

March 30, 2017

Jose L. Carrion
Superintendent of Schools
Wappingers Central School District
25 Corporate Park Drive
P.O. Box 396
Hopewell Junction, New York 12533

Re: Case No. 02-16-1507
Wappingers Central School District

Dear Superintendent Carrion:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR), regarding the above-referenced complaint filed against the Wappingers Central School District (the District). The complainant alleged that the District discriminated against her daughter (the Student), on the basis of her sex, by failing to respond appropriately to her complaint that a teacher at the XXXXXXXXXXX XXXXX XXXX XXXXXX (the school) subjected the Student to sexual harassment on or about XXXXXXXX x, xxxx.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (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.

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 (a Title IX coordinator), including the investigation of any complaint communicated to such recipient alleging its noncompliance with Title IX or alleging any actions which 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 Title IX coordinator. Additionally, recipients should provide the electronic mail (email) address of the designated Title IX coordinator.

The District designated its Assistant Superintendent of Compliance and Information Systems (assistant superintendent A) as the individual responsible for the District’s compliance with Title IX with respect to students. The District’s “Notice of Non-Discrimination Policy & Compliance Officer for Students” (the notice of non-discrimination for students), which is available on the District’s website, lists assistant superintendent A’s name, title, phone number, mailing address, and email address. The District’s notice of non-discrimination is also published within the District’s Code of Conduct and the school’s Syllabi/Course Handbook, both of which are physically distributed to students annually and available on the District’s website.

The District designated its Assistant Superintendent for Human Resources and Labor Relations (assistant superintendent B) as the individual responsible for the District’s compliance with Title IX with respect to employees. The District’s “Notice of Non-Discrimination Policy & Compliance Officer for Employees” (the notice of non-discrimination for employees), which is available on the District’s website, lists assistant superintendent B’s name, title, phone number, mailing address, and email address. The District’s notice of non-discrimination for employees is also published within the District’s Code of Conduct and the school’s Syllabi/Course Handbook.

OCR determined that the District is not in compliance with the regulation implementing Title IX, at 34 C.F.R. § 106.8(a), in that the District has not notified students and employees of the office address of the Title IX coordinators, as required by the regulation.

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, employees, sources of referral of applicants for admission and employment, and all unions and professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of sex in the educational program or activity which it operates and that it is required by Title IX not to discriminate in such a manner. Such notification shall also state that inquiries concerning the application of Title IX and its implementing regulation may be referred to the Title IX coordinator or to OCR. The regulation implementing Title IX, at 34 C.F.R. § 106.9(b), requires recipients to include the notice of nondiscrimination in each announcement, bulletin, catalog, or application form it makes available or is otherwise used in connection with the recruitment of students or employees.

As described above, the District’s notices of non-discrimination are published on the District’s website, in the District’s Code of Conduct, and in the school’s Syllabi/Course Handbook. The District’s notice of non-discrimination for students that is published on the District’s website provides: “The Wappingers Central School District does not discriminate in offering educational opportunities on the basis of race, color, national origin, weight, ethnic group, religion, religious practice, disability, sex, sexual orientation, gender identity, gender expression, age, military/veteran status, genetic predisposition, marital status, and domestic violence victim status or any other basis prohibited by New York State and/or Federal non-discrimination laws.”¹ The non-discrimination notice for employees that is published on the District’s website matches the non-discrimination notice for students. The employee notices contained within the District’s Code of Conduct and the school’s Syllabi/Course Handbook differ in some respects, but both

¹ The student notices contained within the District’s Code of Conduct and the school’s Syllabi/Course Handbook also specify an additional protected category.

specify that the District does not discriminate on the basis of sex. The notices for students and employees indicate that inquiries may be referred to assistant superintendents A and B, respectively; however, they do not state that such inquiries may also be referred to OCR as required by regulation implementing Title IX, at 34 C.F.R. § 106.9(a). Accordingly, OCR determined that the District is not in compliance with the regulation implementing Title IX, at 34 C.F.R. § 106.9(a).

