations, and includes all of a recipient's operations.<sup>24</sup> 28 C.F.R. § 42.202(k). As applied to a local law enforcement agency, such as a sheriff's department, this means that the Safe Streets Act protects individuals from discrimination in connection with any operation of a recipient, whether it takes place in agency facilities, in the field, or elsewhere. The Act's implementing regulations also contain expansive categories of conduct constituting discrimination. *Id.* § 42.203. Given these broad civil rights protections, a recipient must ensure that individuals receive nondiscriminatory services and benefits in any setting and without improper interference from others. Thus, to protect individuals in a particular program or activity, a recipient must effectively supervise and manage employees who may interact with those participants, third parties who administer services or benefits to those participants on the recipient's behalf, and other participants who are also part of that program or activity.<sup>25</sup>

While it is important for all DOJ recipients to adopt appropriate protocols regarding the prevention of discrimination, it is especially vital for recipients that provide services and benefits related to community corrections to protect its participants from discriminatory treatment. The

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<sup>23</sup> The term “discrimination,” as used in the Safe Streets Act, includes conduct that would constitute harassment or retaliation. *See Jackson*, 544 U.S. at 174-75; *see also* Letter of Finding, *supra* Section III.B.1.

<sup>24</sup> In exchange for receiving federal financial assistance from the DOJ, a recipient also executes a contractual assurance stating that the recipient will comply with all of the requirements set forth in the Safe Streets Act and its implementing regulations, including the obligations regarding nondiscrimination.

<sup>25</sup> This application of the Safe Streets Act comports with the U.S. Department of Education's statutory interpretation of Title IX, which the OCR construes consistent with the Safe Streets Act. *See* Letter of Finding, *supra* III.A.2. In providing guidance to recipients of federal financial assistance that are educational institutions, that agency emphasizes that recipients must adopt sufficient safeguards to protect students from harassment by school employees, third parties, such as volunteers and contractors, and other students. *See* U.S. Dep't of Educ., Office for Civ. Rts., Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties (Jan. 2001). The nondiscrimination obligations under the Safe Streets Act are equally broad.

OCR is particularly sensitive to civil rights issues in this context because participants may face unique obstacles to reporting alleged misconduct. For instance, in lieu of secure confinement, a court may permit a pretrial detainee, a probationer, or a parolee to participate in a community-corrections program. Failure to satisfy applicable court-imposed conditions, such as those related to a work-release program, could result in incarceration. Given the possible imposition of confinement as a sanction, a participant understandably may be reluctant to oppose or report alleged misconduct, such as sexual harassment. *See Scott v. Mo. Dep't of Prob. and Parole*, Case No. 1:07CV82 SNLJ, 2009 U.S. Dist. LEXIS 53706, at \*2 (E.D. Mo. June 25, 2009) (plaintiff alleged that he succumbed to probation supervisor's sexual advances because he was afraid of returning to prison); Letter of Finding, *supra* Section II.B.2. (A.A. was uncomfortable reporting harassment because of concern that it could affect her probation status). As a result, it is especially important that a recipient take adequate measures to protect the civil rights of participants receiving its services or benefits through a community-corrections program.

#### **B. Specific Civil Rights Compliance Standards**

To minimize the risk that individuals may be subjected to discrimination in connection with a community-corrections program, a recipient should ensure that any such program includes systems, policies, and procedures that result in all participants receiving services and benefits without regard to their race, color, national origin, religion, or sex. In identifying specific measures that a recipient should adopt, the OCR relies in part on proposed standards issued by the DOJ pursuant to the Prison Rape Elimination Act of 2003 (PREA), Public Law 108-79, 117 Stat. 972 (codified as amended at 42 U.S.C. §§ 15601-09 (2006)). PREA created the National Prison Rape Reduction Commission (Commission); as part of its mandate, the Commission submitted proposed standards to the DOJ for addressing sexual abuse in corrections. Under PREA, the Attorney General, in turn, must promulgate regulations that adopt national standards for the detection, prevention, reduction, and punishment of prison rape. National Standards to Prevent, Detect, and Respond to Prison Rape, 76 Fed. Reg. 6248, 6248 (proposed Feb. 3, 2011) (to be codified at 28 C.F.R. pt. 115) (Proposed PREA Standards). The Commission, relying on an extensive record, issued recommendations to the DOJ that included protocols for community corrections, broadly defined.<sup>26</sup> Responding to the Commission's expansive definition of community corrections, which ostensibly would have included all work-release programs, the DOJ emphasized that its proposed standards, as applied to community corrections, only apply to

