

February 4, 2016

Ann Marie Quartironi  
Interim Superintendent of Schools  
Beacon City School District  
10 Education Drive  
Beacon, New York 12508

Re: Case No. 02-15-1417  
Beacon City School District

Dear Ms. Quartironi:

This letter is to notify you of the determination made by the U.S. Department of Education, New York Office for Civil Rights (OCR) with respect to the above-referenced complaint filed against the Beacon City School District. The complainant alleged that the District failed to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints alleging sex discrimination filed by or on behalf of students (Allegation 1). The complainant also alleged that the District failed to properly train its employee designated to respond to complaints of sex discrimination/harassment pursuant to Title IX of the Education Amendments of 1972 (Title IX) (Allegation 2).

OCR is responsible for enforcing Title IX, as amended, 20 U.S.C. § 1681 *et seq.*, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in programs and activities receiving financial assistance from the U.S. Department of Education (the Department). The District is a recipient of financial assistance from the Department. Therefore, OCR has jurisdictional authority to investigate this complaint under Title IX.

In its investigation, OCR interviewed the complainant, the District's Title IX Coordinators and the District's former Superintendent of Schools (Superintendent), who was the District's Superintendent when the complaint was filed. OCR also reviewed documentation that the complainant and the District submitted. OCR made the following determinations.

With respect to Allegation 1, the complainant alleged that the District failed to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints alleging sex discrimination filed by or on behalf of students.

The regulation implementing Title IX, at 34 C.F.R. § 106.8(a), requires a recipient to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities

under Title IX and its implementing regulation, including the investigation of any complaint communicated to such recipient alleging its noncompliance with Title IX or alleging any actions that would be prohibited by Title IX. The recipient must notify all of its students and employees of the name, office address and telephone number of the designated employee(s). Additionally, OCR policy states that recipients should provide the electronic mail (email) address of the designated Title IX coordinator(s).

The regulation implementing Title IX, at 34 C.F.R. § 106.9(a), requires each recipient to implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of sex in the education programs or activities which it operates, and that it is required by Title IX not to discriminate in such a manner. Such notification shall state at least that the requirement not to discriminate in the education program or activity extends to employment therein, and to admission thereto unless Subpart C does not apply to the recipient, and that inquiries concerning the application of Title IX and this part to such recipient may be referred to the employee designated pursuant to § 106.8, or to OCR's Assistant Secretary. The regulation implementing Title IX, at 34 C.F.R. § 106.9(b), requires recipients to include this notice in each announcement, bulletin, catalog, or application form which it makes available to any person described above, or which is otherwise used in connection with the recruitment of students or employees.

Further, the regulation implementing Title IX, at 34 C.F.R. § 106.8(b), requires a recipient to adopt and publish procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any action prohibited by Title IX and its implementing regulation. OCR has identified a number of elements in evaluating whether a recipient's grievance procedures are prompt and equitable, including whether the procedures provide for: (a) notice of the procedure, including where complaints may be filed, that is easily understood, easily located, and widely distributed; (b) application of the procedure to complaints alleging discrimination or harassment carried out by employees, other students, or third parties; (c) adequate, reliable, and impartial investigation of complaints, including an opportunity to present witnesses and evidence; (d) designated and reasonably prompt timeframes for major stages of the complaint process; (e) written notice to the parties of the outcome of the complaint and any appeal; and (f) an assurance that the recipient will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

#### *Designation of a Title IX Coordinator*

The District designated two individuals as its Title IX Coordinators: the Deputy Superintendent of Schools and XXXXXXXXXXXX (Coordinator 1); and the XXXXXXXXXXXX (Coordinator 2). Accordingly, OCR determined that the District satisfied the requirement of 34 C.F.R. § 106.8(a) to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX and its implementing regulation.

