



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION I
5 POST OFFICE SQUARE, 8th FLOOR
BOSTON, MASSACHUSETTS 02109-3921

May 3, 2018

Ms. Linda Paolillo
Principal
Kingston Hill Academy
850 Stony Fort Road
Saunderstown, RI 02874

By email: lpaolillo@kingstonhill.org

Re: Complaint No. 01-14-1230
Kingston Hill Academy

Dear Principal Paolillo:

The U.S. Department of Education (Department), Office for Civil Rights (OCR) has completed its investigation of the complaint we received on July 9, 2014, against Kingston Hill Academy (the Academy). The complaint alleged that Academy administrators failed to adequately respond to complaints that the Student had been subjected to sexual harassment and a sexually hostile environment at the Academy during the spring of 2014, after XX was allegedly touched inappropriately on several occasions by a fellow XXXX student in XXX XXXX class. The complaint also alleged that the Academy has no designated Title IX Coordinator or Title IX policies and procedures in place, and has not provided Title IX training to Academy staff and administrators.

OCR enforces Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any program or activity receiving federal financial assistance from the Department.

OCR investigated the following three issues:

- 1.) Whether the Academy failed to designate one or more employees to coordinate its efforts to comply with Title IX; and whether the Academy 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 Academy failed to adopt and publish grievance procedures that provide for prompt and equitable resolution of complaints of sex discrimination, in violation of 34 C.F.R. Section 106.8(b); and
- 3.) Whether the Academy failed to promptly and equitably respond to notice of a possible sexually hostile environment for the Student and, if a hostile environment existed, whether

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any failure to provide a prompt and equitable response led to the continuation of a hostile environment, in violation of 34 C.F.R. Sections 106.8(b) and 106.31(a) and (b)(7).

Summary of Investigation and Findings

Upon receipt of this complaint, OCR interviewed the Complainant and spoke with the Academy Principal. OCR also interviewed Academy staff and administrators and reviewed data from the Academy including notes from its investigation, copies of emails between Academy administrators and the Complainant, and other related correspondence. OCR reviewed copies of the Student's and accused student's regular education, special education, and discipline records, including team meeting minutes, evaluations, Section 504 Plans, Behavior Intervention Plan, and progress reports. OCR also reviewed: a copy of the Student's safety plan for the 2014-2015 school year; the 2013 Student Handbook; the Employee Handbook; the Employee Training Materials, and; copies of Orientation Training for new employees.

As explained below, OCR found that the Academy did not appropriately designate an employee to coordinate its Title IX compliance during the 2014-2015 school year, as required (Issue 1); however, the Academy largely addressed this violation in subsequent academic years and, through the resolution agreement, has agreed to provide additional trainings to ensure compliance. In addition, OCR found that although the Academy revised its Title IX grievance procedures during the course of OCR's investigation (Issue 2), these procedures comported with some, but not all, Title IX requirements. Finally, OCR identified some preliminary concerns with the Academy's response to the Complainant's initial sexual harassment complaint reported during June 2014 (Issue 3), but the Academy requested to voluntarily resolve this allegation pursuant to Section 302 of OCR's *Case Processing Manual* before OCR made any compliance determination.

OCR's findings and conclusions are discussed below.

Legal Standards

The Title IX regulation, at 34 C.F.R. § 106.8(a), requires that each recipient designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX, including any investigation of any complaint communicated to the recipient alleging noncompliance with Title IX. The recipient must notify all students and employees of the name, office address, telephone number, and email address of the designated coordinator.

The Title IX regulation, at 34 C.F.R. § 106.8(b), requires that recipients adopt and publish grievance procedures that provide for the prompt and equitable resolution of student and employee complaints of Title IX violations. 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 procedures to students, parents and employees, including where to file complaints; application of the procedures to complaints alleging discrimination 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 discrimination and to correct its effects.

The Title IX regulation at 34 C.F.R. § 106.31 provides generally that, except as provided elsewhere in the regulation, no person shall on the basis of sex be excluded from participation in, denied the benefits of, or subjected to discrimination in education programs or activities operated by recipients of Federal financial assistance.

