



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

50 BEALE ST., SUITE 7200
SAN FRANCISCO, CA 94105

REGION IX
CALIFORNIA

May 18, 2015

Michael Chimente
Superintendent
Bret Harte Union High School District
323 S. Main St - P.O. Box 7000
Angels Camp, California 95221

(In reply, please refer to case no. 09-15-1102.)

Dear Superintendent Chimente:

The San Francisco Office for Civil Rights (OCR) has resolved the above referenced complaint against the Bret Harte Union High School District (District). OCR investigated whether a District staff person subjected students to sexual harassment and the District failed to take reasonable steps to prevent the recurrence of harassment.¹

OCR enforces Title IX of the Education Amendments of 1972 which prohibits discrimination on the basis of sex in programs and activities operated by recipients of Federal financial assistance. The District receives funds from the Department and is a public education entity. Therefore the Recipient is subjected to laws and regulations enforced by OCR.

OCR gathered evidence through interviews with the complainants, students, and you (XXX XXXXXXXXXXXX XXX XXXX XXXXXX XX XXX XXXXXXXXXXXXXXXXXXXX). OCR also reviewed documents submitted by the complainants and the District. However, prior to the end of OCR's investigation, the District expressed an interest in resolving this complaint voluntarily through a Resolution Agreement. Therefore, OCR did not complete its investigation and reach conclusions regarding the District's compliance with Title IX. However, this letter summarizes the applicable legal standards, the information gathered by OCR, and how the District is voluntarily resolving the issues raised in the complaint.

Legal Standards

Title IX and its implementing regulations, 34 C.F.R. Part 106, prohibit discrimination on the basis of sex in education programs or activities operated by recipients of Federal financial assistance. Sexual harassment is unwelcome conduct of a sexual nature and

¹ OCR notified the District of the identities of the complainants and the students when the investigation was initiated. We are withholding their names from this letter to protect their privacy.

is a form of sex discrimination prohibited by Title IX. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature.

Sexual harassment of a student can result in the denial or limitation, on the basis of sex, of the student's ability to participate in or receive education benefits, services, or opportunities. When a student sexually harasses another student, the harassing conduct creates a hostile environment if the conduct is sufficiently serious to interfere with or limit a student's ability to participate in or benefit from the school's program. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the harassment is physical. Indeed, a single or isolated incident of sexual harassment may create a hostile environment if the incident is sufficiently severe. For instance, a single instance of rape is sufficiently severe to create a hostile environment.

Under Title IX and the regulations, once a school district has notice of possible sexual harassment between students, it is responsible for determining what occurred and responding appropriately. The district is not responsible for the actions of the harassing student, but rather for its own discrimination in failing to respond adequately. A school district may violate Title IX and the regulations if: (1) the harassing conduct is sufficiently serious to deny or limit the student's ability to participate in or benefit from the educational program; (2) the district knew or reasonably should have known about the harassment; and (3) the school district fails to take appropriate responsive action. These steps are the district's responsibility whether or not the student who was harassed makes a complaint or otherwise asks the district to take action.

OCR evaluates the appropriateness of the responsive action by assessing whether it was prompt, thorough, and effective. What constitutes a reasonable response to harassment will differ depending upon the circumstances. However, in all cases the district must conduct a prompt, thorough, reliable and impartial inquiry. If harassment is found, it should take reasonable, timely, age-appropriate, and effective corrective action, including steps tailored to the specific situation. The response must be designed to stop the harassment, eliminate the hostile environment, and remedy the effects of the harassment on the student who was harassed. The district must also take steps to prevent the harassment from recurring, including disciplining the harasser where appropriate. A series of escalating consequences may be necessary if the initial steps are ineffective in stopping the harassment.

Other actions may be necessary to address sexual harassment. These may include special training or other interventions, the dissemination of information, new policies, and/or other steps that are designed to clearly communicate the message that the district does not tolerate harassment and will be responsive to any student reports of harassment. The district also should take steps to prevent any retaliation against the student who made the complaint or those who provided information.

In addition, the Title IX regulations establish procedural requirements that are important for the prevention and correction of sex discrimination, including sexual harassment. These requirements include issuance of a policy against sex discrimination (34 C.F.R. § 106.9) and adoption and publication of grievance procedures providing for the prompt and equitable resolution of complaints of sex discrimination (34 C.F.R. § 106.8[b]). The regulations also require that recipients designate at least one employee to coordinate compliance with the regulations, including coordination of investigations of complaints alleging noncompliance (34 C.F.R. § 106.8[a]).

OCR examines a number of factors in evaluating whether a recipient's grievance procedures are prompt and equitable, including whether the procedures provide for the following: notice of the procedure to students and employees, including where to file complaints; application of the procedure to complaints alleging harassment by employees, other students, or third parties; adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; designated and reasonably prompt timeframes for major stages of the complaint process; written notice to the parties of the outcome of the complaint; and an assurance that steps will be taken to prevent recurrence of any harassment and to correct its discriminatory effects.