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The District publishes an “Equal Opportunity Notice” on its website, which includes the Title IX Coordinators’ names, telephone numbers and email addresses, but does not include their office addresses.<sup>1</sup> The District also published the names, telephone numbers and office addresses of the Title IX Coordinators in its *Annual Notice to Parents A-Z* document, which is provided to District parents at the beginning of each school year and contains information about District policies and procedures; however, this document is distributed only to parents of District students, and does not include the email addresses of the Title IX Coordinators. Accordingly, OCR determined that the District did not satisfy the requirement of 34 C.F.R. § 106.8(a) to notify all students and employees of the names, office addresses, telephone numbers and email addresses of its designated Title IX Coordinators. On January 25, 2016, the District entered into the enclosed resolution agreement with OCR to resolve this compliance concern.

### Nondiscrimination Notice

OCR determined that the District publishes a notice of nondiscrimination (the Notice) on its website, which states that the District does not discriminate on the basis of race, religion, color, national origin, disability, weight, age or sex in its education programs or employment and provides equal access to the Boy Scouts and other designated youth groups.<sup>2</sup> This Notice is also published in District Policy No. 0100, entitled “Equal Opportunity and Nondiscrimination,” which is available online; in the District’s calendar, which is distributed to the school community at the start of each school year; and in the District’s Dignity for All Students Act (DASA) notice, which is available online. The District also publishes a notice of nondiscrimination in the *Annual Notice to Parents A-Z* document described above.<sup>3</sup> However, there is no notice of nondiscrimination included on the District’s webpage for “Employment Opportunities.”<sup>4</sup> OCR determined that none of these notices of nondiscrimination states that inquiries concerning the application of the regulation implementing Title IX may be referred to the Title IX Coordinators or to OCR, as required by the regulation implementing Title IX, at 34 C.F.R. § 106.9(a).<sup>5</sup> On January 25, 2016, the District entered into the enclosed resolution agreement with OCR to resolve this compliance concern.

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<sup>1</sup> See: <http://www.beaconcityk12.org/files/filesystem/Equal%20Opportunity%20Notice%207-2-15.pdf>.

<sup>2</sup> The Notice is available at: <http://www.beaconcityk12.org/index.cfm>.

<sup>3</sup> The document contains the following notice, in a section entitled “Equal Employment Opportunity”: “[i]t is the policy of this District to provide, through a positive and effective program, equal opportunities for employment, retention and advancement of all people regardless of race, color, creed, religion, national origin, political affiliation, sex, sexual orientation, age, marital status, military status, veteran status, disability, predisposing genetic characteristics, or use of a recognized guide dog, hearing dog or service dog, or domestic violence victim status.”

<sup>4</sup> OCR determined that this webpage contains the following notice, “Our District is committed to achieving a diverse workforce. We are an equal opportunity employer.” However, this notice does not specifically inform applicants for employment that the District does not discriminate on the basis of sex in its education programs or activities.

<sup>5</sup> The *Annual Notice to Parents A-Z document* includes the following statement: “General Nondiscrimination - Questions about this nondiscrimination policy may be directed to the appropriate Compliance Officer, c/o District Clerk, 10 Education Lane, Beacon, New York. The appropriate compliance officer has information related to grievance procedures.”

Grievance Procedures

OCR determined that the District has several policies and regulations that prohibit discrimination and harassment on the basis of sex.<sup>6</sup> The District informed OCR that it uses Regulation No. 6121R and the accompanying Form No. 6121F to investigate complaints of sex discrimination. However, Regulation 6121R and Form No. 6121F are not published online; rather, they are physically located in the District’s administrative offices and are not disseminated to students, parents, staff or third parties.<sup>7</sup>

