



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1244 SPEER BLVD, SUITE 310
DENVER, CO 80204-3582

REGION VIII
ARIZONA
COLORADO
NEW MEXICO
UTAH
WYOMING

January 19, 2017

Dr. Christina M. Kishimoto
Superintendent
Gilbert Public Schools
140 S. Gilbert Rd.
Gilbert, AZ 85296

Re: Gilbert Public Schools
OCR Case Number: 08-16-1384

Dear Dr. Kishimoto:

On June 21, 2016, we accepted for investigation a complaint alleging that Gilbert Public Schools (District) discriminated on the basis of sex. Specifically, the complainant alleged that the District failed to provide a prompt and equitable response to her internal complaint regarding sexual harassment of her daughter by another student xxxxx.

We initiated an investigation under the authority of Title IX and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in education programs and activities that receive Federal financial assistance from the U.S. Department of Education. As a recipient of Federal financial assistance from the Department, the District is subject to this law and regulation.

During the investigation, but before completed the investigation, the District expressed a willingness to resolve the complainant's allegations without further investigation, and to enter into a voluntary Resolution Agreement pursuant to Section 302 of OCR's *Case Processing Manual (CPM)*. We determined that this was appropriate. However, we also explained that our review of the District's sexual harassment policies and procedures, as well as its Title IX notice of coordinator, revealed compliance concerns which are described in this letter. The District also voluntarily agreed to resolve these compliance concerns. Pursuant to our *CPM*, resolution options were discussed with the District, and it has agreed to enter into the enclosed Resolution Agreement. The bases for our findings are explained below.

The regulation implementing Title IX, at 34 C.F.R. § 106.31(a), provides that no person 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 operated by a recipient. Sexual harassment that creates a hostile environment is a form of sex discrimination prohibited by Title IX.

The Title IX regulation, at 34 C.F.R. § 106.8(b), requires recipients to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints alleging

any action that would be prohibited by Title IX, including sex discrimination, sexual harassment, and sexual assault/violence.

The Title IX regulation, at 34 C.F.R. § 106.8(a), requires that a recipient designate at least one employee to coordinate its responsibilities to comply with and carry out its responsibilities under that law. The recipient is further required, by the Title IX implementing regulation at 34 C.F.R. § 106.9(a), to notify all students and employees of the name (or title), office address, and telephone number of the designated employee(s).

As we previously indicated, our review of the District's sexual harassment policies and procedures, as well as its notice of coordinator revealed compliance concerns. Specifically, we found that the District did not identify the Title IX coordinator by name, office address and telephone number.

Additionally, we found that while the District's sexual harassment policies and grievance procedures contain many of the items required by Title IX, they do not provide for all of the requirements including the following:

- Accurate information about where and to whom complaints should be filed;
- Application of the procedures to complaints alleging discrimination or harassment carried out by third parties;
- An assurance that the District will conduct an adequate, reliable, and impartial investigation, including an equal opportunity to present witnesses and relevant evidence;
- Written notice to the parties of the outcome of the complaint and any appeal; and
- An assurance that the institution will take steps to prevent recurrence of any sex discrimination or harassment found to have occurred, and to correct its discriminatory effects on the complainant and others if appropriate.

In addition, the District's policies and procedures lack the following items that should be included:

- Steps to protect the complainant as necessary, including interim steps before the final outcome of the recipient's investigation;
- A statement that a preponderance of the evidence standard will be used for all sexual harassment investigations;
- An equal opportunity for both the reporting party and alleged perpetrator to appeal;
- Notification of the right to proceed with a criminal investigation and a Title IX complaint simultaneously;
- No prohibition against conflicts of interest by those implementing the procedures;
- Inform students at regular intervals of the status of the investigation; and
- Disallow evidence of past relationships.

Because the District's policies and procedures lack many of the required provisions and its Title IX coordinator is not properly identified in its notice, we find that the District is in noncompliance with 34 C.F.R. § 106.8(a) and (b).

As previously stated, during the investigation, but before we completed the investigation, the District expressed a willingness to resolve the complainant's allegations by entering into a voluntary resolution agreement pursuant to Section 302 of OCR's *CPM*. The District also agreed to voluntarily resolve the procedural violations found in this investigation. On January 10, 2017, it voluntarily entered into a Resolution Agreement, a signed copy of which is enclosed. OCR will monitor the implementation of the Agreement. When the Agreement is fully implemented, all allegations will be resolved consistent with the requirements of Title IX and its implementing regulation. A failure to implement the Agreement according to its terms would require us to reopen the case for further proceedings.

The provisions of the Agreement are aligned with the issues raised in the complaint and are consistent with the applicable regulations. The Agreement requires the District to revise its Title IX sexual harassment procedures and notice of its coordinator; provide training to staff; investigate the Complainant's internal grievances, including a requirement that the investigation report must demonstrate that the District gathered information from relevant individuals; conducted relevant interviews with District staff, the Student, and any other witnesses; applied appropriate legal standards, including a determination whether any sexual harassment created a hostile environment; and proposed appropriate remedies to resolve any sexual harassment found and to eliminate a hostile environment, prevent its recurrence, and remedy its effects.

This concludes our investigation of this complaint. We will continue to monitor the District's compliance with the Agreement until all the terms are satisfied. This letter addresses only the issues listed above and should not be interpreted as a determination of the District's compliance or noncompliance with Title IX or any other federal law in any other respect. Accordingly, we are closing the investigation of this complaint effective the date of this letter.

This letter sets forth OCR's determination in an individual 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.

OCR routinely advises recipients of Federal funds and public educational entities that Federal regulations prohibit intimidation, harassment, or retaliation against those filing complaints with OCR and those participating in a complaint investigation. Complainants and participants who feel that such actions have occurred may file a separate complaint with OCR. Additionally, complainants have a right to file a private suit in Federal court whether or not OCR finds a violation.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will protect personal information to the extent provided by law.

Dr. Kishimoto
OCR Case Number 08-16-1384
Page 4 of 4

We thank you for the District's cooperation in this matter, and the assistance of the District's counsel. If you have any questions regarding this letter, please feel free to contact me, the attorney assigned to this case at (303) 844-4556 or by email at ginger.yee@ed.gov

Sincerely,

/s/

/s/

Ginger Yee

Senior Attorney and Designated Team Leader

Enclosure – Copy of Resolution Agreement

Cc: Counsel for the District

Diane Douglas, Arizona Superintendent of Public Instruction