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OFFICE FOR CIVIL RIGHTS

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September 13, 2016

Dr. Kenneth R. Baca
Superintendent
Tempe Union High School District
500 West Guadalupe Road
Tempe, Arizona 85283-3599

Re: Tempe Union High School
District OCR Case Number 08-16-
1225

Dear Superintendent Baca:

On March 7, 2016, we received a complaint against Tempe Union High School District (District) alleging that the District discriminates on the basis of sex. Specifically, the Complainant alleged that the District's Title IX policy and procedures for students to report sexual harassment, and notice of its Title IX Coordinator, do not meet Title IX requirements.

We initiated our investigation under the authority of Title IX of the Education Amendments of 1972 and its implementing regulation, which prohibit discrimination on the basis of sex in education programs and activities that receive funds from the U.S. Department of Education. As a recipient of Federal financial assistance from the U.S. Department of Education, the District is subject to this law and regulations.

Specifically, we investigated the following issues:

- (1) Whether the District's Title IX grievance procedures provide for the prompt and equitable resolution of student complaints of discrimination based on sex; and
- (2) Whether the District provides proper notice of its Title IX coordinator.

OCR conducted interviews and reviewed information provided by the Complainant and the District. After careful review of the information, we have determined that the District violated Title IX as alleged. The legal standards, facts gathered, and the reasons for our determinations are summarized below.

Title IX Grievance Procedures

We considered whether the District's Title IX grievance procedures provide for the prompt and equitable resolution of sexual discrimination complaints.

The Title IX regulation, at 34 C.F.R. § 106.8(b), provides that a recipient shall adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints alleging any action which would be prohibited by the regulation. _!

In evaluating whether a school's grievance procedures meet Title IX requirements, we review a school district's policies, including the following elements that are critical to achieve compliance with Title IX.

- Notice to students, parents of elementary and secondary students, and employees of the procedure, including where complaints may be filed;
- Application of the grievance procedures to complaints filed by students or on their behalf alleging harassment carried out by employees, other students, or third parties;
- Provisions for adequate, reliable, and impartial investigation of complaints, including the opportunity for both the complainant and alleged perpetrator to present witnesses and other evidence;
- Designated and reasonably prompt timeframes for the major stages of the complaint process;
- Written notice to the parties (complainant and alleged perpetrator) of the outcome of the complaint; and
- 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.

The District provided its various policies² that address sexual harassment, how to file a complaint of sexual harassment, and the District's obligation to investigate such complaints. The District asserts that it provides a learning and work environment for all students and employees that is free from sexual harassment and is in compliance with Title IX requirements as identified by the number of policies that it dedicates to defining and identifying the process for addressing complaints of sexual harassment.

The District's Sexual Harassment Policies and Grievance procedures describe the District's expectation of employees, students, governing board, and administration to conduct themselves in a manner that is free from sexual harassment. The policies also provide a description of what constitutes sexual harassment; states that anyone who is subjected to sexual harassment or is aware of occurrence should inform the compliance officer; includes a complaint form; indicates that the Compliance Officer will

¹The applicable legal standards described herein are more fully discussed in OCR's Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties (2001 Guidance) dated January 19, 2001, and found online at <http://www.ed.gov/about/offices/list/ocr/docs/shguide.html>, OCR's 2011 Dear Colleague letter on Sexual Violence (2011DCL), dated April 4, 2011, which is available online at http://www2.ed.gov/about/offices/list/ocr/letters/colleague-2011_04.html, and OCR's "Questions and Answers on Title IX and Sexual Violence" (2014 FAQs) dated April 29, 2014, which is available online at <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

² The District's Sexual Harassment and Discrimination Policies and Procedures consist of: { } ACA- Student Concerns, Complaints, and Grievances, (2) ACA-R- Student Concerns, Complaints, and Grievances, (3) ACA-E – Sexual Harassment Complaint form, (4) ACB – Hostile Environment Harassment, (5) ACB-R-Hostile Environment Harassment, (6) ACB-E-Hostile Environment Harassment Complaint Form, (7) GBA-EEO – Notice of Non-Discrimination Policy, (8) GBA-R-EEO Complaint Procedures, (9) GBA-E-EEO Complaint Form, (10) JB-Equal Educational Opportunities – Non-Discrimination Policy, (11) JB-R- EEO, (12) JB-E-EEO Complaint Form, (13) JICK Policy, (14) JICL- Dating Abuse, (15) JH- Student Concerns, Complaints, and Grievances, (16) JII-RA - Investigative procedures, (17) JII-RB- Non-Discrimination, (18) JII-EA-Complaint Form, (19) JII-EB- Student Concerns, Complaints, and Grievances, and JK-RD- Student Discipline .

promptly investigate all incidents of sexual harassment of which the District has notice; and provides that the District will take appropriate disciplinary action against students, faculty, and staff who violate the District policies and procedures addressing sexual harassment.

We note, however, that the District's Sexual Harassment Complaint policies and grievance procedures are difficult to navigate and contain contradictory information, making it difficult for interested parties and School personnel to understand which policy the District applies when it receives and investigates Title IX discrimination complaints. For instance, Policy JII-RA "Student Concerns, Complaints and Grievances," restricts victim or others to file a complaint within 30 days, whereas, policy JII-RB titled "Non-Discrimination," does not require a complaint to be in writing or require a 30 day timeframe to file a complaint. Also, Policy JII-EB, titled "Student Concerns, Complaints and Grievances," restricts complaint submissions to a complaint form; and Policy JH, titled "Student Concerns, Complaints and Grievances," indicates that staff will inform parents and students what complaint form to use to initiate a complaint. Additionally, Policy JII-RA states that complaints can be filed with the Superintendent, administrator, or someone approved by the administrator; whereas Policy JII-EB states that complaints must be filed with a school administrator or a school staff member. Further, Policy JKD-R, titled "Student Discipline", provides an appeal process for the perpetrator if there is a long-term suspension or expulsion involved in the disciplinary action; however, none of the policies indicate that an appeal process is available to the victim.

