



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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BOSTON, MASSACHUSETTS 02109-3921

Ms. Regina Lemerich Botsford
Superintendent of Schools
Regional School District 15
Central Office
286 Whittemore Road
P.O. Box 395
Middlebury, CT 06762-0395

Re: Case No. 01-16-1104
Regional School District 15

Dear Superintendent Botsford:

This letter is to inform you that the U.S. Department of Education, Office for Civil Rights (OCR) has completed its investigation of the above-referenced complaint against Regional School District 15 (the District). The Complainant alleged that the District's grievance policies and procedures related to claims of harassment based on disability and sex were inaccessible, after she had difficulty finding information to file a grievance about possible student harassment.

OCR's investigation examined whether the District complied with its obligations under Title IX of the Education Amendments of 1972 (Title IX); Section 504 of the Rehabilitation Act of 1973 (Section 504); and Title II of the Americans with Disabilities Act of 1990 (Title II). In its investigation, OCR reviewed documentation submitted by the Complainant and the District, including student handbooks, grievance policies and procedures, and notices of non-discrimination.

OCR found numerous violations and concerns regarding the District's designation and notice of a Title IX coordinator and Section 504 coordinator, notices of non-discrimination, and grievance procedures for processing complaints of disability- and sex-based discrimination. To address these violations and concerns, the District agreed to the enclosed Resolution Agreement.

OCR is responsible for enforcing Section 504, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104; and Title II, 42 U.S.C. § 12131 et seq., and its implementing regulation at 28 C.F.R. Part 35, both of which prohibit discrimination on the basis of disability. OCR is also responsible for enforcing Title IX, 20 U.S.C. § 1681, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in programs or activities receiving financial assistance from the Department. The District is subject to Section 504 and Title IX because it is a recipient of financial assistance from the U.S. Department of Education (the Department); and it is subject to Title II because it is a public entity operating an educational institution. Therefore, OCR had jurisdictional authority to investigate this complaint under Section 504, Title II, and Title IX.

To explain and provide guidance on OCR’s findings, this letter discusses the District’s designation and notice of its Section 504/Title II Coordinator and Title IX Coordinator; the District’s various notices of non-discrimination; and the District’s numerous grievance policies and procedures applicable to complaints of disability- and sex-based discrimination.

Legal Standard

A. Section 504/Title II Coordinator and Title IX Coordinator

The regulation implementing Section 504, at 34 C.F.R. § 104.7(a), requires that a recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with the requirements of Section 504 and its implementing regulation. The regulation implementing Title II, at 28 C.F.R. § 35.107(a), contains a similar requirement in the instance of a public entity that employs 50 or more persons and requires the public entity to make available the name, office address, and telephone number of the designated employee or employees.

The regulation implementing Title IX, at 34 C.F.R. § 106.8(a), requires that a recipient designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX, and to notify all students and employees of the name, office address, and telephone number of the designated employee or employees.

B. Notice of Non-Discrimination Pursuant to Section 504/Title II and Title IX

The regulation implementing Section 504, at 34 C.F.R. § 104.8(a), requires that a recipient take appropriate steps to notify participants, beneficiaries, applicants, employees, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate in admission or access to, or treatment or employment in, its program or activity on the basis of disability; and, this notice should also include the identity of its designated coordinator(s). The regulation implementing Section 504, at 34 C.F.R. § 104.8(b), requires that a recipient publish this notice of non-discrimination in any recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees. The regulation implementing Title II, at 28 C.F.R. § 35.106, contains similar requirements.

The regulation implementing Title IX, at 34 C.F.R. § 106.9(a), requires that a recipient implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in the education program or activity which it operates, and that it is required by Title IX and its implementing regulations not to discriminate in such a manner. The notice must state that inquiries concerning the application of Title IX may be referred to the recipient’s Title IX coordinator or to the Assistant Secretary of OCR. It should also provide notice of the Title IX coordinator’s name or title, office address, and telephone number. The regulation implementing Title IX, at 34 C.F.R. § 106.9(b), requires recipients to include the notice of non-discrimination in each announcement, bulletin, catalog, or application form which

it makes available to the persons described above, or which is otherwise used in the recruitment of students or employees.

C. Grievance Policies and Procedures under Section 504/Title II and Title IX

The regulation implementing Section 504, at 34 C.F.R. § 104.7(b), requires a recipient to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging action prohibited by Section 504, including disability harassment. The regulation implementing Title II, at 28 C.F.R. §35.107(b), contains similar requirements.

The Title IX regulation, at 34 C.F.R. § 106.8(b), requires a recipient to adopt and publish grievance procedures providing for the prompt and equitable resolution of student and employee complaints of discrimination based on sex. Title IX does not require a recipient to provide separate grievance procedures for sexual harassment and sexual violence complaints. Therefore, a recipient may use student disciplinary procedures or other separate procedures to resolve such complaints. Any procedures used to adjudicate complaints of sexual harassment or sexual violence, including disciplinary procedures, however, must meet the Title IX requirement of affording a complainant a prompt and equitable resolution. A grievance procedure applicable to sexual harassment complaints cannot be prompt or equitable unless students know it exists, how it works, and how to file a complaint. Thus, the grievance procedures should be written in language appropriate to the age of the school's students, easily understood, easily located, and widely distributed.

OCR has identified a number of elements that are necessary for a recipient's grievance procedures to provide for the prompt and equitable resolution of complaints of discrimination and harassment under Section 504, Title II, and Title IX. The standards for grievance procedures under Section 504 and Title II are analogous to the standards under Title IX. These include: (1) notice to students, parents of elementary and secondary students, and employees of the grievance procedures, including where complaints may be filed; (2) application of the grievance procedures to complaints alleging harassment carried out by employees, other students, or third parties; (3) provision for adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; (4) designated and reasonably prompt timeframes for the major stages of the complaint process; (5) notice to the parties of the outcome of the complaint; and (6) an assurance that the school will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

Overview

The District serves elementary and secondary school students in the Connecticut towns of Middlebury and Southbury. It is comprised of seven schools in total: four elementary schools, two middle schools, and one high school.