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<sup>26</sup> The Commission's definition of community corrections is as follows: "Supervision of individuals, whether adults or juveniles, in a community setting as a condition of incarceration, pretrial release, probation, parole, or post-release supervision. These settings would include day and evening reporting centers." *See Nat'l Prison Rape Elimination Comm'n, Standards for the Prevention, Detection, Response, and Monitoring of Sexual Abuse in Community Corrections* 5 (2009). Solely for the purposes of this Letter of Finding, the OCR adopts the Commission's definition of community corrections.

community-confinement facilities.<sup>27</sup> As a result, the Proposed PREA Standards do not appear to cover the RCSD's Labor Program.

While the Recipient may not be required under PREA to address any of the concerns included in A.A.'s Complaint, it still has an obligation under the Safe Streets Act to ensure that it prevents sex-based discrimination against Program participants. As explained above, the Act's nondiscrimination provision is broad; in the context of community corrections, a participant's civil rights protections under the Act do not depend on whether she is confined during her involvement in, for instance, a work-release program. To encourage compliance with these obligations, the OCR recommends that a recipient take several steps, all of which are cost-effective and practicable, to ensure that it provides nondiscriminatory services and benefits through any community-corrections program. In particular, an entity receiving federal financial assistance authorized by the Safe Streets Act should (1) develop a services nondiscrimination policy that includes a robust complaint process, (2) provide meaningful access to individuals who are limited English proficient (LEP),<sup>28</sup> (3) provide multiple ways for a participant to report services discrimination, (4) develop a training curriculum for appropriate employees and third parties involved in administering the community-corrections program, (5) provide information to participants about nondiscrimination protections, (6) protect individuals from retaliation, and (7) impose appropriate disciplinary sanctions for violations of the services nondiscrimination policy. As explained below, several of these recommendations directly correlate to those PREA standards proposed by the DOJ that relate to sexual harassment in the context of community confinement but are equally relevant to other community-corrections programs.<sup>29</sup> *Id.* at 6251; *see generally id.* at 6289-95.

1. Develop nondiscrimination policy and procedures

As a critical component of a civil rights compliance program, a recipient administering a community-corrections program should issue a policy that emphasizes its commitment to providing services and benefits free from discrimination. In connection with this policy, a recipient should implement detailed procedures for preventing, detecting, receiving, and responding to services discrimination issues. While a recipient has significant discretion to prepare a nondiscrimination policy and related procedures that comport with its overall

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<sup>27</sup> See Proposed PREA Standards, 76 Fed. Reg. at 6250 ("The Department believes that to the extent [the Commission's] definition [of community corrections] includes supervision of individuals in a non-residential setting, it exceeds the scope of PREA's definitions of jail and prison, which include only 'confinement facilit[ies].'" (citing 42 U.S.C. §§ 15609(3), (7))).

<sup>28</sup> A limited English proficient person is an individual whose primary language is not English and who has a limited ability to read, write, speak, or understand English.

<sup>29</sup> Sexual harassment is a form of discrimination covered by the Safe Streets Act. See Letter of Finding, *supra* note 23.

operations, it should ensure that its system for handling services discrimination concerns includes, at a minimum, the following elements:

