

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

5 POST OFFICE SQUARE, 8TH FLOOR
BOSTON, MASSACHUSETTS 02109-3921



Dr. Salvatore F. Menzo
Superintendent of Schools
Wallingford Board of Education
142 Hope Hill Road
Wallingford, Connecticut 06492

Re: Complaint No. 01-13-1204
Wallingford Board of Education

Dear Superintendent Menzo:

This letter is to inform you that the U.S. Department of Education, Office for Civil Rights (OCR) is closing the investigative phase of the above-referenced complaint that was filed against the Wallingford Board of Education (District) alleging discrimination on the basis of sex and retaliation, because the District has agreed to resolve this complaint on terms that OCR has found to be acceptable. Below you will find a brief factual summary of the case leading to this resolution, as well as OCR's expectations for monitoring the District's compliance with the agreed-upon terms.

As you know, the Complainant alleged that the District failed to adequately respond to her complaints that the Student had been subjected to peer sexual harassment and a sexually hostile environment, including student-on-student retaliation, XXXXXXXXXXXXXXXXXXXX at school during the spring of 2013. The Complainant also alleged that the District failed to provide her with information on how to contact the District's Title IX Coordinator, and failed to inform her of the outcome of its investigation into her concerns.

OCR opened this complaint for investigation under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq., and its implementing regulation found at 34 C.F.R. Part 106 (Title IX), which OCR enforces. Title IX broadly prohibits sex discrimination, including prohibitions against sexual harassment and assault, by educational institutions that receive Federal funding. The District is subject to the requirements of Title IX because it is a recipient of Federal funding from the U.S. Department of Education. Title IX also prohibits the District from retaliating against individuals for asserting rights protected under our regulations. Additional information about the laws OCR enforces is available at: <http://www.ed.gov/ocr>.

OCR formally opened for investigation the following issues:

- 1) Whether the District failed to designate one or more employees to coordinate its efforts to comply with Title IX and its implementing regulation; and whether the District failed to notify students, employees, and interested parties of such a designation, in violation of 34 C.F.R. Section 106.8(a);
- 2) Whether the District failed to adopt and publish grievance procedures that provide for a prompt and equitable resolution of complaints of sex discrimination, in violation of 34 C.F.R. Section 106.8(b); and

- 3) Whether the District, once on notice of possible sexual harassment at its middle school and on the Student's XXXXXXX, failed to promptly and equitably respond to allegations of sexual harassment/assault, in violation of 34 C.F.R. Section 106.8(b).

With regard to issue #2, in response to a compliance concern OCR identified during our preliminary investigation, the District agreed to take corrective action steps outlined in the enclosed Agreement. With regard to issues #1 and 3, prior to the conclusion of this investigation, the District requested to resolve these allegations and agreed to take the action steps also outlined in the enclosed Agreement.

Legal Standards

School districts are responsible for providing students with a non-discriminatory educational environment. 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." (See 20 U.S.C. §1681(a).) All students are protected from sex-based discrimination under Title IX. Harassment of a student on the basis of sex that results in the denial or limitation of the student's ability to participate in or receive education benefits, services, or opportunities can constitute a hostile environment, to which a school district may have an obligation to respond under Title IX. Title IX prohibits both harassment that is sexual in nature and gender-based harassment.

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 a harassing student, but rather for its own potential 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 district fails to take appropriate responsive 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 circumstances. However, in all cases the response must be tailored to stop the harassment, eliminate the hostile environment if one has been created, and, where appropriate, to address the problems experienced by the student who was harassed. The district must also take steps to prevent the harassment from recurring, including disciplining the harasser where appropriate. 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.

The Title IX regulations also establish procedural requirements that are important for the prevention and correction of sex discrimination. 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 non-compliance (34 C.F.R. §106.8(a)). That individual must take responsibility for overseeing Title IX complaints and identifying and addressing any patterns or systemic problems that are identified during the review of such complaints, and should be available to meet with students as needed. That individual must also be trained on sexual harassment, including sexual violence, and trained to understand how the institution's grievance procedures operate.

Background and Analysis

Title IX policies and procedures

OCR requested and reviewed the District's Title IX sexual harassment policy and complaint procedures that were in effect at the time of this investigation. OCR found that the District had its full-length Title IX sexual harassment

policy and complaint procedure posted on its website (District Policy JFHA and related complaint procedure JFHA-R). An abbreviated version of this policy was also included on page 32 of the School student handbook. Students and parents were also provided with annual notice of the policies and procedures.