The District's grievance procedures also do not: indicate that the District provides parties the opportunity to present witnesses and other evidence; indicate that the District will determine the remedial actions necessary to address and resolve an incident; provide the assurance that the District will take prompt and effective responsive action to end sexual harassment and prevent its recurrence; indicate that both parties will receive a written notice of the findings, the final decision, and the reasons for final decision; or contain a notice of the victim's right to choose to report to campus or local law enforcement, and that reporting to law enforcement does not relieve the District of its duty to respond promptly and effectively. Further, the policies do not provide interim measures such as protection to the victim even before the completion of investigation. Policy JII-RB, Student Concerns, Complaints and Grievances addresses corrective measures for the accused individual in accordance with the District's discipline policies; however, Policy JII-RB and the other relevant policies do not provide strategies to protect the individual subject to the harassment and witnesses from retaliation, or indicate that counseling, academic resources, and other steps taken will be available to address any impact on the individual.

Therefore, we have determined that the District's Sexual Harassment policies and procedures do not provide for a prompt and equitable resolution of complaints, and that the District is not in compliance with Title IX on this issue.

Title IX coordinator

The Title IX regulation, at 34 C.F.R § 106.8(a), requires that recipients designate at least one employee to coordinate compliance with the regulations, including coordination of investigations of complaints alleging noncompliance. This provision further requires that the recipients notify all of its students and employees of the name (or title), office address, and telephone number of the employee(s) so designated. In addition, recipients must notify all students and employees of the email address of the Title IX Coordinator(s) and include complete and current information about the Title IX Coordinator on its website. A recipient must ensure that employees designated to serve as Title IX coordinators have

adequate training or experience in handling sexual harassment complaints and in the operation of the recipient's grievance procedures.

The Complainant stated that she had difficulty locating the identity, name, title, and contact information for the District's Title IX Compliance Officer and its designated Title IX Coordinators that handle complaints of sexual harassment. She stated that she could not locate this information on the District's website.

In summary, during our review of the District's website and Sexual Harassment Complaint policies and grievance procedures, we found a number of inconsistencies in the complaint procedures which are not consistent with Title IX's requirement to notify all of its students and employees of the name (or title), office address, and telephone number of the employee(s) so designated. The information provided by the District is confusing because some policies only identify the Superintendent as its Title IX Compliance Officer without clarifying whether the Associate Superintendents and Athletic Directors at each school, who are identified in other documents and on the District's website, as employees who also have responsibilities as Title IX coordinators, are available to students as responsible for investigating and handling inquiries about sexual discrimination complaints. Additionally, the District's Sexual Harassment Complaint policies and grievance procedures, Student Handbook, and other publications, are not consistent in providing the name, title, and contact information for the designated Title IX coordinators, as required. Further, based on a review of each school's website, we could not locate the name, title, or contact information of the athletic director who is the designated Title IX Coordinators at that specific school.

Regarding the location of the Non-Discrimination notice, the District reported that since the filing of this OCR complaint, it determined that the location of the specific name and title of its Title IX Compliance Officer and designated Title IX Coordinators at each school site was not easily accessible to the general public. The District has since updated the District website, adding a link to the District's Non-Discrimination notice on the enrollment and attendance map website. The link contains the specific names of the District's Title IX Coordinator Officer, in addition to notice that Athletic Directors at each school site are designated as the schools' Title IX Coordinators. However, this is still not a location that parents, students, and staff would know to navigate to in order to view the notice of the Title IX Compliance Officer and designated Title IX Coordinators.

Therefore, there is sufficient evidence to support a conclusion of noncompliance with Title IX and its implementing regulation regarding the requirement to provide notice of the District's designated Title IX Coordinator(s).

Conclusion

We find that the District violated Title IX procedural requirements. Based on the commitments made in the enclosed Resolution Agreement, OCR is closing the investigation of this complaint as of the date of this letter, and we are notifying the Complainant of our findings and the Agreement. When fully implemented, the Resolution Agreement is intended to address all of OCR's compliance concerns identified in this investigation. OCR will monitor the implementation of the Agreement until the District is in compliance with the Title IX and its implementing regulation, which were at issue in the 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.

It is unlawful to harass, coerce, intimidate or discriminate against any individual who has filed a complaint, assisted in a compliance review, or participated in actions to secure protected rights. Under the Freedom of Information Act, this document and related records may be released upon request or made public by the United States. In the event that the United States receives such a request or intends to make these documents public, the respective agency will seek to protect, to the extent provided by law, personal information that if released could reasonably be expected to constitute an unwarranted invasion of personal privacy.

We thank the District for its cooperation during this investigation. If you have any questions regarding this letter, please contact Rachel Phillips-Cox, Equal Opportunity Specialist and the primary contact for this case, at 303-844-4559, or by email at Rachel.Phillips-Cox@ed.gov.

Sincerely,

/s/

Angela Martinez-Gonzalez
Supervisory General Attorney

Enclosure: Resolution Agreement

cc: XXX XXX
District Legal Representative (via electronic copy)

Diane Douglas
Arizona Superintendent of Public Instruction