A district's failure to respond promptly and effectively to sexual harassment that it knew or should have known about, and that is sufficiently serious that it creates a hostile environment, is a form of discrimination prohibited by Title IX. Harassing conduct may take many forms, including verbal acts and name-calling; graphic and written statements, which may include use of cell phones or the Internet; physical conduct; or other conduct that may be physically threatening, harmful, or humiliating.¹ Harassment creates a hostile environment when the conduct is sufficiently severe, persistent, or pervasive as to interfere with or limit a student's ability to participate in or benefit from the district's programs, activities, or services. When such harassment is based on sex, it violates Title IX.

To determine whether a hostile environment exists, OCR considers the totality of the circumstances from both an objective and subjective perspective and examines the context, nature, scope, frequency, duration, and location of incidents, as well as the identity, number, and relationships of the persons involved. Harassment must consist of more than casual, isolated incidents to constitute a hostile environment.

When responding to harassment, a district must take immediate and appropriate action to investigate or otherwise determine what occurred. The specific steps a district will take will vary depending upon the nature of the allegations, the source of the complaint, the age of the student or students involved, the size and administrative structure of the school, and other factors. In all cases, however, the inquiry should be prompt, thorough, and impartial. If an inquiry reveals that discriminatory harassment has occurred, a district must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring.

Background

This complaint involves two reports of inappropriate touching of the Student by one of XXX classmates that occurred at the Academy during the spring of 2014. Both students were in XXXX at the time. The first report was raised on June 11, 2014, where the Complainant notified the Academy that the Student had alleged a number of past incidents of harassment that had occurred during an unspecified timeframe; the second report was raised the next day, June 12, where the Student notified the Academy of harassment that occurred that same day.

OCR found that the Academy had no designated Title IX Coordinator at the time of the alleged incidents. In its Data Response, the Academy asserted that while there was no designated Title IX Coordinator, the Principal was responsible for carrying out Title IX-related duties, including investigating harassment complaints.

Subsequent to OCR opening this complaint for investigation, the Academy designated two Title IX Coordinators, published their contact information on the Academy’s website and in its Student Handbook, and arranged for initial Title IX training to assist them in conducting their duties.

OCR also found that the Academy did not have any Title IX Policies/Procedures in effect at the time this complaint was filed, however, the Academy referenced pages 11-14 (“Code of Conduct”) and page 32 (“Correspondence on School Matters”) of the Student handbook, and pages 30-32 (“Harassment” and “Anti-Violence Policy”) and page 33 (“Correspondence on School Matters”) of the Employee handbook for information pertaining to how the Academy handles harassment complaints.

Subsequent to the filing of this OCR complaint, in December 2014 the Academy provided OCR with a copy of its newly drafted Title IX Sexual Harassment and Sexual Violence Policy (Policy). The Policy did not purport to constitute a grievance procedure, but, rather, called for the development of procedures and guidelines for the investigation of sexual violence and sexual harassment reports. The Academy subsequently requested technical assistance from OCR, which was provided, then revised and adopted a TIX policy again during the fall of 2015. Academy counsel confirmed that this policy is still in effect as of February 2018 and noted that it is now located on the Academy’s website. Among other information, the revised policy states “To the extent possible, KHA strives to complete all Title IX investigations, from date of report to final hearing and notice of outcome, within 60 days.” The revised policy also states: “This policy applies equally to all KHA students, employees, authorized volunteers, parents, and other members of the KHA community.” Also, the revised policy appears to have a preliminary investigative process by the TIX Coordinator, who then determines whether to terminate the complaint because it is “not credible” or to refer it for a more fulsome investigation and resolution.

Analysis

Issue 1: Title IX Coordinator

OCR determined that the Academy’s designation and notice of the Title IX Coordinator, at the time of the alleged incidents, did not meet the requirements of the Title IX regulation at 34 C.F.R. § 106.8(a).

