



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION I

CONNECTICUT
MAINE
MASSACHUSETTS
NEW HAMPSHIRE
RHODE ISLAND
VERMONT

DATE

John P. Phelan

By email: jphelan@belmont.k12.ma.us

Re: Complaint No. 01-15-1241
Belmont Public Schools

Dear Superintendent Phelan:

This letter is to advise you of the outcome of the U.S. Department of Education, Office for Civil Rights (OCR) investigation into the complaint received against Belmont Public Schools (District). The Complainant alleged that the District discriminated against her child (Student) based on sex and disability. Specifically, she alleged that the District failed to promptly and equitably respond to complaints that the Student was sexually harassed and subsequent complaints that the Student was sexually assaulted by two students on [redacted content]. She also alleged that the District denied the Student a free appropriate public education (FAPE) by failing to implement the Student's Individualized Education Program (IEP), to provide schoolwork while the Student was [redacted content], and to evaluate the Student following the alleged sexual assault.

OCR enforces Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. Section 1681 *et seq.*, 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 U.S. Department of Education. OCR also enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. Section 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in any program or activity receiving federal financial assistance from the U.S. Department of Education. Finally, OCR enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. Section 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive federal financial assistance from the U.S. Department of Education. Because the District receives federal financial assistance from the U.S. Department of Education and is a public entity, OCR has jurisdiction over it pursuant to Title IX, Section 504, and Title II.

OCR investigated the following legal issues¹:

- Whether the District failed to respond promptly and equitably to complaints and/or incidents of sexual harassment, including sexual violence, made by the

¹ OCR revised the statement of the issues during its investigation.

Student, and if so, whether the Student was subjected to a sexually hostile environment, in violation of 34 C.F.R. §§ 106.8(b), 106.31(a) and (b).

- Whether the District denied the Student a free appropriate public education, in violation of 34 C.F.R. §§ 104.33 and 104.35.

During the investigation, OCR reviewed documents provided by the Complainant and the District; interviewed the Complainant and District personnel; and reviewed publicly available information on the District's website. Prior to the completion of OCR's investigation, the District expressed a willingness to resolve the complaint under Section 302 of OCR's *Case Processing Manual*. As discussed below, OCR had identified various concerns and determined that it was appropriate to resolve them pursuant to a Resolution Agreement.

Legal Standards

The regulation implementing Title IX, at 34 C.F.R. § 106.31(a), states: "Except as provided elsewhere in this part, 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 academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives Federal financial assistance."

Sexual harassment is a form of sex discrimination prohibited by Title IX.² Sexual harassment can include unwelcome sexual advances and other verbal, nonverbal, or physical conduct of a sexual nature, such as sexual assault or acts of sexual violence.

Under the Title IX regulations in effect at the time of the incidents at issue in this case, a district had a responsibility to provide prompt and equitable resolutions of complaints of sex discrimination. *See* 34 C.F.R. § 106.8(b). When the district has actual or constructive notice of sexual harassment, it must take appropriate steps to investigate or otherwise determine what occurred, and it may be appropriate for a school to take interim measures prior to or during the investigation of a complaint. Interim measures are individualized services offered as appropriate to either or both the reporting and responding parties involved in an alleged incident of sexual misconduct. Interim measures include counseling, extensions of time or other course-related adjustments, modifications of work or class schedules, campus escort services, restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar accommodations. If a school's investigation or other appropriate steps to determine what occurred identify sexual harassment that creates a hostile environment, schools are responsible for taking prompt and effective action to stop the harassment and prevent its recurrence. A school also may be responsible for remedying the effects of the harassment on the student who was harassed.

² Amendments to the Title IX regulation went into effect on August 14, 2020, and can be viewed [here](#). However, OCR investigated this complaint based on the Title IX regulation that was in effect in the 2014-2015 school year, [redacted content] . You can find that regulation [here](#).

The current Title IX regulation sets out detailed notice requirements and requirements for processing complaints of sexual harassment under a formal grievance process. *See* 34 C.F.R. § 106.8 and 106.45(b)(1), respectively.³

The Section 504 implementing regulation at 34 C.F.R. § 104.33 states that a recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate public education (FAPE) to each qualified person with a disability who is in the recipient's jurisdiction. An appropriate education is regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met and that are developed in compliance with Section 504's procedural requirements. Implementation of an IEP developed in accordance with the Individuals with Disabilities Education Act is one means of meeting this standard.

