



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

November 29, 2017

Lawrence P. Filippelli
Superintendent of Schools
Scituate School Department
drfilippelli@cox.net

Re: Complaint No. 01-16-1341
Scituate School Department

Dear Superintendent Filippelli:

The U.S. Department of Education (Department), Office for Civil Rights (OCR) has completed its investigation of the complaint we received on September 6, 2016 against the Scituate School Department (the District). The Complainant alleged that the District discriminated against female students at Scituate High School based on their sex and retaliated against him for his advocacy on behalf of these students. OCR investigated whether:

- The District discriminated against female students on the basis of sex by targeting them and/or steering them away from computer programming in favor of music courses (through counseling by District staff, circulating flyers, and making comments) (Allegation 1).
- The District retaliated against the Complainant due to his advocacy, when it denied the Complainant a promotion (Allegation 2).
- The District complied with the following requirements:
 - Designation of an employee to coordinate the District's compliance with Title IX (Allegation 3);
 - Notice of nondiscrimination (Allegation 4); and
 - Grievance procedures that provide for the prompt and equitable resolution of complaints alleging discrimination based on sex (Allegation 5).
- District provided a prompt and equitable response to the Complainant's report that District policies and practices were having a disproportionate impact on female students seeking to enroll in computer programming (Allegation 6).

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. In addition, the laws enforced by OCR prohibit retaliation against any individual who asserts rights or privileges

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under these laws or who files a complaint, testifies, assists, or participates in a proceeding under these laws. The District is subject to Title IX because it is a recipient of Federal financial assistance from the Department.

Background

The District is a small public school district in Rhode Island. The District's schools serve over 1,400 students in pre-school through grade twelve. The District's high school, Scituate High School is at the center of this complaint.

In reaching a determination, OCR reviewed documents provided by the Complainant and the District; interviewed the Complainant, District staff, and third parties; and conducted a site visit on May 10, 2017.

After carefully considering all of the information obtained during the investigation, OCR found insufficient evidence to support Allegations 1 and 2. However, OCR found sufficient evidence of a violation of Title IX regarding Allegations 3, 4, 5, and 6, which the District agreed to resolve through the enclosed Resolution Agreement.

OCR's findings and conclusions are discussed below.

Legal Standards

Different Treatment

The Title IX regulation, at 34 C.F.R. § 106.31(a), provides that no person shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under the District's education programs or activities on the basis of sex. When investigating an allegation of different treatment, OCR first determines whether there is sufficient evidence to establish an initial, or prima facie, case of discrimination. Specifically, OCR determines whether the District treated the female students seeking to enroll in computer programming less favorably than similarly situated male students. If so, OCR then determines whether the Districts had a legitimate, nondiscriminatory reason for the different treatment. Finally, OCR determines whether the reason given by the District is a pretext, or excuse, for unlawful discrimination.

In addition, the Title IX regulation implementing, at 34 C.F.R. § 106.36(a), provides that the District shall not discriminate against any person on the basis of sex in the counseling or guidance of students. Specifically, the District must conduct its student counseling practices in a nondiscriminatory manner, and respond to substantially disproportionate enrollment of individuals of one sex by taking such action as is necessary to assure itself that such disproportion is not the result of discrimination on the basis of sex in counseling or appraisal materials by counselors.

Retaliation

The Title IX regulation, at 34 C.F.R. § 106.71, which incorporates the procedural provisions of the regulation implementing Title VI of the Civil Rights Act of 1964, prohibits retaliation against any individual who asserts rights or privileges under Title IX or who files a complaint, testifies, assists, or participates in a proceeding under Title IX. When analyzing a claim of retaliation, OCR will look at: (1) whether the Complainant engaged in a protected activity (e.g., filed a complaint or asserted a right under a law OCR enforces); (2) whether the District took an adverse action against the Complainant; and (3) whether there is a causal connection between the protected activity and the adverse action. If all these elements are present, this establishes an initial, or prima facie, case of retaliation. OCR then determines whether the District has a legitimate, non-retaliatory reason for its action. Finally, OCR examines whether the District's reason for its action is a pretext, or excuse, for unlawful retaliation.

Designation, Notice, and Training of an Employee to Coordinate the District's Compliance with Title IX

The Title IX regulation, at 34 C.F.R. § 106.8(a), requires that the District 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 District alleging noncompliance with Title IX. The District must notify all students and employees of the name, office address, and telephone number of the designated employee. The District must also ensure that this designated employee has adequate training as to what constitutes discrimination based on sex and that he or she is able to explain how the District's grievance procedures operate.

Notice of Non-Discrimination Pursuant to Title IX

The Title IX regulation, at 34 C.F.R. § 106.9, requires that the District 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 District, 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 employee the District designated to coordinate its responsibilities under Title IX or to the Assistant Secretary of OCR. It should also provide notice of the designated employee's name or title, office address, telephone number. The Title IX regulation, at 34 C.F.R. § 106.9(b), requires the District to include the notice 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.