- notifies employees, third parties, and participants of prohibited discrimination in the recipient's community-corrections program and the procedures for filing a discrimination complaint;
- prohibits retaliation against any person who reports discrimination or cooperates with a discrimination investigation;
- notifies the complainant of each avenue for filing a complaint (as part of this notice, the recipient should state that an individual may file a complaint with the OCR by submitting a written complaint to the following address: Office for Civil Rights; Office of Justice Programs; U.S. Department of Justice; 810 Seventh Street N.W.; Washington, DC 20531);
- designates a coordinator who is responsible for developing, implementing, and overseeing the complaint process;
- establishes procedures for receiving discrimination complaints;
- describes how it conducts a prompt and impartial investigation, notifies the parties of the investigative process and outcome, issues findings, and remedies any identified deficiencies;
- details the responsibility of employees and third parties to report discrimination complaints or potential discrimination issues to the recipient's complaint coordinator as soon as the alleged discrimination comes to their attention;
- describes the training provided to employees and third parties on the recipient's approach to preventing, detecting, and responding to discrimination;
- explains how the recipient disseminates its nondiscrimination policy and complaint procedures to appropriate personnel, third parties, and participants; and
- states that the nondiscrimination policy and complaint procedures will be published on the recipient's Web site.

Viewed collectively, these policy and procedure components seek to ensure that a recipient administers its community-corrections program in ways that effectively guard against services discrimination. In addition to reflecting the requirements of the Safe Streets Act, these elements

are consistent with the DOJ's proposed PREA standards, which recognize the importance of adopting a zero-tolerance sexual harassment policy and creating effective sexual harassment grievance procedures. *See* Proposed PREA Standards, 76 Fed. Reg. at 6289-90 (§§ 115.211, .223).

a. *Application of standard to the RCSD*

In reviewing the adequacy of the RCSD's policies and procedures in connection with the Labor Program, it is important to emphasize those measures that the Department has already taken to prevent discrimination against participants. The Recipient notifies all user agencies that Program participants should be able to perform their assignments free from harassment and distributes to user agencies the County's workplace sexual harassment policy. If a user agency employee engages in sexual harassment or related misconduct, the RCSD emphasizes its ability to remove the user agency from participation in the Program. The Department also has a policy in its Court Services Division Policy Manual that requires Labor Program personnel to conduct a complete investigation of allegations received from a Program participant. Further, the Recipient describes in a policy document how it receives, investigates, and resolves complaints it receives from the public involving RCSD policy, procedure, or personnel. This policy also designates the Administrative Investigations Unit as the coordinator for complaints.

b. *Recommendations*

Despite the RCSD's efforts to protect participants from discrimination in the Labor Program, the OCR recommends that the Recipient strengthen its approach in several ways. The Department should develop a nondiscrimination policy that (1) explains to employees, third parties, and offenders the protections against services discrimination that apply because of the Department's receipt of federal financial assistance from the DOJ; (2) explains how an individual may file a complaint with the RCSD or with an external entity, such as a user agency, the Superior Court, a local law enforcement agency, or the OCR; and (3) states that the policy will be published on the RCSD's Web site. As part of this policy or as a revision to its Department-wide policy governing complaints from the public, the Recipient should also (1) make clear that an individual may file a discrimination complaint against a third party, such as a volunteer or contractor, who provides services or benefits in connection with the Labor Program; (2) explain the responsibility of employees and third parties to report discrimination complaints or potential discrimination issues to the Department as soon as the alleged discrimination comes to their attention; and (3) describe the training or information provided to appropriate employees, third parties, and offenders on the Recipient's approach to preventing, detecting, and responding to discrimination. Finally, the RCSD should expand the notice it provides to user agencies by explaining that they must report discrimination complaints or potential discrimination issues – not just concerns

related to sexual harassment – promptly to the Department.<sup>30</sup>

2. Provide meaningful access to LEP participants

Under the Safe Streets Act, a recipient may not administer its programs or activities in ways that discriminate against individuals based on their national origin. As a result, a recipient must take reasonable steps to ensure that LEP participants have meaningful access to the services and benefits it provides through a community-corrections program. *See* Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41,455, 41,470 (June 18, 2002) (DOJ Guidance). The DOJ Guidance establishes a four-factor balancing test to identify those measures that a recipient should take to ensure meaningful access: (1) the number or proportion of LEP persons that are likely beneficiaries of a recipient's services, (2) the frequency with which LEP persons come into contact with the recipient's programs or activities, (3) the nature and importance of the program, activity, or service provided, and (4) the resources available to the recipient and related costs. *Id.* at 41,459-61.