As part of a recipient's obligation to provide a FAPE to students with disabilities, the Section 504 regulation at 34 C.F.R. § 104.35(a) requires a recipient to evaluate any student who needs or is believed to need special education or related services due to a disability. A recipient must conduct an evaluation before initially placing the student in regular or special education and before any subsequent significant change in placement. In addition, 35 C.F.R. § 104.35(b) requires a recipient to establish standards and procedures for the evaluation and placement of students with disabilities.

The Section 504 regulation, at 34 C.F.R. § 104.35(d), requires a school district to periodically reevaluate a student who has been provided special education or related services. Also, when there is information suggesting that a student's educational program is not meeting the student's individual needs, such as a significant decline in the student's grades or behavior, a group of knowledgeable persons should consider whether further evaluation or revisions to the student's placement are necessary.

Findings of Fact

This case concerns incidents that occurred during the [redacted content] school year.

Applicable Procedures

During the [redacted content] school year, the District had a "Uniform Complaint Procedures for Harassment or Discrimination Claims" (Uniform Procedures) that covered, among other conduct, allegations of sexual harassment. The Uniform Procedures stated that targets of harassment should notify school staff; and required any employee who received information about an alleged incident of harassment at school or school-sponsored activities to report it to the principal. The Uniform Procedures stated that complainants may trigger a formal resolution process by directing a written complaint to specific District staff, including the principal. Within 24 hours of

³ Due to court order, OCR no longer is enforcing a provision of the current regulation found at 34 C.F.R. § 106.45(b)(6)(i). *See* <https://www2.ed.gov/about/offices/list/ocr/docs/202108-titleix-VRLC.pdf>.

receipt, all complaints would be forwarded to the Superintendent. The Uniform Procedures state that an investigation will subsequently occur and be completed no later than 30 calendar days, during which an investigator will interview individuals involved, review written and other materials, and consider other factors (nature of behavior; frequency; past incidents; continuing pattern of behavior; relationship of parties involved). The Uniform Procedures required the investigator to document the investigation's progress, including any reasons for delay. The Uniform Procedures also stated that the District would take remedial action as necessary to ensure that further harassment does not occur, and listed examples of remedial and disciplinary outcomes. Finally, the Uniform Procedures contained a recordkeeping provision that stated that a "record of any complaint and investigation of harassment or discrimination as well as the disposition of the complaint and any disciplinary or remedial action taken will be maintained by the School District in a confidential file."

Alleged Harassment

During the [redacted content] school year, the Student was enrolled in the [redacted content] at the District's [redacted content] school (the [redacted content] School). In [redacted content], the [redacted content] School and the Student's family discussed concerns with the Student's interactions with other students, including alleged bullying of the Student. The Student was subsequently referred to but was found ineligible for special education or related services; however, the Student was placed on a personal safety plan to assist with her inter-personal relationships. This plan identified staff to whom the Student could report when she felt unsafe, or school areas where the Student could visit when she felt unsafe, resulting from [redacted content]

In [redacted content], the Student was [redacted content] for [redacted content]. The Complainant initially requested a special education referral and evaluation in [redacted content], which she subsequently asked the District to cancel, and then re-requested in [redacted content]. On [redacted content], the Student was [redacted content] from the [redacted content]

[Redacted sentence]. Sometime during her [redacted content], the Student informed [redacted content] that she had been sexually harassed and sexually assaulted; this information was memorialized in the [redacted content] letter for the Student, dated [redacted content]. OCR's investigation did not identify any reports or allegations of sexual harassment prior to this date.

On [redacted content], the same day as the Student's [redacted content], the Belmont Police Department faxed a police report dated [redacted content] to the principal of the [redacted content] school. The report stated that on [redacted content], the Complainant told a Belmont Police detective that she wanted to file a report of sexual assault for [redacted content], who was [redacted content] at the time. The report stated that the Student was sexually assaulted at the [redacted content] school twice in the last six months, and specifically stated that the Student [redacted content] and a few months prior. The report also stated that the Student had reported the sexual assaults to the [redacted content]. The police report did not contain the names of the accused students.

A second Belmont Police Department report, dated [redacted content], indicated that the school resource officer contacted the [redacted content] school principal on [redacted content] and

informed her that the Complainant reported on behalf of [redacted content] that the alleged incident took place on the grounds of the [redacted content] school. The report stated that this information was shared in accordance with a Memorandum of Understanding between the police department and the District. The police report also indicated that the matter had been referred to the District Attorney's Office, which would be taking the case, and that the school resource officer had reported the incident to the Department of Children and Families. Similar to the previous police report, this police report did not contain the names of the accused students.