The Complainant filed her complaint with OCR on February 2, 2016. The Complainant alleged that after she and XXXXXXXXXXX raised concerns about a possible incident of disability discrimination on XXXXXXXXXXX school bus, the Complainant had difficulty locating the

District’s grievance policy and procedures related to disability discrimination. The Complainant further alleged that the District’s grievance policy and procedures related to sex discrimination were inadequate and were not included in the elementary schools’ student handbooks.

As detailed below in Section A, OCR found that although the District properly designated a District-wide Section 504/Title II Coordinator¹ and a District-wide Title IX Coordinator, the District provided inconsistent contact information for these coordinators in its student handbooks and its notices of non-discrimination. OCR also found that the District’s notices of non-discrimination lacked essential information required by the Section 504, Title II, and Title IX regulations, including a statement that the District is required by Title IX not to discriminate on the basis of sex, accurate contact information for the District’s Section 504 Coordinator and Title IX Coordinator, and contact information for OCR.

Furthermore, as detailed below in Section B, OCR found that the sheer number of applicable policies relating to disability- and sex-based discrimination was confusing and failed to provide students, parents/guardians, and employees specific notice of the grievance policy and procedure that would be applicable. In addition, OCR found that the District’s grievance policies failed to include certain elements necessary to ensure the prompt and equitable resolution of complaints.

Facts & Analysis

A. Section 504/Title II Coordinator and Title IX Coordinator & Notice of Non-Discrimination

1. Designation of Section 504/Title II Coordinator and Title IX Coordinator

During the 2015-2016 academic year, the District designated a District-wide Section 504 Coordinator, school-based Section 504 Coordinators at each of the District’s schools, and a District-wide Title IX Coordinator. As described below, the District included notice of its Section 504 Coordinator and the Title IX Coordinator in the District’s student handbooks and in a notice of non-discrimination which the District posted in every school building and in its central office.

2. Notice of Non-Discrimination Pursuant to Section 504/Title II and Title IX

During the 2015-2016 academic year, the District disseminated its notices of non-discrimination in the following locations: the District’s student handbooks were distributed to parents/guardians annually and posted online; the District posted its notice of non-discrimination in every school building and in its central office; the District’s Non-Discrimination Policy for Students was available on the District’s website; and the District’s separate Non-Discrimination Administrative Regulations for Students² were available upon request.

¹ The District’s Section 504/Title II Coordinator is hereinafter referred to as the “Section 504 Coordinator.”

² The District has a Non-Discrimination Policy #5155 for Students (Non-Discrimination Policy for Students); Policy #5155 Administrative Regulations for Students (Non-Discrimination Administrative Regulations for Students); and Complaint Form (collectively, “Non-Discrimination Policy & Administrative Regulations for Students”).

i. Notice of Non-Discrimination in Student Handbooks

With regard to the notice of non-discrimination in each school's student handbook, while each student handbook contained language prohibiting discrimination on the basis of sex and disability, OCR determined that the District violated Title IX because each student handbook lacked a statement that the District is required by Title IX and its implementing regulations not to discriminate on the basis of sex, as required by 34 C.F.R. § 106.9(a). In addition, the District did not provide consistent notice of the District-wide Section 504 and Title IX Coordinators across its student handbooks because certain student handbooks omitted email addresses for both the District-wide Section 504 and Title IX Coordinators, certain student handbooks listed the incorrect name of the District-wide Section 504 Coordinator, and none of the student handbooks provided notice of the school-based Section 504 Coordinators. Finally, while each student handbook identified OCR as a referral resource, OCR is concerned that certain student handbooks did not provide accurate contact information for OCR.

ii. Posted Notice of Non-Discrimination in School Buildings

With regard to the District's posted notice of non-discrimination, OCR found that this posted notice of non-discrimination contained language prohibiting discrimination on the basis of sex and disability and provided OCR's contact information as a referral resource. However, OCR determined that the District violated Title IX because the posted notice of non-discrimination lacked a statement that the District is required by Title IX and its implementing regulations not to discriminate on the basis of sex, as required by 34 C.F.R. § 106.9(a). In addition, OCR is concerned that the District's posted notice of non-discrimination omitted email addresses for both the District-wide Section 504 and Title IX Coordinators and did not provide any name or contact information for the school-based Section 504 Coordinators.

iii. Non-Discrimination Policy & Administrative Regulations for Students

With regard to the District's Non-Discrimination Policy & Administrative Regulations for Students, OCR found that they contained language prohibiting discrimination on the basis of sex and disability. However, OCR determined that the District violated Section 504, Title II, and Title IX because its Non-Discrimination Policy & Administrative Regulations for Students did not provide notice of the District's Section 504 and Title IX Coordinators, did not provide notice that the Assistant Secretary for OCR may be contacted for inquiries concerning the application of Title IX, and lacked a statement that the District is required by Title IX and its implementing regulations not to discriminate on the basis of sex, as required by 34 C.F.R. § 106.9(a).

3. Conclusion

Taking the above findings into consideration, OCR has concluded that the District properly designated District-wide Section 504 and Title IX Coordinators. However, OCR is concerned that the District's notice of its Section 504 and Title IX Coordinators was not consistent across its student handbooks and notices of non-discrimination. OCR is also concerned that this notice

did not list the District’s school-based Section 504 Coordinators. In addition, OCR has concluded that the District’s notices of non-discrimination in its student handbooks, its posted notice of non-discrimination, and its Non-Discrimination Policy & Administrative Regulations for Students did not comply with Section 504, Title II, or Title IX, as detailed above. The Resolution Agreement will ensure that the District implements changes in its notice of its Section 504 and Title IX Coordinators and its notices of non-discrimination to comply with Section 504, Title II, and Title IX.