A recipient should apply these four factors to its community-corrections program and determine areas where language assistance services are most needed and reasonable. For instance, a recipient likely will have an obligation to provide adequate oral interpretation and written translation assistance to an LEP person in connection with conducting interviews, explaining court-imposed conditions, developing and adjusting case plans, setting up referrals for service, conducting supervision, and outlining violations of court-imposed conditions and recommendations. A recipient should also take adequate language assistance measures to convey to LEP participants all information about its nondiscrimination policies, including how to report harassment or retaliation. Once in the program, a recipient should ensure that LEP participants are able to report discrimination to staff directly or through other established reporting mechanisms, such as an abuse hotline, without relying on other participants to provide interpretation or translation assistance, absent exigent circumstances. *See* Proposed PREA Standards, 76 Fed. Reg. at 6289 (§ 115.215); *see also* DOJ Guidance, 67 Fed. Reg. at 41,470.<sup>31</sup>

In the instant Complaint, A.A. does not allege that she was discriminated against because of her national origin; as a result, the OCR has not evaluated whether the RCSD's administration of the Labor Program effectively prevents discrimination against LEP persons.

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<sup>30</sup> To ensure that user agencies understand their civil rights obligations as applied to Program participants, who are neither user agency nor RCSD employees, once the Department prepares an appropriate services nondiscrimination policy, it should distribute this document to participating user agencies.

<sup>31</sup> Under Section 504 of the Rehabilitation Act of 1973, a recipient of federal financial assistance also must ensure that its services and benefits, including information about its nondiscrimination policy and related complaint procedures, are accessible to participants who are deaf, visually impaired, or otherwise disabled.



3. Provide multiple avenues for a participant to report discrimination

A recipient should encourage participants in a community-corrections program to report alleged civil rights violations by providing multiple ways for them to privately report discrimination or retaliation by recipient employees or third parties, including non-employee supervisors and other participants. *See Proposed PREA Standards, 76 Fed. Reg. at 6291-92 (§ 115.251)*. By providing several reporting mechanisms, a recipient is more likely to receive prompt notice of problems that involve discrimination. To satisfy this standard, a recipient should identify available internal and external reporting avenues for a participant. Internally, in addition to noting that a participant can file a complaint with program staff members, a recipient should consider enabling participants to file a complaint with an entity that is independent from the recipient's chain of command and that reports directly to the recipient head. *Id.* at 6290 (§ 115.222). Externally, a recipient should attempt to enter into an agreement with an outside entity, such as a community service provider, stating in the agreement that the entity will receive and immediately forward individual reports of discrimination to the recipient. *Id.* A recipient should also endeavor to provide at least one way for participants to report civil rights violations to an outside local or state governmental entity that is not affiliated with the recipient, such as an inspector general, and that can receive and immediately forward participant reports of discrimination to recipient officials. *Id.* at 6291 (§ 115.251). Finally, a recipient should inform participants that they may file discrimination complaints directly with the OCR.

a. *Application of standard to the RCSD*

In the RCSD's response to the OCR's information request, the Department explains that there are several internal and external ways for a Labor Program participant to report alleged discrimination, such as sexual harassment. Within the Department, an offender can contact a Program supervisor, by phone or in writing, or submit an anonymous complaint. If the allegation involves a Department employee, an offender could also file a complaint with the Recipient pursuant to the RCSD citizen complaint process. Under the Department's protocol for citizen complaints, any member of the Department may receive a complaint and a person can file a complaint in person, by telephone, through a letter, or online. Outside the Department, an offender could report misconduct to his or her job site supervisor, the presiding Superior Court judge, a member of local law enforcement, or the OCR.<sup>32</sup> The existence of these methods suggests that a complainant need not report a concern to the person directly involved in the