Specifically, OCR found that, although the Principal was technically tasked with coordinating the Academy’s Title IX compliance along with the Vice Principal at the time of the June 2014 incident, neither individual was sufficiently trained and aware of how to appropriately respond to and resolve allegations of sexual harassment under Title IX, and the Academy did not provide adequate notice of this designation to members of the Academy community. The lack of training was demonstrated in the Academy’s handling of the underlying incidents in this complaint, where the Principal appeared to rely heavily upon the Academy’s XXXX, who was not tasked with ascertaining whether harassment had taken place, or otherwise delegated any duties to resolve consistent with Title IX, as required.

However, as noted above, the Academy largely corrected this violation in subsequent years. OCR found that the Academy has since designated two Title IX Coordinators, published these individuals' contact information on the Academy's website and in its Student Handbook, and arranged for Title IX training to assist them in conducting their duties. The Academy has also been receptive to OCR's technical assistance, and signaled its strong interest to enhance its Title IX compliance in this area. The Academy has memorialized its commitment to these areas as detailed as detailed in the resolution agreement in which, the Academy agreed to provide more comprehensive investigatory training to its designated Title IX Coordinators, and general Title IX training for Academy staff who interact with students on a regular basis.

Issue 2: Title IX Grievance Procedures

While OCR recognizes and commends the Academy for having made effort to significantly improve its grievance procedures during our investigation, OCR found that the Academy did not have a Title IX policy in effect at the time of the underlying incidents; OCR also found that the policy that was subsequently developed/revised by the Academy (and that currently remains in effect), while improved, did not fully comport with the Title IX regulation at 34 C.F.R. § 106.8(b), as follows:

- The revised policy lacks timeframes for the major stages of the resolution process. The policy states “To the extent possible, KHA strives to complete all Title IX investigations, from date of report to final hearing and notice of outcome, within 60 days.” Because there is only one timeframe given, timeframes for the major stages of the grievance process are not provided, as required.
- The revised policy does not expressly apply to misconduct committed by third parties, and it does not expressly state that it covers misconduct committed by third parties, as required. The policy states: “This policy applies equally to all KHA students, employees, authorized volunteers, parents, and other members of the KHA community.” While this language is helpful, OCR has determined that “third parties” is a broader category than “other members of the KHA community,” and that therefore the policy must be amended to comport with this Title IX requirement.
- The revised policy, on its face, does not expressly provide an equitable, impartial process to the parties. The language stating that the TIX Coordinator will complete the preliminary investigation and then determine whether to terminate the complaint because it is “not credible” or to refer it for a more fulsome investigation and resolution, is overall too vague to satisfy this Title IX requirement.

The Academy agreed to amend its grievance procedures consistent with the provisions detailed in the resolution agreement.

Issue 3: Response to Complaint

Prior to the conclusion of OCR's investigation of Issue 3 and pursuant to Section 302 of OCR's *Case Processing Manual*, the Academy expressed an interest in resolving this allegation.

Conclusion

Subsequent discussions between OCR and the Academy resulted in the Academy signing the enclosed Agreement on April 12, 2018, which commits the Academy to take specific steps to address the identified areas of noncompliance (Issues 1 and 2) as well as the area where OCR identified preliminary concerns but did not make a compliance determination (Issue 3). The Agreement entered into by the Academy is designed to resolve the issues of noncompliance. Under Section 304 of OCR's *Case Processing Manual*, a complaint will be considered resolved and the Academy deemed compliant when the Academy enters into an agreement that, fully performed, will remedy the identified areas of noncompliance.

OCR will monitor closely the Academy's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively. OCR may conduct additional visits and may request additional information if necessary to determine whether the Academy has fulfilled the terms of the Agreement. Once the Academy has satisfied the commitments under the Agreement, OCR will close the case. As stated in the Agreement entered into by the Academy on April 12, 2018, if the Academy fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10) or judicial proceedings, including to enforce the Agreement, OCR shall give the Academy written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the Academy's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. 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 Academy may not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

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.

We would like to thank you and your staff, and Academy counsel Matt Plain, for your time and assistance throughout this investigation. If you have any questions, you may contact OCR Senior Investigator Mary-Anne Khouani at (617) 289-0036 or by e-mail at Mary-Anne.Khouani@ed.gov .

Sincerely,

Ramzi Ajami w/p MO
Acting Regional Director

Enclosure

cc: Matt Plain, Esq. (by email: mplain@bglaw.com)