B. Grievance Policies and Procedures under Section 504/Title II and Title IX

OCR reviewed the District’s Section 504 Policy & Administrative Regulations³ and the District’s Title IX Policy & Administrative Regulations for Students.⁴ OCR also reviewed the related policies in the District’s student handbooks, including the sexual harassment policies in the Pomperaug High School student handbook, the Memorial Middle School student handbook, and the Rochambeau Middle School student handbook and the grievance procedures in the Pomperaug High School student handbook. Finally, OCR reviewed the District’s related non-discrimination, harassment, and discipline policies, including the District’s Non-Discrimination Policy & Administrative Regulations for Students; the District’s Bullying Policy;⁵ and the District’s Discipline Policy.⁶

OCR found that the District’s Section 504 Policy & Administrative Regulations, Title IX Policy & Administrative Regulations for Students, the related policies in the District’s student handbooks, Non-Discrimination Policy & Administrative Regulations for Students, Bullying Policy, and Discipline Policy did not comply with Section 504, Title II, or Title IX, for the reasons detailed below.

As described in Section B(1), the District’s Section 504 Policy & Administrative Regulations failed to: provide sufficient notice of the grievance procedures applicable to complaints of disability discrimination; include sufficient provisions for adequate, reliable, and impartial investigations; and provide notice to the respondent of the outcome of requests for review.

As described in Section B(2), the District’s Title IX Policy and Administrative Regulations for Students failed to: provide sufficient notice of the grievance procedures applicable to complaints of sex discrimination; provide for the application of these grievance procedures to oral

³ The District has a Section 504 of the Rehabilitation Act of 1973 Policy #4156/5150 (Section 504 Policy); Section 504 of the Rehabilitation Act of 1973 Administrative Regulations (Section 504 Administrative Regulations); Notice of Parent/Student Rights Under Section 504; Complaint Form; and Request for Mediation/Hearing (collectively, “Section 504 Policy & Administrative Regulations”).

⁴ The District has a Sex Discrimination and Sexual Harassment Policy #5156 (Title IX Policy for Students); Sex Discrimination and Sexual Harassment Administrative Regulations (Title IX Administrative Regulations for Students); and Complaint Form (collectively, “Title IX Policy & Administrative Regulations for Students”).

⁵ The District has a Bullying and Prevention Policy #5131.2 and Safe School Climate plan for the District and each of its schools (collectively, “Bullying Policy”).

⁶ The District has a Student Discipline Policy #5144 (“Discipline Policy”).

complaints of harassment; include sufficient provisions for adequate, reliable, and impartial investigations; designate reasonably prompt timeframes for the major stages of the complaint process; provide notice to the parties of the outcome of the complaint and notice to the respondent of the outcome of appeals; and provide assurance that the District would take steps to remedy the discriminatory effects of harassment.

As described in Section B(3), the sexual harassment policies in the District’s student handbooks failed to: provide sufficient notice of the grievance procedures applicable to complaints of sex discrimination; and include sufficient provisions for adequate, reliable, and impartial investigations.

As described in Section B(4), the grievance procedure in the Pomperaug High School Student Handbook failed to: provide sufficient notice of the grievance procedures applicable to complaints of disability and sex discrimination; include sufficient provisions for adequate, reliable, and impartial investigations; and provide assurance that the District would take steps to remedy the discriminatory effects of harassment.

In addition, OCR is concerned that the District’s Bullying Policy and Discipline Policy could conflict with the District’s Section 504 Policy & Administrative Regulations and the District’s Title IX Policy & Administrative Regulations for Students.

1. Section 504 Policy & Administrative Regulations

The District’s Section 504 Policy is available on the District’s website⁷ and the District advised OCR in its data response that the District’s 504 Administrative Regulations, Section 504 Discrimination Complaint Form, and Request for Mediation/Hearing are available upon request to the District-wide Section 504 Coordinator or any other school administrator. Collectively, OCR refers to these documents as the District’s “Section 504 Policy & Administrative Regulations.”

Because the District’s Section 504 Policy is mostly devoid of procedures for filing and processing complaints, OCR read the District’s Section 504 Policy and the District’s Section 504 Administrative Regulations together to determine the District’s compliance with Section 504. OCR reviewed the District’s Section 504 Policy & Administrative Regulations as they apply to complaints of disability discrimination, rather than complaints about the identification, evaluation, and/or educational placement of students with disabilities.

The text of the District’s Section 504 Policy & Administrative Regulations reflects that they prohibit disability discrimination. The text of the District’s Section 504 Policy includes the title and phone number of the District’s Section 504 Coordinator, along with the address and phone

⁷ The District’s Section 504 Policy is available at: http://www.region15.org/filestorage/158/2563/2266/2419/7418/pol_41565150Section_504oftheRehabilitationActof1973.pdf (last accessed December 20, 2016). OCR notes that navigating the District’s website to find the relevant policies is not easy. It requires knowing that the student policies are in the “5000 Series Students” and the personnel policies are in the “4000 Series Personnel” sections of the drop-down menu, and then browsing the list of policies by name or number.

number of OCR. The text of the District’s Section 504 Administrative Regulations includes the title, address, and phone number of the District’s Section 504 Coordinator, along with the address, phone number, and website of OCR.

i. Reporting Complaints of Disability Discrimination

According to the District’s Section 504 Policy & Administrative Regulations, in the event of an incident of disability discrimination, the complainant must file a complaint with the District’s Section 504 Coordinator (or superintendent if the Section 504 Coordinator is the subject of the complaint) within 30 school days of the alleged incident. If the complaint is not made in writing, the person taking the complaint will reduce it to writing. The complainant can be any eligible person, including any student, parent/guardian, staff, or other employee. The complaint should include the name of the complainant, date filed, dates of discrimination, witnesses or other relevant individuals, a detailed statement, and the remedy requested. The District also has a Section 504 Discrimination Complaint Form that, according to the District’s data response, is available upon request to the Section 504 Coordinator. The Complaint Form requires the name and contact information of the complainant; the date of the complaint; the name and address of the student or covered individual; the age, grade level, school, and position; a description of the complaint; and the proposed resolution or corrective action. OCR notes that the Complaint Form does not include questions about the dates of discrimination or witnesses and does not list to whom a complainant should submit the form.