Title IX Grievance Procedures

The Title IX regulation, at 34 C.F.R. § 106.8(b), requires that the District 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 District’s grievance procedures are prompt and equitable, including whether the procedures provide for the following:

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 discrimination carried out by employees, other students, and third parties;
3. 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 discrimination and to correct discriminatory effects on the complainant and others, if appropriate.

Because retaliation is prohibited by Title IX, schools may want to include a provision in their procedures prohibiting retaliation against any individual who files a complaint or participates in an investigation.

OCR’s Insufficient Evidence Findings

OCR found insufficient evidence to support Allegation 1 (Discrimination as Students Registered for Courses) and Allegation 2 (Retaliation in Hiring).

Allegation 1: Discrimination Based on Sex in Spring 2016 when Students Registered for Courses

The Complainant alleged that in spring 2016, the District discriminated against female students on the basis of sex by targeting them and/or steering them away from enrolling in Computer Programming for the 2016-2017 academic year in favor of music courses. In its investigation, OCR sought to understand the District’s course selection process during spring 2016; the number of female students who initially requested Computer Programming, but dropped that course in favor of a music course, and why they did so; and the course promotion tactics used by the Music Department Staff. After careful investigation, OCR found insufficient evidence that Title IX was violated.

A. Background: The Course Selection Process during Spring 2016

The Guidance Department Chairperson explained in an interview with OCR how the course selection process worked during spring 2016. In February 2016, the high school guidance department conducted a presentation for students on how to register for courses through the PowerSchool online platform. The only mention of elective courses in this presentation was a slide that explained that students should “[p]ick electives that interest you” and “[p]ick electives that are related to what you would like to study in college.”

For a two week period at the beginning of March 2016, students were allowed to select courses through PowerSchool. After students selected their courses, the guidance counselors met individually with each student to go over their schedule and finalize the student's courses. This meeting with guidance counselors was necessary because students may have overenrolled in classes, e.g., by selecting three science courses on PowerSchool or by selecting more courses than they could fit in their schedule.

Around the end of March 2016, the Guidance Department Chairperson met with Dr. Sollitto to determine which courses would or would not run during the 2016-2017 academic year. Because the District's high school is small, the District has a practice that a minimum of fifteen students is required for a course and that there cannot be more than twenty-five or twenty-six students in a class, so courses with low enrollment numbers are offered only once during the school day or not at all; and courses with high enrollment numbers are offered multiple times during the school day.

The master schedule for the 2016-2017 academic year was finalized in June 2016. During the 2016-2017 academic year, the District offered XX singletons, or courses that only ran during one course period. As the Guidance Department Chairperson explained to OCR, singleton courses commonly occur with elective courses and high-level courses because fewer students are enrolled in those classes. Computer Programming is an example of a singleton course that ran during the 2016-2017 academic year.

The number of singletons offered for the 2016-2017 academic year led to course conflicts – situations in which a student requested two courses but both courses were being offered during the same period. The Guidance Department Chairperson explained that during the last couple of weeks of school in June 2016, the guidance counselors spoke with students who had course conflicts in their schedule. The Guidance Department Chairperson explained that those conversations were easy if the student had to choose between an elective course or a course required for graduation or college, but that these conversations were harder if the student had to choose between two elective courses.

On June 7, 2016, Dr. Sollitto sent a memo to each teacher in the District's high school that attached the teacher's schedule for the 2016-2017 academic year. The memo explained that "due to finalizing room assignments and student movement, the number of students assigned to each class and the room assigned may change." The schedule attached to this memo listed the courses the teacher would be teaching each period, the room assignment, and the number of students currently enrolled in the course. The schedule did not include students' names or sex.

The Guidance Department Chairperson explained that the schedule the teachers received in June was close to final, but there could always be changes. For example, students or their parents/guardians could request to add or drop courses over the summer, students could transfer out of the District, or new students could enroll. In addition, according to OCR's review of the District's "Policy for Dropping Subjects and Changing Schedules" outlined in the program of studies, students could request changes to their schedule up to the fifteenth day of class, although exceptions could be made after consulting with the principal, guidance counselor, parent,

department chair, and teachers. As a result, schedules would not be completely finalized until a couple of weeks into the academic year.

B. Student Requests and Enrollment for Computer Programming for the 2016-2017 Academic Year

OCR reviewed student requests and enrollment for Computer Programming, which were at issue in this case. As the chart below shows, three male students and seven female students dropped Computer Programming after they initially requested this course in spring 2016.

Computer Programming Student Requests vs. Student Enrollment

	<u>Male Students</u>	<u>Female Students</u>	<u>Total Students</u>
<u>Student Requests</u> (Mid-April 2016 - June 2016)	14	12	26
<u>Student Enrollment</u> (Fall 2016)	11	5	16
<u>Change from</u> <u>Request to Enrollment</u>	-3	-7	-10

OCR then compared student course requests and enrollment information to determine what classes the students who dropped Computer Programming enrolled in instead, specifically whether these students enrolled in music courses, as alleged.

Courses Students Chose Other than Computer Programming

As the chart below shows, one male student and three female students dropped Computer Programming to take band as their elective.