On [redacted content], the District convened an IEP eligibility meeting, which had been postponed due to the [redacted content]. The written summary of the meeting indicated that the team discussed the Student's "safety in school" and how to "prevent[] bullying," and that an IEP was developed "due to [redacted content] and evidence of [redacted content]." Services included [redacted content]. Emails and other documentation around this time do not indicate that any further materials were shared with or discussed by team members, including records of [redacted content] (including the [redacted content]) or any police reports. The IEP team minutes explained that the District developed the IEP in the absence of a comprehensive evaluation due to the Student's unavailability when [redacted content], and that the team would revisit its terms upon completion of a comprehensive evaluation scheduled for later that month. The family did not provide access to the Student through the fall, however, and negotiated potential amendments to the IEP through [redacted content].

On [redacted content], the District received a copy of the [redacted content] letter from the [redacted content]. The [redacted content] letter stated that the Student "reports she was sexually assaulted by a current student at [the [redacted content] school] and that she has been continually sexually harassed by two current male students." The letter did not contain the names of the accused male students, nor did it provide the dates of the alleged incidents.

On [redacted content], the Complainant sent an email to District staff, including the principal, former vice principal, assistant director of student services (Assistant Director), and guidance counselor, naming Students B and C as the students who sexually assaulted the Student at the [redacted content] school. In the email, the Complainant indicated that she had [redacted content] records related to the sexual assault, and that she was "still waiting on the written documentation about the numerous bullying assaults [the Student] experienced along with . . . sexual harassment assault [the Student] experienced." The Complainant was not specific about the type of sexual harassment that the Student allegedly experienced but noted that Student C was "the one who harassed [the Student] for an entire week." In her email to the District, the Complainant also noted that she had requested copies of the District's records regarding alleged sexual harassment and bullying, and expressed incredulity that the District had no responsive notes or documents, despite District staff having been notified and having met with the Complainant on numerous occasions regarding these incidents.

According to OCR's review of District records, no reports or complaints of harassment existed for the Student during the [redacted content] school year. OCR identified several emails in which staff noted that the Student had approached them pursuant to her personal safety plan following incidents with other students. The internal emails did not include allegations or reports of sexual

harassment; the incidents were characterized in generalized terms of the Student experiencing difficulty with others. The emails indicate that District staff spoke to the Student and/or others.

In [redacted content], the Student’s parents and the District entered into a settlement agreement to resolve disputes relating to the Student’s special education and related services. The agreement provided, among other terms, [redacted content] for the Student. The agreement constituted a release of all claims that existed or may have existed between the Student’s parents and the District relating to the Student’s regular education, special education, and related services since the Student enrolled in the District through the date of the agreement. The agreement stated that it did not constitute a release of claims pursuant to Title IX. The family subsequently [redacted content].

To date, the District has not provided OCR with any records indicating that it conducted an investigation into the alleged sexual assault or sexual harassment of the Student. No witnesses have recounted participating in an investigation, and the former vice principal noted that the District would “hypothetically give deference to police and criminal investigations.”

Current Procedures

The District revised its sexual harassment procedures in October 2020. These procedures, titled “Belmont Public School’s Response to Sexual Harassment” (“revised sexual harassment procedures”), are found on the District’s main website.⁴

The sexual harassment procedures do not require that the District’s Title IX Coordinator, investigator(s), decision-maker(s), and those facilitating its informal resolution process, not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. While the sexual harassment procedures state that the parties will be notified of the need for any delay in the grievance process, they do not specify that this notification must be written and specify the reason(s) for the delay. Further, the sexual harassment procedures do not include reasonably prompt time frames for the District’s informal resolution process or for resolving appeals. The sexual harassment procedures also do not expressly require an objective evaluation of all relevant evidence - including both inculpatory and exculpatory evidence - or provide that credibility determinations may not be based on a person’s status as a complainant, respondent, or witness. The revised sexual harassment procedures state that the District reserves the right to hold a hearing, but there is no information explaining why or when a hearing would or would not take place. Finally, the sexual harassment procedures state that if a hearing takes place and a party or witness does not submit to cross-examination, the decision-maker will not consider any statement of that party or witness in determining responsibility.