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<sup>32</sup> The RCSD suggests that participants could also seek relief from the U.S. Equal Employment Opportunity Commission or the California Department of Fair Employment and Housing. Because these agencies seemingly lack jurisdiction over services discrimination issues such as the one at issue in A.A.'s Complaint, Labor Program participants likely would be unable to avail themselves of these administrative processes. Similarly, the Department notes that a participant could contact the County Human Resource Department (HRD). Because this department does not appear to investigate issues involving services discrimination – indeed, the County harassment policy, which delegates authority to the HRD, only covers employment-related misconduct – the HRD may lack the authority or expertise to respond appropriately to a Program participant's complaint.

asserted misconduct.

b. *Recommendations*

To strengthen the RCSD's handling of discrimination complaints involving non-Department personnel, the RCSD may wish to enable offenders to file complaints with the Administrative Investigations Unit or another unit within the RCSD that is separate from the Labor Program. The OCR also remains concerned that, despite the availability of multiple complaint reporting mechanisms, the Department does not have a method to provide consistent notice about them to Program participants. The RCSD should revise its protocols to ensure that each offender receives information on all of the available avenues for filing complaints about alleged discrimination in the Program.

4. Develop training program for employees and third parties

Once a recipient implements an appropriate system for handling civil rights complaints, it should develop a training curriculum for new employees, existing personnel, and third parties, including volunteers and contractors, on their responsibilities under the recipient's nondiscrimination policy and procedures. *See id.* at 6290-91 (§§ 115.231-.232). By providing comprehensive training, a recipient can equip employees and third parties to prevent discrimination, to identify signs that civil rights violations may be occurring, and to take appropriate action when they learn of recent incidents of discrimination involving participants. As part of this training, the recipient should (1) explain a participant's right to be free from discrimination and retaliation, (2) describe trainee responsibilities under the recipient's policy and procedures for preventing, detecting, reporting, and responding to services discrimination complaints, and (3) identify strategies for promoting effective prevention and intervention of discrimination involving personnel or third parties. A recipient should create a record documenting that trainees have received and understand the information covered in the training.

a. *Application of standard to the RCSD*

Based on the RCSD's response to the OCR's information request, the Department has no discernible training program for the Recipient's employees or user agencies regarding all of the civil rights requirements that apply to the provision of services and benefits to Labor Program participants.

b. *Recommendations*

The RCSD should provide periodic training to Department employees and user agency representatives on the civil rights protections that are afforded Labor Program participants. The Department's training program should address each of the aspects detailed in the above standard. The OCR has developed training modules that explain a recipient's various civil rights

obligations, including those related to the Safe Streets Act. The Recipient may wish to consult these videos, which are available online at <http://www.ojp.usdoj.gov/about/ocr/assistance.htm>, in developing its own curriculum. The RCSD may also benefit from the various PREA training and technical assistance materials that are available through the National Institute of Corrections (NIC) and the Bureau of Justice Assistance (BJA). As part of its training program, the Department should document that individuals have received and understand the information covered in the training.

5. Provide information on nondiscrimination to participants

In administering a community-corrections program, it is critical that a recipient inform participants of their rights under the Safe Streets Act to be free from discrimination. While the recipient can determine the most effective way to convey this information, it should ensure that all participants learn, within a reasonably brief period of time after their admission in the program, about the recipient's nondiscrimination policy, their rights to be free from discrimination, including harassment and retaliation, and the process for reporting incidents or suspicions of discrimination. *See id.* at 6291 (§ 115.233). A recipient should create a record documenting that individuals have participated in these education sessions.

a. *Application of standard to the RCSD*

Based on A.A.'s Complaint and the RCSD's response to the OCR's information request, the Department has no discernible method of consistently educating all Labor Program participants about their rights to receive Program services and benefits free from discrimination.

b. *Recommendations*

The Recipient should develop an orientation program that satisfies the above standard. As with the prior recommendation, the RCSD may find useful the NIC's and the BJA's various PREA-related training and technical assistance materials that address offender education. The Department should also document that individuals have participated in an orientation session that discussed applicable nondiscrimination protections.

