



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGION IX
CALIFORNIA

50 UNITED NATIONS PLAZA
MAIL BOX 1200; ROOM 1545
SAN FRANCISCO, CA 94102

March 15, 2017

Kent Kern, Superintendent
San Juan Unified School District
3738 Walnut Avenue
Carmichael, CA 95608

(In reply, please refer to case no. 09-16-1345.)

Dear Superintendent Kern:

This letter is to notify you that the U.S. Department of Education (Department), Office for Civil Rights (OCR) has completed its investigation of a complaint filed against the San Juan Unified School District (District). The Complainant, the parent of a student (Student)¹ in the District, alleged that students were subjected to discrimination on the basis of sex at Casa Roble High School (School). OCR investigated the following:

1. Whether the District created a hostile environment for students at the School by sponsoring, sanctioning, and participating in a rally on March 11, 2016; and
2. Whether the District failed to respond promptly and equitably to notice of gender-based peer harassment against the Student on the day of the school-sponsored rally on March 11, 2016, and whether the failure to respond resulted in a hostile environment for the Student and/or other students at the school.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 *et seq.*, and its implementing regulations, which prohibit discrimination on the basis of sex, including sexual and gender-based harassment, in education programs or activities operated by recipients of Federal financial assistance. The District receives funds from the Department, and is subject to Title IX and its implementing regulations.

To investigate this complaint, OCR gathered evidence by reviewing documents provided by the District, and by interviewing the Complainant and Student. Before the investigation was concluded, the District expressed an interest in resolving the allegations, and OCR determined that it was appropriate to resolve them with a Resolution Agreement (Agreement) reached during the course of an investigation.² Accordingly, OCR did not make a compliance determination. This letter summarizes the applicable legal standards, relevant facts obtained during the investigation to date, and resolution of the complaint.

¹ OCR informed the District of the Complainant's and Student's identities at the beginning of the investigation. Their identities are withheld in this letter in order to protect their privacy.

² See Section 302 of OCR's Case Processing Manual (CPM). The CPM is available at <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

Legal Standards

Under Title IX, “[n]o person in the United States 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 receiving Federal financial assistance.” 20 U.S.C. § 1681(a). A district may not treat individuals differently on the basis of sex with regard to any aspect of services, benefits, or opportunities it provides, 34 C.F.R. §§ 106.31(a)-(b), or subject students to separate or different rules of behavior, sanctions, or other treatment, 34 C.F.R. § 106.31(b)(4). All students are protected from sex-based discrimination under Title IX.

Harassment of a student on the basis of sex can result in the denial or limitation of the student’s ability to participate in or receive education benefits, services, or opportunities. Title IX prohibits discrimination resulting from harassment that is gender-based or based on sex-stereotyping. Such harassment may include verbal or nonverbal acts, or physical aggression, intimidation, or hostility based on sex or sex stereotyping. Thus, harassment of students for failing to conform to stereotypical notions of masculinity and femininity constitutes sex discrimination.

When a student or third party harasses another student on the basis of gender, the harassing conduct creates a hostile environment if the conduct is sufficiently serious – severe, persistent, or pervasive – that it interferes with or limits a student’s ability to participate in or benefit from the recipient’s program. In determining whether a hostile environment has been created, OCR considers the totality of the circumstances, including the type of harassment; the degree to which the conduct affected one or more students’ education; the context, nature, scope, frequency and severity of the conduct; the location of the harassing incidents; and the identity, age, number, and relationships of the persons involved. The conduct is assessed from both a subjective and objective perspective.

School districts provide program benefits, services, and opportunities to students through the responsibilities given to employees. If an employee who is acting, or reasonably appears to be acting, in the context of carrying out these responsibilities engages in harassment on the basis of sex that is sufficiently serious to deny or limit a student’s ability to participate in or benefit from the program, the district is responsible for the discriminatory conduct whether or not it has notice.

The Title IX regulation establishes procedural requirements that are important for the prevention and correction of sex discrimination, including gender-based harassment. These requirements include 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]).

Title IX requires the recipient to respond upon notice of the conduct in a prompt and equitable manner regardless of whether a student has complained, asked the recipient to take action, or identified harassment as a form of discrimination. To meet its duty to respond in a prompt and equitable manner to a hostile environment based on sex or gender, a recipient must take immediate action to eliminate the harassment, prevent its recurrence, and address its effects. If, upon actual or constructive notice, a recipient delays responding to allegations of harassment on

the basis of sex or gender or responds inappropriately, the recipient's own action may subject a student(s) to a hostile environment. If it does, the recipient will be required to remedy the effects of both the initial harassment on the basis of sex or gender and the effects of the recipient's failure to respond promptly and appropriately.

Facts Gathered To Date

The Student is a male student who was enrolled in the School during the 2015-2016 school year. On March 11, 2016, the School held a rally in the gym during school hours with students, teachers, and administrators in attendance. The District stated in its written response to OCR's data request that the rally was part of the School's AWARE Week; AWARE was an acronym for "All Weeks Activities Reflect Equality."

According to the Complainant and Student, student attendance at the rally was mandatory. Male students were required to wear blue shirts and female students were required to wear pink shirts, and students were required to separate by gender, with boys on one side of the gym and girls on the other. The Student borrowed a pink shirt to wear for the day of the rally. The Complainant and Student told OCR that the gym was decorated with blue and pink balloons and streamers, and there were signs and posters, which stated, for example, "Boys go to Jupiter to get more stupider", "Meninists", "Boys rule", and a poster listing jobs that begin with the word "man" such as "manager" followed by "enough said." The Complainant provided a photo to OCR which showed a group of male students seated on bleachers with a poster behind them that reads "who makes the money?" The Complainant and Student also alleged that students played a "boys versus girls" game in which students answered questions based on sex stereotypes.