ii. Investigation and Notice of Outcome

The District’s Section 504 Policy & Administrative Regulations further detail the obligations of the person investigating the complaint (hereinafter the “investigator”), upon his/her receipt of the complaint. After a complaint is made, the investigator will provide the superintendent with a copy of the complaint. Complaints filed during summer recess are reviewed and addressed as quickly as possible based on the availability of staff and other individuals with relevant information, but if the fixed timeframes detailed below cannot be met, the investigator will notify the complainant and interim measures may be implemented as necessary. The investigator must meet with the complainant within 10 school days to (1) discuss the complaint, (2) identify relevant individuals, and (3) obtain any relevant information and documentation from the complainant. The investigator must also provide the complainant with a copy of the District’s Section 504 Policy & Administrative Regulations, and conduct an “adequate, reliable, and impartial investigation,” by interviewing witnesses, reviewing documents, and maintaining confidentiality to the extent practicable.

At the conclusion of the investigation, the investigator will communicate the outcome of the investigation to the complainant and any other parties involved within 15 school days after the Section 504 Coordinator or superintendent first received the complaint. This 15 school-day period may be extended for an additional 15 school days if necessary to allow the investigator to complete the investigation; and notice of the extension must be provided to the complainant. The outcome of the investigation includes a finding of whether the complaint “was substantiated” and how the District will remedy any violations. Remedies may include compensatory services or other measures to remedy the effects of the discrimination; and

corrective action should include steps to avoid continuing discrimination. If the investigator concludes that there is no violation of Section 504, the District may still attempt to resolve the complainant's ongoing concerns.

iii. Appeal Process

Pursuant to the District's Section 504 Policy & Administrative Regulations, if the complainant is "not satisfied" with the outcome of the investigation, the complainant has the right to submit a written request to the superintendent for review and reconsideration within 30 calendar days of receiving the investigator's findings. The request for review must explain why the complainant believes the factual information was incomplete, why the analysis of the facts was incorrect, and/or why the appropriate legal standard was not applied and how this would change the investigator's determination. Upon request for review, the superintendent will review the investigative report and determine if additional investigation is necessary. The superintendent may consult with the investigator and complainant, seek to resolve the complaint, or decide to affirm or overrule the investigator's conclusions or findings. The superintendent must provide written notice to the complainant about the appeal within 10 school days after receiving the written request for review.

Violations in the District's Section 504 Policy & Administrative Regulations

OCR's investigation determined that the District's Section 504 Policy & Administrative Regulations are not fully compliant with Section 504 and Title II. Specifically, the District's Section 504 Policy & Administrative Regulations violated Section 504 and Title II in the following ways:

1. They did not provide sufficient notice of the specific grievance procedure due to the fact that the District's Section 504 Administrative Regulations are not available online.
2. They did not provide for adequate, reliable, and impartial investigation of complaints, including the opportunity for the respondent to present witnesses and evidence.
3. There was no notice to the respondent of the outcome of requests for review.

These determinations are explained immediately below.

Notice of Grievance Procedures. The difficulty of accessing the District's Section 504 Policy & Administrative Regulations could preclude students, parents/guardians, employees, or third parties from bringing complaints of disability discrimination to the District. While the District's Section 504 Policy is available on the District's website, it lacks procedures for filing complaints other than to explain that a potential complainant should follow the procedures outlined in the Section 504 Administrative Regulations; and it lacks instructions about how to obtain the Section 504 Administrative Regulations. Moreover, the District's Section 504 Coordinator explained in a December 1, 2015 email to the Complainant that the District's Section 504 Administrative Regulations were not posted online, which OCR has independently confirmed. OCR also noted that the District's Section 504 Policy does not include the full contact information for the District's Section 504 Coordinator; it only provides her title and phone number. As a result, it would be unreasonably difficult for a potential complainant to know how to access the

procedures for filing a disability discrimination complaint, to know what to expect from the District’s Section 504/Title II grievance process, or even to obtain basic contact information for the District employee charged with overseeing the Section 504/Title II grievance process.

Adequate, Reliable, and Impartial Investigations. According to the text of the District’s Section 504 Policy & Administrative Regulations, the complainant is provided more rights than the respondent in the following instances: (1) the investigator meets only with the complainant to discuss the complaint, identify individuals that may have relevant information, receive any relevant documents from the complainant, and provide the complainant with a copy of the District’s Section 504 Policy & Administrative Regulations; (2) only the complainant is notified if the deadline for receiving the notice of the outcome of the investigation is extended; and (3) only the complainant has the right to request a review of the findings of the investigation by the superintendent. As a result, the District’s Section 504 Policy & Administrative Regulations did not provide an equitable resolution process for the respondent in a disability discrimination complaint.

Notice of Outcome. The District’s Section 504 Policy & Administrative Regulations did not provide the respondent with notice of the superintendent’s decision following a request for review, even though the complainant receives such notice. As a result, the District’s Section 504 Policy & Administrative Regulations violated Section 504 and Title II because they did not provide notice to both parties of the resolution of any requests for review.

2. Title IX Policy & Administrative Regulations for Students

The District’s Title IX Policy for Students and the District’s Complaint Form are available on the District’s website⁸ and the District advised OCR in its data response that the District’s Title IX Administrative Regulations for Students are available upon request to the District’s Title IX Coordinator or any other school administrator. Collectively, OCR refers to these documents as the District’s “Title IX Policy & Administrative Regulations for Students.”

The District’s Title IX Policy for Students is mostly devoid of procedures for filing and processing complaints. As a result, OCR reviewed the District’s Title IX Policy for Students and the District’s Title IX Administrative Regulations for Students together to determine the District’s compliance with Title IX.