The District’s notice of non-discrimination is published on the District’s website in the same location as its revised sexual harassment procedures.⁵ It is titled “Equal Opportunity and Non-Discrimination,” and is the first document listed in the policy compendium. In March 2023, District counsel confirmed that this nondiscrimination notice is current and in effect.

⁴ <https://www.belmont.k12.ma.us/bps/Committee/Policies> (last visited March 30, 2023).

⁵ <https://www.belmont.k12.ma.us/bps/Committee/Policies> (last visited March 30, 2023).

The notice states that the District “does not discriminate against students, staff, the general public, or individuals, with whom it does business,” and lists as a legal reference Title IX and its implementing regulation. The notice does not state that inquiries about the application of Title IX may be referred to the Title IX Coordinator and/or to OCR.

OCR notes that the District lists the name, title, and telephone number of its Title IX Coordinator in several of its grievance procedures addressing harassment located in the current online policy compendium; the District does not identify the Title IX Coordinator in its revised sexual harassment procedures. Also, the Title IX Coordinator’s contact information does not list their office address or electronic mail address.

Analysis

OCR has a concern that the District did not respond to notice of possible sexual assault and harassment of the Student, at all, much less in a prompt and equitable manner. The evidence indicates that the District was aware no later than [redacted content] that the Complainant had reported to the local police that the Student had been [redacted content] that school year on the grounds of a District [redacted content] school. OCR notes that the principal, who was the designated contact person under the Uniform Procedures for allegations of sexual harassment against students, received this information as well as other notices. OCR is concerned that, notwithstanding the District’s requirements under its Uniform Procedures to maintain a case file that contained written records memorializing all investigative activities and remedial actions, OCR has found no evidence demonstrating that the District took steps to investigate the allegations or to provide the Student with interim measures or to evaluate whether a hostile environment existed for the Student or other students.

OCR is also concerned that the District may have chosen not to conduct an investigation because of an ongoing criminal investigation of the sexual assault allegations, or possibly an investigation by the Department of Children and Families. The District’s Title IX obligation to ensure a nondiscriminatory school environment did not pause for, and was not dependent on the outcome of, any separate criminal investigation. Similarly, to the extent a decision [redacted content] not to investigate may have been informed by the Student [redacted content] to the [redacted content] School, the District had a Title IX obligation to consider what actions may be necessary to ensure a nondiscriminatory environment for other students in light of the sexual harassment allegations.

In addition to the concerns OCR identified regarding the District’s fulfillment of its Title IX obligations during the 2014-15 school year, OCR identified current concerns, during the 2022-23 school year, with the District’s published procedures for resolving formal complaints of sexual harassment, as well as its notice of nondiscrimination and dissemination of the Title IX Coordinator’s information, including in the areas discussed above. The District has agreed to address these concerns as part of the enclosed Resolution Agreement.

OCR notes that the parties entered into a settlement agreement in fall 2015 that resolved all outstanding concerns relating to the Student’s receipt of special education and related services.

OCR therefore dismisses investigation of whether the Student received a free appropriate public education.

Resolution

The District expressed an interest in resolving this complaint pursuant to Section 302 of OCR's *Case Processing Manual*. Section 302 provides that allegations under investigation may be resolved before OCR completes its investigation when the recipient expresses an interest in resolving the allegations and OCR determines it is appropriate to resolve them because OCR's investigation has identified concerns that can be addressed through a resolution agreement. OCR determined that a voluntary resolution would be appropriate in light of the concerns identified above.

Subsequent discussions between OCR and the District resulted in the District signing the enclosed Agreement which, when fully implemented, will address the allegations raised in the complaint. Specifically, under the Agreement, the District will ensure that its policies and grievance procedures fully comply with Title IX, it will promptly display the contact information for its Title IX Coordinator and ensure that it creates and maintains contemporaneous records of alleged reports of sexual harassment. The District will also provide training on Title IX and the District's grievance procedures for addressing complaints of sexual harassment to all District staff and administrators. The District will offer to reimburse the Student for costs related to counseling and hospitalizations and the Superintendent will invite the Student and her parents to a voluntary meeting to discuss concerns that they may have about the alleged incident. OCR will monitor the District's implementation of the Agreement.

This concludes OCR's investigation of the complaint. This letter 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. 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. OCR would like to make you aware that individuals who file complaints with OCR 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 must 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. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

Sincerely,

/s/

Meighan A.F. McCrea
Compliance Team Leader

Enclosure

cc: Colby Brunt, Esq. (*by email*: CBrunt@SCMLLP.com)