OCR's partial investigation showed the following:

- The complaint alleges that a XXXXXXXXXXXX coach made a comment to a group of students about a student on his XXXXXXXXXXXX team that was sexual in nature; the complaint states that this comment was sexually harassing and created a hostile environment on the basis of sex when it was repeated to the target student by other students on the team. The complaint states that when the District was provided notice of the coach's comment, the District failed to conduct an adequate, reliable and impartial investigation.
- Student 1 is female and a member of the high school XXXXXXXXXXXX team; Student 2 is her boyfriend and is on the school XXXXXXXXXXXX team.
- In August 2014, Student 1 was dropped off by Student 2 at school early on a Saturday morning so that she could get on the team bus to attend a XXXXXXXXXXXX tournament. The complaint made in writing to the District alleges that the coach made a comment directed to the XXXXXXXXXXXX team in the van and out of earshot of Student 1 stating, "I wonder how many touchdowns Student 2 scored and I hope she (Student 1) can walk today."
- Student 1 heard about the comment from her teammates during the XXXXXXXXXXXX tournament and one player eventually admitted that the comment was made by the coach and was made about her. When Student 1 learned about what was said, she was embarrassed and upset and reported it to her mother. The complainant immediately reported the comment to the school principal.

- OCR received documentation from the District and the information showed that the District hired a private investigator to conduct the investigation. OCR received a copy of the report and it stated that the comment made by the coach did not constitute sexual harassment. Additionally, as described in the District report, stated that the comment reported by the complainant was as follows: “how many touchdowns did Student 2 make last night.”
- The investigator’s conclusion of no evidence of sexual harassment was based on the fact that the coach was “honest and forthright” in admitting that he regretted making the comment. The coach told the investigator that he made the comment because he was concerned that Student 1 may have had “sexual relations with Student 2.” The investigator considered this admission as credible evidence that the coach intended no “inappropriate sexual overtone.” The investigator did not interview other members of the team to consider possible hostile environment because Student 1 specifically requested that he not do so.
- The investigator also considered other allegations against the coach by Student 1’s parent, specifically that he made comments about Student’s 1 clothing and appearance. The investigator concluded that the comments were related to dress code and were appropriately delivered. He stated that Student 1 did not feel that these comments were inappropriate or harassing on the basis of sex.
- Student 1 told OCR that she remembers talking to an investigator about her mother’s complaint and stated that she told the investigator that she felt uncomfortable with him asking her teammates about the situation because it was during XXXXXXXXXX season and she did not want unnecessary distractions. She described two other comments that the coach has made to her that made her feel “uncomfortable.” The first was last year when he asked her to pull up her shirt to “cover up” because part of her breast was showing. The second was when she was taking a team picture and was dressed up in a dress. He said something like her “boyfriend would like the picture.” She told OCR that she found out about the “touchdown” comment while at the tournament. One of her friends asked her about how many touchdowns her boyfriend scored last night while other teammates were laughing. Eventually, one of her friends explained what the comment was about. Student 1 did not report other students discussing this around her or referring to this comment at any other time.
- Student 2 told OCR that he was unaware of any commentary or other kind of harassment against him by other students based on the coach’s comment. He had heard about the comment from Student 1’s mother. He felt that the comment made by the coach had sexual implications and he felt it sexually harassing to him. But he reported no other students teasing him or hearing about this comment from anywhere else.

- On January XX, 2015, the superintendent sent the coach a letter of reprimand based on the incident. The letter details concerns regarding the comments made about Student 1's clothing and appearance and the comment made before the tournament. The superintendent concluded that based on the investigation, the comment about the Student 1's appearance was inappropriate and the "touchdown" comment was inappropriate and unprofessional. The superintendent stated that the coach was correct in immediately recognizing the comment was inappropriate at the time but should have stopped the team from discussing his comment. The superintendent also states that the coach's letter of apology to the student and her parents was inadequate because it contained an inaccurate date and contained grammatical errors. The letter instructs the coach to cease all discussions with students about non-educational subjects (e.g. their personal or dating life). Further it directs him to complete a sexual harassment program and informs him that he will be assigned a female assistant when he coaches.

Resolution Agreement

OCR and the District have been engaged in several discussions regarding the adequacy of the District's investigation and subsequent response; OCR expressed concerns that the investigator did not apply the appropriate legal standard regarding sexual harassment and the creation of a hostile environment in coming to the conclusion that the coach's comment did not constitute sexual harassment. OCR was unable to interview the investigator regarding his investigation because he is deceased. Prior to the conclusion of OCR's investigation, the District expressed an interest in resolving this complaint voluntarily. The District submitted a signed Resolution Agreement (Agreement) on May 18, 2015. Pursuant to the Agreement, the District will:

- Re-examine its investigation in accordance with Title IX, and reconsider its sanction against the coach;
- Provide new notice to the complainants on its findings and offer to conduct a meeting with Students 1 and 2 to explore other possible remedies;
- Revise its Title IX policies and procedures consistent with Title IX requirements; and
- Train staff and students on District policies and Title IX legal standards.

OCR has determined that full implementation of the Agreement will resolve the issues raised in this complaint. OCR is therefore closing the investigative phase of this complaint. The District has agreed to provide data and other information demonstrating implementation of the Resolution Agreement in a timely manner in accordance with the reporting requirements of the Agreement. OCR may conduct additional visits and request additional information as necessary to determine whether the District has fulfilled the terms of the resolution agreement and is in compliance with Title IX and its

implementing regulation, with regard to the issues under review. OCR will monitor the District's implementation of the resolution agreement and will not close the monitoring of this agreement until the District has complied with its terms and is in compliance with Title IX.

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 or Student may file another complaint alleging such treatment.

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

If you have any questions about this letter, please contact Ava De Almeida Law, Investigator, at (415) 486-5513 or Nancy Li, Investigator, at (415) 486-5530.

Sincerely,

/s/

Sara Berman
Team Leader

Attachment