Regulation 6121R, entitled “Sexual Harassment,” applies to students and employees, and prohibits sexual harassment by students, employees and third parties. The regulation defines sexual harassment, but does not reference or define sexual violence. Pursuant to Regulation 6121R, any student or employee who believes he/she has been subjected to sexual harassment, or who is made aware of and/or witnesses any possible occurrence of sexual harassment, shall promptly report such occurrence to either of the District’s designated Title IX Coordinators. The regulation states that oral or written complaints will be taken, and the Title IX Coordinator will begin an investigation of the complaint within three (3) working days of receipt. The regulation provides that the Title IX Coordinator will meet separately with the complainant and the accused and encourages the parties to identify any witnesses and provide any evidence related to the incident. The results of the investigation will be reported to the Superintendent no later than twenty (20) working days following receipt of the complaint, and the Title IX Coordinator will notify the complainant and accused, in person and in writing, of the results of the investigation and course of action within this same timeframe. Accordingly, Regulation 6121R provides for reasonably prompt time frames for the completion of the investigation and submission of the written report of the incident to the Superintendent and to the parties. The regulation further provides that if the complainant or the accused is not satisfied with the outcome of the investigation, either party may appeal the determination to the Superintendent within ten (10) working days following the Title IX Coordinator’s decision; and within thirty (30) working days, the Superintendent will issue a determination. The regulation provides that if the complainant or the accused is not satisfied with the outcome of the Superintendent’s determination, either party may appeal the decision to the Board of Education within ten (10) working days following receipt of the Superintendent’s determination; the Board will then conduct a hearing and issue a written response to the parties within thirty (30) days. The regulation contains a prohibition against retaliation, and includes an assurance that the District will take steps to prevent the recurrence of any harassment, correct its discriminatory effects and provide information regarding available support services.

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<sup>6</sup> Relevant policies include the following: No. 0100, Equal Opportunity and Nondiscrimination; No. 0110, Sexual Harassment; No. 0115, Student Harassment and Bullying Prevention and Intervention; No. 3420, Anti-Harassment in the School District; No. 7550, Complaints and Grievances by Students; No. 7551, Sexual Harassment of Students; No. 7552, Student Harassment and Bullying Prevention; and No. 8130 Equal Educational Opportunities. Relevant District regulations include: No. 3230R, Anti-Discrimination Complaint Guidelines (accompanied by 3230P, Anti-Discrimination Complaint Procedures and 3230F, Anti-Discrimination Complaint Form); 3420R, Anti-Harassment in the School district (accompanied by 3420F, Harassment Complaint Form); 6121R, Sexual Harassment (accompanied by 6121 F, Sexual Harassment Complaint Form); 7550R, Student Discrimination Grievance Guidelines; and 7551R, Sexual Harassment of Students.

<sup>7</sup> The District is currently transitioning from the Eerie 1 BOCES policy service to the New York State School Boards’ Association (NYSSBA) policy service. The Superintendent informed OCR that all policies and regulations will be posted on the District’s website when the transition is complete, in or around late spring 2016.

Based on the foregoing, OCR determined that Regulation 6121R sets forth procedures that provide for the prompt and equitable resolution of student and employee complaints alleging actions prohibited by Title IX and its implementing regulation. However, OCR determined that Regulation 6121R is not easily located or widely distributed.<sup>8</sup> On January 25, 2016, the District entered into the enclosed resolution agreement with OCR to resolve this compliance concern.

With respect to Allegation 2, the complainant alleged that the District failed to properly train its employee designated to respond to complaints of sex discrimination/harassment pursuant to Title IX.

The District's Regulation 6121R provides that, "[t]hose administrators and/or supervisors who have specific responsibilities for the investigation and resolution of sexual harassment complaints will receive specialized training on conducting such investigations." Additionally, pursuant to OCR policy, all persons involved in conducting a school's Title IX investigations should receive training in handling complaints of sexual violence and in the district's grievance procedures.<sup>9</sup>

The District informed OCR that Coordinator 1 has served as the District's Title IX Coordinator for the past three years and has investigated one complaint of sex discrimination during that time. Coordinator 1 informed OCR that she has read the District's grievance procedures and consults with District counsel regarding issues pertaining to sexual harassment and sexual violence; however, she stated that she has had no training regarding the handling of complaints of sexual violence or the District's grievance procedures.<sup>10</sup> She further stated that she is not aware how the grievance procedures are made available to students and staff.