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 actions 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: (1) notice of the procedure, including where complaints may be filed, that is easily understood, easily located, and widely distributed; (2) application of the procedure to complaints alleging discrimination or harassment carried out by employees, other students, or third parties; (3) adequate, reliable, and impartial investigation of complaints, including an opportunity to present witnesses and evidence; (4) designated and reasonably prompt timeframes for the major stages of the complaint process; (5) notice to the parties of the outcome of the complaint (both parties must be notified about the outcome of both the complaint and any appeal); and, (6) an assurance that the school will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

OCR reviewed the District's grievance procedures applicable to complaints of sexual harassment, contained in District regulation 0110-R, "Sexual Harassment Regulation." The District revised regulation 0110-R on May 16, 2016, subsequent to the complainant's submission of her sexual harassment complaint to the District in February 2016; however, OCR determined that there were no substantive differences between the current and former versions of the regulation with respect to the following analysis.

Regulation 0110-R (the regulation) is published on the District's website and within the school's Syllabi/Course Handbook. The regulation specifies that complaints of sexual harassment involving students, employees, or third parties may be filed with a principal or the District's Title IX Coordinator, and it includes both school-level and district-level investigative procedures. The regulation also prohibits retaliation against any person who files a complaint, opposes sexual harassment or participates in any manner in an investigation or proceeding related to a sexual harassment complaint, and includes a definition of retaliation.

With respect to the procedures for school-level investigations, OCR determined that the regulation provides for the opportunity for the parties involved to present witnesses and evidence; specifies that written notice will be provided to the parties of the outcome of the investigation; and contains an assurance that the District's goal is to end any harassment and obtain prompt and equitable complaint resolutions. The regulation also provides that complainants will be referred to available counseling resources during the pendency of a school-level investigation. The regulation states that an investigation should be initiated within three business days of a complaint, but it does not specify the overall timeframe for conducting an

investigation and providing notice to parties, or otherwise provide designated and reasonably prompt timeframes for the major stages of the complaint process.

With respect to district-level investigations, the regulation states that complaints may be investigated directly at the district-level.² Specifically, it states that complaints of “serious or extreme harassment,” including complaints of employee-to-student harassment, will be promptly referred to the superintendent for investigation. The regulation specifies that district-level investigations should be initiated within three business days of receiving a complaint and completed within 30 days, and parties will be provided with written notice of the outcome of the investigation. The regulation contains an assurance that if a district-level investigation results in a determination that sexual harassment occurred, prompt corrective action will be taken to end the harassment; however, the regulation does not specify the steps of a district-level investigation, including whether both parties will have an opportunity to present witnesses and evidence. Rather, it states only that district-level investigations will be completed by an investigator with formal training in sexual harassment investigations.

Based on the foregoing, OCR determined that the District has adopted and published procedures with regard to the resolution of student and employee complaints alleging sexual harassment. OCR determined that the District provides notice of the procedure, including where complaints may be filed, that is easily understood, easily located, and widely distributed; that the procedures are applicable to complaints alleging harassment carried out by employees, students, or third parties; that the procedures provide for notice to the parties of the outcome of the complaint; and that the procedures provide an assurance that the school will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate. OCR determined that the District’s grievance procedure is not in compliance with the regulation implementing Title IX, at 34 C.F.R. § 106.8(b), as follows: with respect to school-level investigations, the regulation does not specify the overall timeframe for conducting an investigation and providing notice to parties, or otherwise provide designated and reasonably prompt timeframes for the major stages of the complaint process; and with respect to district-level investigations, the regulation does not specify whether both parties will have an opportunity to present witnesses and evidence.

Complainant’s Allegation

The complainant alleged that the District discriminated against the Student, on the basis of her sex, by failing to respond appropriately to her complaint that a teacher at the school subjected the Student to sexual harassment on or about Xxxxxxxx x, xxxx. Sexual harassment that creates a hostile environment is a form of sex discrimination prohibited by Title IX. Sexual harassment is unwelcome conduct of a sexual nature. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, such as sexual assault or acts of sexual violence. Sexual harassment of a student creates a hostile environment if the conduct is sufficiently serious that it denies or limits a student’s ability to participate in or benefit from the recipient’s program.

² Complaints may also be appealed to the district-level following a school-level investigation.