The District provided a narrative and other documentation related to the rally. According to the District's response, the rally lasted 45 minutes and boys and girls separated by gender "by choice." No dress requirements were included in the District's documentation. The District provided OCR with a copy of the schedule for the rally consisting of several events including: the national anthem; a rally skit/dance, where both boys and girls did "the same moves to show equality"; class chants about "our world is for everyone"; a shoe-finding game; a GLEE club performance; a trivia game; a dance team performance; and musical chairs. The schedule also stated that students were required to be in the gymnasium for the entire rally and would not be allowed to leave until it was completed. The District did not retain rally posters and signs.

The District provided OCR a copy of the questions and answers for the trivia game entitled "Boys vs. Girls 2016 Rally Trivia". The twenty questions were related to pop culture, sports, and fashion and included, for example, "What sportscaster posted an NFL record of 103-22-7?" and "What are the names of Taylor Swift's cats?"

The Student told OCR that in one of his classes before the rally, other male students called him "faggot," "gender bender," "traitor," and "not a man," and that he believed they did so because he was wearing a pink shirt. The Student told OCR that the teacher heard these statements, and that she told one of the students to "stop saying those things." The Student told OCR that later that day at the rally, a male student told him to "get that faggot ass gay shit away from me," and that several other boys refused to let the Student sit near them because of his pink shirt. The

Student told OCR that another boy student pushed him to keep the Student from sitting near him, but the Student pushed past him and sat down. The Student told OCR that one of the boys who participated in refusing to allow the Student to sit down was the same student from his class who had called him names earlier in the day.

When asked by OCR about the impact of these events on him, the Student told OCR that he knew that the events of the day were offensive, but that he was not personally affected. However, several other students told him and/or the Complainant that they were “very distressed” and/or “very upset” by what had occurred at the rally.

The Complainant and Student informed OCR that they did not complain to the District because the School sanctioned the event, School administrators participated in the event, and they did not believe that the District would provide an appropriate response. The District told OCR that no one at the School or at the District received a complaint about the rally.

Analysis

With respect to the first allegation, because the District sanctioned, promoted and required student participation in the event, if the facts as alleged by the Complainant and the Student are true, a reasonable student might have been subjected to a hostile environment on the basis of sex. With respect to the second allegation, the District has an obligation to respond promptly and equitably to potential peer-to-peer harassment on the basis of sex of which it reasonably knew or should have known. School staff and administrators were present at the rally at which the Student alleged that he was pushed, taunted, and called slurs. The Student alleged that a teacher had notice that he had been called slurs earlier in the day, and the teacher’s response was allegedly not effective in preventing further harassment of the Student at the rally later in the day. The Student reported that his educational experience was not limited as a result. However, the Student alleges that he was targeted based on his decision to wear a gender nonconforming shirt, and a reasonable student could find that the language and conduct that he experienced were both unwelcome and offensive. Under these circumstances, the District has an obligation to respond promptly and equitably to potential harassment on the basis of sex of which it reasonably knows or should have known, regardless of whether a complaint is made. Accordingly, OCR identified a deficiency in that the District may have had notice of potential harassment on the basis of sex but may not have discharged its duty to provide a prompt and equitable response to such notice.

Prior to completing the investigation, the District expressed an interest in voluntarily resolving both allegations, and OCR determined that it was appropriate to do so. To reach a compliance determination, OCR would need to interview students, administrators, and staff, including the teacher who the Student alleged witnessed the harassing statements in class. Accordingly, OCR did not make a compliance determination with respect to either allegation.

Conclusion

On March 15, 2017, the District entered into the enclosed Agreement with OCR that is aligned with the allegations investigated, and the information obtained by OCR during the investigation.

In summary, the Agreement requires the District to (1) prepare a memorandum to be distributed to District and School staff regarding the prohibition of discrimination, including harassment under Title IX; (2) train District administrators and the School's administrators, staff, and teachers during the 2017-2018 year regarding Title IX; (3) provide training to all students in the School regarding discrimination on the basis of sex and gender, including harassment based on sex stereotyping; and (4) establish a School Climate Task Force to promote a positive and informed educational climate free from sex and gender based harassment or discrimination at the School. OCR will monitor the implementation of the Agreement until the District is in compliance with Title IX, 20 U.S.C. § 1681(a), and its implementing regulations, 34 C.F.R. §§ 106.31(a)-(b) and 34 C.F.R. § 106.31(b)(4).

This concludes OCR's investigation of the complaint and 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. OCR is closing the investigation of this complaint as of the date of this letter, and notifying the Complainant concurrently. 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, retaliate, 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.

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, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

OCR would like to thank the District for its assistance in resolving this complaint. In particular, we appreciate the assistance of General Counsel Linda Simlick. If you have any questions please contact OCR attorneys Laura Welp at 415-486-5577 or laura.welp@ed.gov, or Matthew Wood at 415-486-5591 or matthew.wood@ed.gov.

Sincerely,

/s/

Kendra Fox-Davis
Team Leader

Enclosure

Cc: Linda Simlick, Esq.
Via email only