The District’s Title IX Policy & Administrative Regulations for Students reflect that they prohibit sex discrimination and sexual harassment. The District’s Title IX Policy & Administrative Regulations also prohibit retaliation against complainants. The District’s Title IX

⁸ The Title IX Policy is available at:

<http://www.region15.org/filestorage/158/2563/2266/2419/7418/5156SexDiscriminationSexualHarassment.pdf> (last accessed December 21, 2016). The Complaint Form is available at: http://www.region15.org/filestorage/158/2563/2266/2419/7418/5156_COMPLAINT_FORM_REGARDING_SEX_DISCRIMINATION_AND_SEXUAL_HARASSMENT.pdf (last accessed December 21, 2016). As with the District’s Section 504 Policy, OCR notes that navigating the District’s website to find the relevant policies is not easy. It requires knowing that the student policies are in the “5000 Series Students” and the personnel policies are in the “4000 Series Personnel” sections of the drop-down menu, and then browsing the list of policies by name or number.

Policy for Students, however, includes a different definition of sexual harassment than the District’s Title IX Administrative Regulations for Students and neither definition explains that sexual violence is a form of sexual harassment.

The District’s Title IX Policy & Administrative Regulations for Students explain that the District will maintain confidentiality “to the extent appropriate” and “insofar as possible while conducting an effective and thorough investigation.”

i. Reporting Complaints of Sex Discrimination

According to the District’s Title IX Policy, in the event of the occurrence of sexual harassment, the complainant student should promptly make a complaint to appropriate school administrators, but the District’s Title IX Policy for Students does not identify who those individuals are. The District’s Title IX Administrative Regulations for Students specify that the complaint should be made to the District’s superintendent, Personnel Department, Title IX Coordinator, building principal, or the principal’s designee. The complaint should be in writing and should contain certain information, including the name of the complainant, the date of the complaint, the date of the harassment or discrimination, the name of the respondent, the location of the incident, witnesses, and a detailed statement. If a student complainant makes an oral complaint to any of the above-listed administrators, the administrator will provide the student with a copy of the District’s Title IX Administrative Regulations for Students and ask the complainant to submit a written complaint. The District’s Title IX Administrative Regulations for Students also explain that a parent or administrator may be able to fill out a written complaint on behalf of a student, if appropriate due to the student’s age.

ii. Investigation and Notice of Outcome

After a complaint is made, the complainant will receive a copy of the District’s Title IX Policy & Administrative Regulations for Students. The complaint will be immediately forwarded to the building principal or the principal’s designee, or superintendent if the principal is the subject of the complaint, and a copy will be sent to the Title IX Coordinator. The Title IX Coordinator or his/her designee will promptly investigate the complaint by meeting with the complainant, the respondent, and any witnesses. At the conclusion of the investigation, the Title IX Coordinator will write a report of the investigation and proposed disposition of the matter. The investigative report will be shared with “persons involved in the investigation” consistent with state and federal law and as deemed appropriate by the Title IX Coordinator.

iii. Appeal Process

If the complainant is “dissatisfied” with the investigative report, the complainant has the right to appeal in writing to the Title IX Coordinator (or the superintendent if the Title IX Coordinator investigated the complaint). Upon appeal, the Title IX Coordinator or superintendent will review the investigative report and conduct an additional investigation if necessary to determine whether the alleged conduct constitutes sexual harassment or sex discrimination. The Title IX Coordinator or superintendent will respond to the complainant’s appeal in writing as soon as possible. After the Title IX Coordinator finalizes the investigative report and any appeals from

the complainant are complete, the District will decide whether there is “reasonable cause to believe that sexual harassment or sex discrimination occurred.” If the District makes such a finding, then the District will apply “appropriate corrective action,” to ensure that the harassment/discrimination ceases and will not recur. The District’s Title IX Policy for Students clarifies that any resulting disciplinary action would be up to and including termination of employment or expulsion from school.

Violations in the District’s Title IX Policy & Administrative Regulations for Students

OCR’s investigation determined that the District’s Title IX Policy & Administrative Regulations for Students are not fully compliant with Title IX. Specifically, the District’s Title IX Policy & Administrative Regulations for Students violated Title IX in the following ways:

1. They did not provide sufficient notice of the specific grievance procedure due to the fact that the District’s Title IX Administrative Regulations for Students are not available online.
2. They did not provide for adequate application of the grievance procedures to oral complaints alleging harassment carried out by employees, other students, or third parties.
3. They did not provide for adequate, reliable, and impartial investigation of complaints, including the opportunity for the respondent to present witnesses and evidence.
4. No reasonably prompt timeframes were designated for the major stages of the complaint process.
5. They lacked an assertion that the parties would be notified of the outcome of the complaint and lacked notice to the respondent of the outcome of appeals.
6. There was no assurance that the District will take steps correct the discriminatory effects of the harassment on the complainant and others, if appropriate.

These determinations are explained immediately below.

Notice of Grievance Procedure. The difficulty of accessing the District’s Title IX Policy & Administrative Regulations for Students may prevent students, parents/guardians, or third parties from bringing complaints of discrimination based on sex to the District. While the District’s Title IX Policy for Students is available on the District’s website, it lacks procedures for filing complaints of discrimination based on sex, other than to explain that a complainant should “promptly report complaints to appropriate school administrators” and that the procedures followed will be those in the Administrative Regulations. However, the District’s Title IX Policy did not specifically identify those school administrators and did not provide student complainants information about how to obtain the Administrative Regulations. In addition, the District’s Title IX Administrative Regulations for Students were not posted online, which OCR has independently confirmed, and the District explained in its data response that they were available by contacting the District’s Title IX Coordinator or a school administrator. Yet, the District’s Title IX Policy for Students provided no contact information for the District’s Title IX Coordinator, and the District’s Title IX Administrative Regulations for Students did not include the Title IX Coordinator’s email address. As a result, it would be difficult for a potential complainant to know how to access the procedures for filing a sex discrimination complaint or what to expect from the District’s Title IX grievance process.