Based on OCR experience, a typical investigation takes approximately 60 calendar days following receipt of the complaint. The 60-calendar day timeframe refers to the entire investigative process, which includes conducting the fact-finding investigation, holding a hearing or engaging in another decision-making process to determine whether the alleged conduct occurred and created a hostile environment, and determining what actions the school will take to eliminate the hostile environment and prevent its recurrence. OCR does not require a recipient to complete investigations within 60 calendar days; rather, OCR evaluates on a case-by-case basis whether the resolution of complaints is prompt and equitable. Whether OCR considers an investigation to be prompt as required by Title IX will vary depending on the complexity of the investigation and the severity and extent of the alleged conduct.

During the course of the investigation, OCR interviewed the complainant. OCR also reviewed documentation that the complainant and the District submitted. OCR made the following determinations.

OCR determined that the Student was enrolled in xxxxxx grade at the school during school year xxxx-xxxx, and she was xx years old in or around XXXXXXXX xxxx. On or about XXXXXXXX x, xxxx, the complainant telephoned the school's assistant principal after school and reported that the teacher made inappropriate comments about the Student's breasts during the Student's xxxxxx xxxxxxxx class that day. The assistant principal reported the complainant's complaint to the school's principal, and they initiated an investigation the following day.

On XXXXXXXX xx, xxxx, the principal and assistant principal met with the Student, and she provided a written statement regarding her interactions with the teacher from the previous day. She stated that during a class discussion about women's clothing during the 1920's, she disagreed with one of her classmates who stated that "when women wear revealing clothing they're asking for negative attention." She stated that the teacher subsequently approached her while she was having a discussion with another student (student A), and he told her that he "hated people like [her]," because "when [she goes] to high school [she] would wear a shirt revealing half of [her] breasts and then wonder why people would be staring at [her] breasts." She stated that she told the teacher she "wouldn't wonder," and the teacher thereafter instructed the class to look at her breasts.

Between approximately XXXXXXXX xx and xx, xxxx, the principal and assistant principal conducted interviews with other students from the class regarding the incident. OCR reviewed written witness statements provided by ten students, including student A. The students generally corroborated the Student's account of her discussion with the teacher, and five students specifically corroborated that the teacher instructed the class to look at the Student's breasts. Student A stated that when the teacher approached her and the Student, he told the Student that "he hates people like her, people that are going to wear tight shirts that show a lot of cleavage for people to see." Student A stated that the teacher thereafter told the class to look at the Student's breasts.

The principal reported the complainant's complaint to the District's Central Office, and assistant superintendent B joined the investigation because the complaint involved a District employee. On XXXXXXXX xx, xxxx, the principal, the assistant principal, assistant superintendent B, and a

XXXXXXXXXXXXXXXXXXXX and XXXXXXXXXXXXXXXXXXXX (the XXXXXXXXXXXXXXXXXXXX) met with the teacher and his union representative. Based on a review of the District’s notes from the meeting, OCR determined that during the meeting, the teacher explained that he was teaching a lesson about the 1920’s, and one of his PowerPoint slides discussed “flappers.” He stated that he heard a student say: “if a girl was wearing provocative clothing, they shouldn’t be surprised if they got raped.” He stated that he explained to the students that “the flapper was in the traditional style of the time and had nothing to do with sluts or whores.”³ The teacher stated that the conversation thereafter became “heated,” which he believed was good. He stated that the Student stated, “I should be allowed to wear whatever I want,” and he responded to the effect of: “if guys made comments or gave a look about what girls were wearing, the girls would turn around and get mad.” The District informed the teacher that some students in the class reported that he made comments about the Student’s breasts, including directing the class to look at the Student’s breasts. In response, the teacher stated: “I didn’t direct it at her. I told them that when girls wear revealing clothing, boys will look at them like that.” At the conclusion of the meeting on XXXXXXXX xx, xxxx, assistant superintendent B informed the teacher that he was being placed on paid suspension and was not permitted to enter school grounds.