OCR reviewed the policy and related complaint procedure and noted that on their face, they appeared to satisfy some, but not all, of the prompt and equitable requirements of the Title IX regulations, and related guidance. Specifically, the policy included: a notice of prohibition against sexual harassment; and a definition of sexual harassment, including verbal, non-verbal, and physical harassment (including assault, although there was not explicit reference to sexual assault); it also provided notice to students, parents, and employees of the complaint procedures, including where complaints may be filed (though this was relatively general – the procedure stated that they could be filed with the Principal or a professional staff member). The District’s complaint procedures also indicated application of the procedures to complaints alleging harassment carried out by employees and other students. The procedures generally provided for adequate, reliable and impartial investigation of complaints, including the opportunity to present witnesses (they, however, did not provide for the respondent to present witnesses) and other evidence, and designated and reasonably prompt time frames for the major stages of the complaint process. The procedures also included notice to the parties of the outcome of the complaint, a statement regarding confidentiality and a non-retaliation provision.

OCR found, however, that the District’s policy and procedures did not meet Title IX requirements in a number of ways. Specifically they did not include: 1) a reference to the applicability of the policy to harassment by third parties; 2) an assurance that the District would take reasonably calculated steps to end the discrimination or harassment, prevent its recurrence, and remedy the effects of the harassment, where appropriate (notably, the only remedy mentioned was discipline, and interim measures were not mentioned); 3) a reference to Title IX coverage of gender-based harassment; 4) a definition of “hostile environment”; 5) an explanation of notice requiring response by the District (“knew or reasonably should have known”); 6) provisions for coordination with law enforcement for alleged acts that are criminal in nature; and, 7) inclusion of the preponderance of evidence standard. OCR additionally noted that the procedure also required that the initial complaint be committed to writing before the Principal would begin an investigation (for student on staff harassment claims), and while the procedure provided an appeal process for the complainant, it was lacking reference to one for the respondent.

Based on our initial review of the procedures that were in effect at the time of this investigation, OCR concluded that while the District had partially adopted prompt and equitable grievance procedures pursuant to 34 C.F.R. §106.8(b), there were a number of areas within the District’s policy that were not in compliance with Title IX and needed some degree of revision in order to fully comply with the standards articulated in OCR’s recent Title IX guidance documents.

Prior to the conclusion of this investigation, with assistance from District Counsel, the District began proactively revising its existing Title IX policies to incorporate various additional required elements, including: 1) a reference to the applicability of the policy to harassment by third parties; 2) an assurance that the District will take reasonably calculated steps to end the discrimination, prevent its recurrence and remedy the effects of the harassment, where appropriate; 3) a definition of “hostile environment”; and, 4) an appeal process for the respondent that is equivalent to that provided the complainant. The District also included new language in its revised policy to address the coordination of bullying investigations between the Safe School Climate Specialist and the Title IX Coordinator, to ensure compliance with applicable District policies for cases dealing with potential protected class harassment.

To address OCR’s concerns, you signed, on behalf of the District, the enclosed Agreement committing the District to continue revising its Title IX policies and procedures, with OCR input. OCR will monitor the District’s compliance with the terms of the enclosed Agreement.

Title IX Coordinator and District’s response to Title IX complaint

With regard to the remaining issues under review in this complaint (Title IX coordination and response), during the course of the investigation and before OCR reached a compliance determination, the District expressed an interest to voluntarily resolve these two issues, the action steps for which are also memorialized in the enclosed Agreement. We also understand from recent conversations with District Counsel that pending the outcome of this case resolution and in consultation with OCR staff, the District proactively moved forward with offering student programming and training of School staff, administrators and XXXXXXXXXX, as referenced in the enclosed Agreement. OCR commends the District's initiative in moving forward with completion of these action steps prior to the resolution of this case.

OCR has determined that the terms of the Agreement address the underlying allegations in this case, as well as the other information OCR obtained during its preliminary investigation. These terms are also consistent with Title IX. Accordingly, OCR is closing this investigation as of the date of this letter, and has notified the Complainant about this resolution.

As memorialized in the Agreement, OCR will monitor the District's compliance with the agreed-upon terms. OCR will close the monitoring of this matter, and will so notify the parties in writing, once it determines that the District has satisfied the terms of the Agreement. Due dates for the District's monitoring reports are set forth in the Agreement.

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 information in this letter is not intended and should not be construed to cover any other issues regarding compliance with Title IX that may exist but are not discussed herein. Please be advised that the Complainant may 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 seek to protect, to the extent provided by law, personal information that, if released, could constitute an unwarranted invasion of privacy. 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 may file another complaint alleging such treatment.

We would like to thank you, your staff, and especially District Counsel Leander Dolphin for your time and assistance with the resolution of this case. If you have any questions regarding this letter, you may contact Senior Investigator Mary-Anne Khouani at (617) 289-0036 or by e-mail at Mary-Anne.Khouani@ed.gov, or Compliance Team Leader Allen Kropp (617) 289-0120. You may also contact me directly at (617) 289-0111.

Sincerely,

/s/ Joel J. Berner

Joel J. Berner
Regional Director

Enclosure

cc: Leander Dolphin, Esq.