Application of the Grievance Procedures to Oral Complaints. The District’s Title IX Policy & Administrative Regulations for Students explained that if a student complainant makes an oral complaint, the administrator will provide the student with a copy of the District’s Title IX Administrative Regulations for Students and ask the complainant to submit a written complaint. However, OCR notes that the District’s obligations under Title IX are triggered once the District has notice of a complaint of discrimination on the basis of sex, regardless of whether that notice is in writing or provided orally. As a result, the District’s Title IX Policy & Administrative Regulations violated Title IX because they appeared on their face to require written complaints of discrimination on the basis of sex, rather than permitting oral complaints.

Adequate, Reliable, and Impartial Investigations. According to the District’s Title IX Policy & Administrative Regulations for Students, the complainant is provided more rights than the respondent in the following instances: (1) only the complainant was provided a copy of the District’s Title IX Policy & Administrative Regulations for Students and was made aware of his or her rights; and (2) only the complainant had a right to appeal the Title IX Coordinator’s investigative report. As a result, the District’s Title IX Policy & Administrative Regulations did not provide an equitable resolution process for the respondent in a sex discrimination complaint.

Designated and Reasonably Prompt Timeframes. The District’s Title IX Policy & Administrative Regulations for Students did not designate any reasonably prompt timeframes; instead, they only used vague terms such as, “immediately,” “promptly,” and “as soon as possible.”

Notice of Outcome. The procedures detailed in the District’s Title IX Administrative Regulations for Students explained that “[c]onsistent with state and federal law and as deemed appropriate by the Title IX Coordinator or designee, the findings of the investigation shall be shared with persons involved in the investigation.” However, the District’s Title IX Administrative Regulations did not affirmatively state that both parties would receive notice of the outcome of the complaint. In addition, there was no notice to the respondent of the outcome of appeals to the Title IX Coordinator or superintendent. As a result, the District’s Title IX Policy & Administrative Regulations did not provide notice to both parties of the resolution of the complaint and they did not provide notice to the respondent of the outcome of any appeals.

Remedy Discriminatory Effects. The District’s Title IX Policy & Administrative Regulations for Students stated that the District will apply “appropriate corrective action” to ensure that the harassment/discrimination ceases and will not recur, and the District’s Title IX Policy listed potential disciplinary sanctions against a respondent. However, the District’s Title IX Policy & Administrative Regulations did not provide an assurance that the District will remedy the discriminatory effects of the harassment on the complainant and others, if appropriate.

3. Sexual Harassment Policies in the District’s Student Handbooks

In addition to the District’s Title IX Policy & Administrative Regulations, the District’s student handbooks provided “Sexual Harassment Policy and Procedures” in the Pomperaug High School student handbook (PHS Sexual Harassment Policy), a “Sexual Discrimination and Sexual

Harassment” policy in the Rochambeau Middle School student handbook (RMS Sexual Harassment Policy), and a “Sexual Harassment” policy Memorial Middle School student handbook (MMS Sexual Harassment Policy).

The sexual harassment policies in the student handbooks were similar to the District’s Title IX Policy & Administrative Regulations for Students, but differed in the following ways. First, the PHS Sexual Harassment Policy did not include the procedures detailed in the District’s Title IX Administrative Regulations for Students. Second, the RMS Sexual Harassment Policy explained that a student should “immediately” report a complaint of sexual harassment to a teacher, counselor, or school administrator and explained that a “Sexual Harassment Complainant form is available in the Main Office.” Third, the MMS Sexual Harassment Policy explained that a student “should immediately inform the harasser that his/her behavior is unwelcome, offensive, in poor taste, unprofessional or highly inappropriate.” The MMS Sexual Harassment Policy further noted that if the sexual harassment does not stop after this initial confrontation with the respondent, then the complainant “should inform a teacher, counselor, or administrator” and there is a “Sexual Harassment Complainant form” in the school’s office if the sexual harassment continues.

Violations in the Sexual Harassment Policies in the Student Handbooks

To the extent that the sexual harassment policies in the student handbooks were similar to the District’s Title IX Policy & Administrative Regulations, the violations and compliance concerns OCR identified in Section B(2) apply to the sexual harassment policies in the student handbooks. In addition, OCR’s investigation determined that the sexual harassment policies in the student handbooks violated Title IX for the following reasons:

Notice of Grievance Procedure. OCR found the sexual harassment policies in the student handbooks also violated Title IX because they did not provide sufficient notice of the specific grievance procedure that would apply as the District did not explain how the PHS Sexual Harassment Policy, the RMS Sexual Harassment Policy, and the MMS Sexual Harassment Policy interact with the District’s Title IX Policy & Administrative Regulations for Students (i.e., whether these sexual harassment policies were summarizing the District-wide Title IX Policy & Administration Regulations or supplementing them).

Adequate, Reliable, and Impartial Investigations. OCR found that the MMS Sexual Harassment Policy did not provide for adequate, reliable, and impartial investigation of complaints in violation of Title IX, because it required the complainant to “immediately inform the harasser” about his/her behavior and for the harassment to continue before a student could inform a teacher, counselor, or administrator about the sexual harassment. While Title IX grievance procedures may include informal mechanisms for resolving sexual harassment complaints, OCR has frequently advised recipients that it is improper for complainants to be required to work out the problem directly with a respondent, and certainly not without appropriate involvement by the recipient (e.g., participation by a trained counselor, a trained mediator, or, if appropriate, a teacher or administrator). In addition, the complainant must be notified of the right to end the informal process at any time and begin the formal stage of the complaint process. Although the MMS Sexual Harassment Policy does not explicitly mention mediation, it is important to note

that in cases involving allegations of sexual assault, mediation is not appropriate even on a voluntary basis. As a result, the District’s MMS Sexual Harassment Policy violated Title IX by requiring complainants to initially confront the respondent and wait to see if the sexual harassment continued before informing a teacher, counselor, or administrator.