Subsequently, based on the investigation, the superintendent determined that the teacher’s conduct towards the Student was in violation of District regulation 0110-R and constituted sexual harassment; and, on XXXXXXXX xx, xxxx, the District filed a complaint against the teacher with the New York State Education Department (NYSED), pursuant to the New York Code, Rules, and Regulations section 83.1, “Determination of Good Moral Character.” On XXXXXXXX xx, xxxx, the superintendent officially notified the teacher that he was placed on paid administrative leave, effective from XXXXXXXX xx, xxxx, until further notice.⁴

The District informed OCR that during a meeting with the Student on or about XXXXX x, xxxx, the assistant principal and the XXXXXXXXXXXXXXXXXXXX offered to speak with the Student about the teacher’s statements and potentially arrange counseling services for her, but the Student did not accept the offer. The complainant confirmed that the assistant principal offered to speak with the Student in the assistant principal’s office anytime the Student felt uncomfortable or wanted to discuss the teacher’s statements. The complainant also stated that the principal and assistant principal were available to speak with her or the Student anytime she or the Student had questions or concerns following the time she filed her complaint with the District.

The complainant sent email messages to the District on XXX x, XXXX xx, and XXXXXX x, xxxx, seeking to obtain additional information regarding her complaint. In response to each inquiry, assistant superintendent B informed the complainant that the District took her complaint seriously and was taking action pursuant to District policy and a collective bargaining agreement, but that it could not provide her with any personal information regarding the District’s investigation as it related to a personnel matter. The complainant informed OCR that the

³ The teacher stated that he had also taught this lesson the previous day; and during both lessons, students used the words “slut” and “whore” during discussion.

⁴ The District stated that the teacher never returned to the District after he was placed on administrative leave. The complainant acknowledged that she was aware that the teacher was not permitted to return to the school beginning the day after she filed her complaint.

District’s attorney told her that the teacher resigned in XXXXXXXX xxxx,⁵ but she stated that the District never notified her about whether it determined the teacher subjected the Student to sexual harassment. The District did not provide to OCR any evidence demonstrating that it notified the complainant about its determination.

Based on the foregoing, OCR determined that the District promptly initiated an investigation of the complainant’s complaint, but did not promptly conclude the process. Specifically, the District received the complainant’s complaint on XXXXXXXX x, xxxx; however, the District did not file disciplinary proceedings against the teacher until XXXX xx, xxxx, more than four months later. OCR determined that the complainant had an opportunity to present witnesses and evidence; and, that the District offered the Student the interim measure of counseling and took the interim measure of immediately placing the teacher on administrative leave. The District determined that the teacher engaged in sexual harassment and sought to take disciplinary action against the teacher; however, as of the time of OCR’s investigation, the District had not notified the complainant that it determined that the teacher’s conduct toward the Student constituted sexual harassment. Therefore, OCR determined that the District failed to respond promptly and equitably to the complainant’s complaint that the teacher subjected the Student to sexual harassment on XXXXXXXX x, xxxx, in violation of the regulation implementing Title IX at 34 C.F.R. §§ 106.8(b) and 106.31(a).

On March 28, 2017, the District agreed to implement the enclosed resolution agreement in order to resolve the compliance concerns. 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 individual may file a complaint alleging such treatment.

⁵ On XXXX xx, xxxx, the District also charged the teacher pursuant to New York Education Law § 3020-a (§ 3020-a), which pertains to disciplinary procedures and penalties for tenured teachers. The District informed OCR that there were ultimately no findings with respect to the § 3020-a proceedings because the District and the teacher entered into a Stipulation of Settlement and Release, and the teacher resigned from the District as of XXXXXXXX xx, xxxx. The complainant stated that prior to the time the teacher resigned, the District contacted her in connection with the disciplinary proceedings related to the teacher. Specifically, on XXXXXXXX x, xxxx, the District’s counsel sent a letter to the complainant, notifying her that the District filed disciplinary charges against the teacher, and had identified the Student as a potential witness to testify at the disciplinary hearing, but stated that the Student was not obligated to speak with the teacher’s attorney prior to the hearing. On XXXXXXXX xx, xxxx, assistant superintendent B sent a letter to the complainant, notifying her that the Student’s educational records were requested pursuant to the Family Education Rights and Privacy Act in connection with the disciplinary hearing.

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 regarding OCR's determination, please contact Logan Gerrity, Compliance Team Attorney, at (646) 428-3791 or Logan.Gerrity@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

cc: XXXXXXX XXXXX, Esq. (via email)