The District informed OCR that Coordinator 2 has served as the District's Title IX Coordinator since July 2015. Coordinator 2 informed OCR that he had no prior experience investigating complaints of sex discrimination, but that he attended a training that the Putnam Northern Westchester BOCES provided on workplace harassment in September 2015.<sup>11</sup> OCR determined

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<sup>8</sup> OCR determined that neither Title IX Coordinator was aware of where the District's grievance procedures are located.

<sup>9</sup> Training for responsible employees with the authority to address sexual violence, including Title IX Coordinators, should include practical information about how to prevent and identify sexual violence, including same-sex sexual violence; the behaviors that may lead to and result in sexual violence; the attitudes of bystanders that may allow conduct to continue; the potential for re-victimization by responders and its effect on students; appropriate methods for responding to a student who may have experienced sexual violence, including the use of nonjudgmental language; the impact of trauma on victims; and, as applicable, the person(s) to whom such misconduct must be reported. The training should also explain responsible employees' reporting obligations, including what should be included in a report and any consequences for the failure to report and the procedure for responding to students' requests for confidentiality, as well as provide the contact information for the school's Title IX coordinator. A District also should train responsible employees to inform students of: the reporting obligations of responsible employees; students' options to request confidentiality; available confidential advocacy, counseling, or other support services; and students' rights to file a Title IX complaint with the school and to report a crime to campus or local law enforcement.

<sup>10</sup> Coordinator 1 stated that she participated in a DASA training in January 2015 that did not pertain to Title IX, and in a workplace harassment training. Coordinator 1 did not indicate that the workplace harassment training included any training regarding handling complaints of sexual violence or the district's grievance procedures, and the District provided no materials to OCR regarding this training.

<sup>11</sup> Coordinator 2 informed OCR that this was not the same training that Coordinator 1 attended.

that although this training touched upon items related to Title IX, including bullying, harassment and how to investigate complaints of sexual harassment, it focused on workplace harassment and did not address investigations of complaints of sex discrimination filed by or on behalf of students. Coordinator 2 informed OCR that he is unfamiliar with the District's Title IX grievance procedures, does not know where they are located or how they are disseminated to students and staff, and has not received any training on them; rather, he relies on the District's counsel for guidance on issues pertaining to sexual harassment and sexual violence.

The Superintendent informed OCR that she is responsible for supervision of the Title IX Coordinators. She stated that when Coordinator 2 was hired, she met with Coordinators 1 and 2 (collectively, the Coordinators) to discuss their roles and responsibilities. She stated that during this meeting, she provided the Coordinators with excerpts of guidance published by the New York State School Boards' Association (NYSSBA) regarding Title IX; copies of District Policy Nos. 0100, 0110 and 0115; discussed the Title IX complaint/investigation process "in a general sense"; and requested that the Coordinators attend training regarding handling complaints of sex discrimination. She confirmed that neither Coordinator received training regarding the District's sex discrimination grievance procedures.

Based on the foregoing, OCR determined that the Title IX Coordinators have not received adequate training regarding their responsibilities under Title IX, the District's Title IX grievance procedures or how to investigate complaints of sex discrimination. On January 25, 2016, the District entered into the enclosed resolution agreement with OCR to resolve this compliance concern.

OCR will monitor the implementation of the resolution agreement.

This letter should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions about OCR's determination, please contact Eboné Woods, Compliance Team Attorney, at (646) 428-3898 or [ebone.woods@ed.gov](mailto:ebone.woods@ed.gov); or Bernard Dufresne, Compliance Team Attorney, at (646) 428-3802 or [bernard.dufresne@ed.gov](mailto:bernard.dufresne@ed.gov).

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.