4. Grievance Procedure in the Pomperaug High School Student Handbook

The District advised OCR in its data response that the Pomperaug High School student handbook includes “grievance procedures related to any claims of discrimination, including claims based on disability” (PHS Grievance Procedure). Because the PHS Grievance Procedure does not appear on its face to be excerpted from the District’s Section 504 or Title IX Policies and Administrative Regulations, OCR reviewed the PHS Grievance Procedure separately from its analysis above to ensure that it complied with Section 504, Title II, and Title IX.

The PHS Grievance Procedure reflects that it is for complaints by students, parents/guardians, staff members, or applicants to a program who feel that they have been discriminated against on the basis of “race, color, national origin, sex, disability, or handicap.” Despite replicating the classes protected by the District’s Section 504 and Title IX Policies and Administrative Regulations, the PHS Grievance Procedure provides no explanation of how it interacts with those policies or the PHS Sexual Harassment Policy. More concerning, the PHS Grievance Procedure provides procedures for investigating complaints of discrimination based on disability and sex that differ from the District’s Section 504 and Title IX Policies and Administrative Regulations. In addition, the PHS Grievance Procedure does not include a prohibition against retaliation and does not include the contact information for the District-wide Title IX Coordinator, the District-wide Section 504 Coordinator, the high school’s Section 504 Coordinator, or OCR.

Violations and Concerns in the PHS Grievance Procedure

OCR’s investigation determined that the PHS Grievance Procedure violated Section 504, Title II, or Title IX for the following reasons:

Notice of Grievance Procedures. The Pomperaug High School student handbook includes the PHS Grievance Procedure without reference to how it interacts with the District’s Section 504 and Title IX Policies and Administrative Regulations or the PHS Sexual Harassment Policy. This is significant because the PHS Grievance Procedure differs substantially from the District’s other applicable policies and regulations. In addition, PHS Grievance Procedure introduces another administrator with whom complaints should be filed – the Compliance Coordinator. However, nowhere in the PHS Grievance Procedure or the Pomperaug High School student handbook is the name or contact information of the Compliance Coordinator provided. Finally, the PHS Grievance Procedure is located only in the Pomperaug High School student handbook and as a result, students and parents/guardians at the District’s other schools do not receive notice of the procedure.

Adequate, Reliable and Impartial Investigations & Notice of Outcome. The PHS Grievance Procedure did not include appropriate information about equitable resolution processes, including the adequate, reliable, and impartial investigation of complaints and notice to the

respondent of the outcome of the superintendent’s appeals and delayed notice to the respondent of the outcome of the Board of Education appeal. First, the PHS Grievance Procedure required the Compliance Coordinator to seek an informal agreement between the complainant and the respondent, explaining that “[e]very attempt shall be made to seek a solution and resolve the alleged discrimination complaint at this level.” OCR has frequently advised recipients that it is improper for a student who complains of harassment to be required to work out the problem directly with the respondent. Second, the PHS Grievance Procedure provided would provide rights to the complainant that were not provided to the respondent: (1) the Compliance Coordinator would provide assistance to the complainant in understanding the Panel process; (2) only the complainant would have the right to appeal both the principal’s decision and the superintendent’s decision; and (3) only the complainant would receive written notice of the Board of Education’s decision.

Remedy Discriminatory Effects. The PHS Grievance Procedure did not provide any assurance that the District would take steps to prevent recurrence of any sex or disability discrimination and remedy discriminatory effects on the complainant and others, if appropriate.

5. Other District Policies and Procedures for Students

In addition to reviewing the District’s Section 504/Title II and Title IX grievance policies and procedures, OCR also analyzed the interplay between these policies and three other District policies to ensure that a potential complainant would understand which policies would apply to his/her complaint of discrimination on the basis of disability or sex. These three additional policies were: the District’s Non-Discrimination Policy & Administrative Regulations for Students; the District’s Bullying Policy; and the District’s Discipline Policy.

i. Non-Discrimination Policy & Administrative Regulations for Students

The District’s Non-Discrimination Policy for Students prohibits discrimination on the basis of disability and sex, but did not reference the grievance procedures found in the District’s Section 504 or Title IX Policy & Administrative Regulations described above. As a result, students, parents/guardians, and employees reading the District’s Non-Discrimination Policy for Students may assume that this is yet another District policy applicable to such discrimination claims. This, however, is not the case.

Rather, students, parent/guardians, or employees would need to obtain the District’s Non-Discrimination Administrative Regulations for Students, which OCR found are not available online. The District’s Non-Discrimination Administrative Regulations for Students clarify that complaints of discrimination based on disability or sex are processed under the District’s Section 504 Policy & Administrative Regulations or the District’s Title IX Policy & Administrative Regulations for Students, respectively.

Lack of access to the District’s Non-Discrimination Administrative Regulations for Students and the cross-references noted therein could lead to significant confusion about whether the Non-Discrimination Policy for Students applies to complaints of disability or sex discrimination, or whether another District policy applies.

ii. Bullying Policy and Safe School Climate Plan

The District’s Bullying Policy, which incorporates the District’s Safe School Climate Plan and bullying complaint forms,⁹ contains language prohibiting bullying, teen dating violence,¹⁰ harassment, and discrimination. The bullying of a student on the basis of disability or sex may result in disability harassment under Section 504/Title II or harassment based on sex under Title IX, respectively. The District’s Safe School Climate Plan briefly mentions this interplay on page 13, explaining that “[i]f a bullying complaint raises concern about discrimination or harassment on the basis of a legally protected classifications [sic]. . . the Safe School Climate Specialist or designee shall also coordinate any investigation with other appropriate personnel within the district as appropriate (e.g. Title IX Coordinator, Section 504 Coordinator etc.)” However, the District’s Bullying Policy and related bullying complaint forms lack any reference to the District’s Title IX Policy & Administrative Regulations for Students or the District’s Section 504 Policy & Administrative Regulations. The District’s Bullying Policy does not explain what procedure will be used if a bullying complaint raises issues under Title IX, Section 504, or Title II – i.e., should the procedure outlined in the Bullying Policy be followed in addition to, in coordination with, or instead of an investigation under the District’s Title IX or Section 504 Policies and Administrative Regulations? As a result, students, parents/guardians, or employees may be uncertain about which policy applies or how to file bullying complaints that may implicate Title IX, Section 504, or Title II.