6. Protect individuals from retaliation

Once a recipient learns of alleged discrimination in a community-corrections program, it has a duty to protect any person who reports discrimination or cooperates with a discrimination investigation from retaliation by others. *See id.* at 6293 (§ 115.265). In particular, a recipient should have the ability to rely on multiple measures to protect someone from retaliation. For example, a recipient should consider reassigning the complainant, removing the individual who is the subject of the complaint from contact with the complainant, and providing emotional support services to persons who fear retaliation for reporting discrimination or for cooperating

with a discrimination investigation.

a. *Application of standard to the RCSD*

Based on the RCSD's response to A.A.'s report of sexual harassment at the Jurupa job sites, the Department can protect individuals from retaliation for complaining about or participating in an investigation regarding discrimination. In the Complainant's case, the Recipient promptly removed A.A. from the Jurupa assignment and reassigned her to a different location within a reasonable period of time. It also made repeated efforts to investigate the merits of A.A.'s claims.

b. *Recommendations*

While the RCSD appropriately responded to A.A.'s harassment complaint, the OCR recommends that the RCSD notify offenders, at the outset of their admission to the Labor Program, of their right to be free from retaliation. The Department should also develop the capacity to provide emotional support services to Program participants who are concerned that they may be the subject of retaliation.

7. Impose disciplinary sanctions for violations of the services nondiscrimination policy

If a staff member violates a recipient's services nondiscrimination policy, the recipient should subject him or her to disciplinary sanctions, which may include termination from employment. *See id.* (§ 115.276). In evaluating an appropriate sanction, a recipient should, on a case-by-case basis, consider the nature and circumstances of the acts committed, the staff member's disciplinary history, and the sanctions imposed for comparable offenses by other staff with similar histories. If a recipient terminates the employment of a staff person for violating the recipient's services nondiscrimination policy, or permits the resignation of an employee whose employment would have been terminated, it should report that separation or resignation to appropriate law enforcement agencies, unless the activity was clearly not criminal, and to any relevant licensing bodies.

In the instant Complaint, A.A. alleged that B.B., an employee of a user agency – but not of the RCSD – sexually harassed her.<sup>33</sup> Because A.A.'s claims do not involve an RCSD employee, the OCR has not evaluated whether the RCSD's administration of the Labor Program comports with this standard.

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<sup>33</sup> While A.A.'s Complaint alleges that RCSD personnel retaliated against her, as explained in Section III.B.2., the OCR concludes that the Department did not subject her to retaliation.

Stanley Sniff, Sheriff-Coroner  
Riverside County Sheriff's Department  
March 23, 2012  
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#### **IV. Conclusion**

After carefully considering the evidence submitted by the Complainant and the RCSD, the OCR concludes that the Department acted appropriately in responding to A.A.'s report of sexual harassment and did not retaliate against the Complainant. While the Recipient satisfied its Safe Streets Act obligations as to the Complainant, the OCR has identified several areas where the RCSD's operation of its Labor Program could result in prohibited discrimination against participants. To minimize the risk of civil rights violations occurring in the Program, the OCR has identified several remedial measures that the RCSD should consider taking to strengthen its systems, policies, and procedures. We would like to work with you to ensure that participants can continue to participate in the Program free from discrimination; such collaboration would likely assist the RCSD and other community-corrections programs confronting similar challenges. Please let us know if you are amenable to receiving technical assistance in connection with any of the above recommendations.

Please note that this letter is a public document and will be posted on the OCR's Web site. This letter is not intended, and should not be construed, to cover any issues regarding compliance with the Safe Streets Act and its implementing regulations that the letter does not expressly address. Under the Freedom of Information Act, it may be necessary to release documents related to the instant Complaint. In the event that the OCR should receive such a request, we will seek to protect, to the extent provided by law, personal information which, if released, could constitute an unwarranted invasion of privacy.

You should also be aware that no one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or participated in an action to secure rights protected under the Safe Streets Act. Any individual alleging such harassment or intimidation may file a complaint with the DOJ. We would investigate such a complaint if the situation warrants.

Thank you for your cooperation during the investigation process. If you have any questions, please contact Attorney Advisor Christopher Zubowicz at 202.305.9012.

Sincerely,



Michael L. Alston  
Director