During negotiations, the District explained to OCR that the District’s Bullying Policy would apply in addition to an investigation under the District’s Section 504 Policy & Administrative Regulations or the District’s Title IX Policy & Administrative Regulations for Students. As a result, OCR is concerned about whether the additional procedures required by the District’s Bullying Policy comply with Section 504, Title II, and Title IX’s requirements regarding prompt and equitable grievance procedures.

iii. Discipline Policy

The District’s Discipline Policy explains that assault, harassment based on a protected class, sexual activity on school grounds or at school-sponsored activity, threatening or intimidating, hazing, bullying, cyberbullying, engaging in a plan to stage sexual activity for recording, and teen dating violence are among the causes for disciplinary action. However, the District’s Discipline Policy does not cross-reference the District’s Section 504 Policy & Administrative Regulations or the District’s Title IX Policy & Administrative Regulations for Students in instances where these behaviors may implicate Section 504, Title II, or Title IX. Rather, the District’s Discipline Policy has its own procedures for imparting discipline. As a result, students, parents/guardians, employees, or third parties may not understand, based on the text of

⁹ OCR’s analysis of the District’s Safe School Climate Plan herein applies equally to each school’s Safe School Climate Plan and any relevant differences between the District’s Safe School Climate Plan and the Pomperaug High School Safe School Climate Plan are noted.

¹⁰ Teen dating violence is not discussed in the Pomperaug High School Safe School Climate Plan, except for one reference to “dating violence” discussed in bullying education and intervention curricula.

the policies, whether discipline will be imparted on respondents in sex and disability discrimination cases in accordance with the District's discipline policy, in accordance with the District's Title IX or Section 504 Policies and Administrative Regulations, or both.

During negotiations, the District explained to OCR that the District's Discipline Policy would apply in addition to an investigation under the District's Section 504 Policy & Administrative Regulations or the District's Title IX Policy & Administrative Regulations for Students. As a result, OCR is concerned about whether these additional procedures required by the District's Discipline Policy comply with Section 504, Title II, and Title IX's requirements regarding prompt and equitable grievance procedures.

6. District Personnel Policies and Procedures

During negotiations, the District provided additional information to OCR about parallel grievance procedures for complaints by District personnel about discrimination based on disability or sex: (1) the District's Title IX Policy & Administrative Regulations for Personnel; and (2) the District's Non-Discrimination Policy & Administrative Regulations for Personnel. OCR is concerned about whether these additional personnel policies comply with Section 504, Title II, and Title IX's requirements regarding prompt and equitable grievance procedures.

Taking all of the above findings about the District's various grievance policies and procedures into consideration, OCR has concluded that the District's grievance policies and procedures under Section 504/Title II and Title IX do not comply with the relevant Section 504, Title II, and Title IX requirements. The Resolution Agreement will ensure that the District implements the changes necessary to its grievance policies and procedures to comply with Section 504, Title II, and Title IX.

Conclusion

OCR found that the District's notices of non-discrimination violated the Section 504 implementing regulation at 34 C.F.R. § 104.8, the Title II implementing regulation at 28 C.F.R. § 35.106, and the Title IX implementing regulation at 34 C.F.R. § 106.9. OCR also found that the District's grievance policies and procedures violated the Section 504 implementing regulation at 34 C.F.R. § 104.7(b), the Title II implementing regulation at 28 C.F.R. § 35.107(b), and the Title IX implementing regulation at 34 C.F.R. § 106.8(b).

Taking a comprehensive approach to address the aforementioned violations, and after agreeing to address related concerns, the District entered into the Resolution Agreement. Among other provisions, the Resolution Agreement requires the District to:

- Revise the District's notices of non-discrimination, including student handbooks, to include accurate contact information for the District's Section 504 Coordinator, Title IX Coordinator, and OCR; and to ensure that such information is timely updated upon any change to the District-wide Section 504 Coordinator and/or Title IX Coordinator.

- Revise the District’s notices of non-discrimination to include the statement: “The district is required by Title IX not to discriminate on the basis of sex in its programs and activities.”
- Revise the District’s Section 504 Policy & Administrative Regulations and its Title IX Policy & Administrative Regulations for Students to comply with applicable Section 504, Title II, and Title IX regulations and to incorporate best practices recommended for the processing of complaints of discrimination on the basis of disability or sex.
- Include cross-references in the District’s grievance policies and procedures to ensure that students, parent/guardians, employees, and third parties are aware of how the District’s policies interact.
- Train District staff on revisions to the District’s Section 504 Policy & Administrative Regulations and Title IX Policy & Administrative Regulations.
- Review the District’s Bullying Policy, Discipline Policy, and related personnel policies to ensure consistency and coordination with the District’s revised Section 504 Policy & Administrative Regulations and the District’s revised Title IX Policy & Administrative Regulations for Students.

When fully implemented, the Resolution Agreement will address all of OCR’s compliance violations and concerns. OCR will monitor the implementation of the Resolution Agreement until the recipient is in compliance with the statutes and regulations at issue in this investigation.

This letter of finding sets forth OCR’s determination in an individual OCR case and should not be construed to cover any other issue regarding the District’s compliance with the laws enforced by OCR. 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.

It is unlawful to harass, coerce, intimidate or discriminate against any individual who has assisted in an OCR investigation, or participated in actions to secure protected rights.

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

We would like to thank you and District counsel XXXXXX for your cooperation in this investigation. If you have any questions, you may contact me at (617) 289-0111.

Sincerely,

Diane M. Henson
Regional Director

Enclosure

Cc: XXXXXXXX