	<u>Male Students</u>	<u>Female Students</u>	<u>Total Students</u>
<u>Enrolled in a Program Outside of</u> <u>the District</u>	0	2	2
<u>Enrolled in a Non-Music Elective</u> <u>or Other Math Class</u> ¹	2	2	4
<u>Enrolled in Band</u>	1	3	4

OCR closely examined student course requests and enrollment data to determine if any of the three female students who dropped Computer Programming to enroll in band had actually dropped Computer Programming because of a schedule conflict. Specifically, Computer Programming was a singleton class that was only offered during period two, so OCR considered whether any of these students requested and enrolled in another singleton class during period two that would have conflicted with Computer Programming.

¹ During the 2016-2017 academic year, Computer Programming counted as an elective course or a math course.

One female student requested Computer Programming and another singleton course as her electives, but subsequently enrolled in band and dropped Computer Programming in favor of the singleton course. OCR found that this singleton course only ran during period two, the same period that Computer Programming ran. As a result, OCR determined that it was more likely than not that this female student dropped Computer Programming so that she could take this singleton course during the same period, rather than due to course promotion from the Music Department.

Thus, 71% of the female students who dropped Computer Programming (five out of seven female students) did so because they enrolled in a program outside of the District, a non-music elective, another math class, or a singleton class that ran during period two; whereas 29% of the female students who dropped Computer Programming (two out of seven female students) did so to take band. While this drop may be concerning, OCR notes that the sample size is small, and disproportionate gender enrollment alone does not constitute a violation of Federal law. Thus, OCR's investigation sought to determine whether these two female students who dropped Computer Programming to take band did so because the Music Department Staff's course promotion tactics targeted female students.

C. Course Promotion Tactics during Spring 2016

While students were registering for courses during spring 2016, teachers were promoting their courses. District administrators explained in interviews with OCR that the District did not have a policy regarding course promotion. The District explained in its data response that the only promotional materials that were distributed to students were the program of studies and a flyer (Flyer) that was created and distributed by the Music Department Staff "without knowledge of or approval by the school principal." District staff and the Complainant confirmed in interviews with OCR that they did not know of any other flyers or promotional materials distributed to students.

The Music Department Staff distributed the Flyer in March 2016 to eighth grade students (i.e., incoming freshman for the upcoming 2016-2017 academic year). The Flyer promoted the high school's music courses with statements such as, "Wanna get out of school and still learn stuff? We go on field trips!"; "You are hanging out in the same music class with seniors, juniors and sophomores."; and "Music connects with other classes like English, Science, Math, History, Foreign Language, Fine Arts and Physical Education!" The Flyer also included a graphic of a brain and explained that "one of the only activities that activates, stimulates, and uses the entire brain is music." OCR reviewed the Flyer and noted that it did not include any statements related to students' sex and did not include any disparaging statements about students who chose electives other than music.

In response to the Flyer, Dr. Sollitto explained to OCR that he met with some department chairs, including the Music Department Chair, to discuss course promotion. The outcome of that meeting was a memo that Dr. Sollitto sent to District staff on March 10, 2016. This memo set out guidelines for course promotion to ensure "equity and respect for other content areas." The guidelines were (1) "No handouts are allowed to be given to students;" (2) "Be sure not to make

students. Rather, the Music Department Staff appear to have pressured and made comments to both male and female students. In conclusion, OCR found insufficient evidence that the District was discriminating against female students on the basis of sex by targeting them and/or steering them away from Computer Programming in favor of music courses.

Allegation 2: Retaliation in the Hiring of the XXXXXXXXXXXXX

The Complainant alleged that the District retaliated against him due to his First and Second Reports in June 2016, in which he alleged that the District may be in violation of Title IX, when the District denied the Complainant a promotion to XXXXXXXXXXXX in fall 2016. As explained below, OCR found that some but not all elements of OCR’s retaliation analysis were met, and as a result OCR found insufficient evidence of a violation of Title IX.

A. Protected Activity

OCR found that the Complainant engaged in a protected activity and that the District knew the Complainant engaged in a protected activity. Specifically, the Complainant engaged in a protected activity when he emailed his First and Second Reports to Dr. Sollitto on June 21, 2016 and June 22, 2016. In addition, the District administration knew that the Complainant engaged in this protected activity because the First and Second Reports were sent to Dr. Sollitto and circulated amongst District administrators (Dr. Lescault, Dr. Filippelli, and Mr. Hassell) and the District’s School Committee.

B. Adverse Action

OCR found that the Complainant experienced an adverse action caused by the District when the Complainant was not promoted to XXXXXXXXXXXX. Specifically, on XXXXXXXXXXXX, the District issued a job posting for the position of “XXXXXXXXXXXXXXXXXXXX.” Two candidates applied for the position – the Complainant and XXXX. In XXXXXXXXXXXX, XXXX was hired for the position and the Complainant was not.

C. Causal Connection between the Protected Activity and the Adverse Action

OCR found sufficient evidence of a causal connection between the Complainant’s protected activity in June 2016 and the adverse action he experienced in XXXXXXXXXXXX. A period of only XXXXXXXXXXXX – the end of June through XXXXXXXXXXXX – elapsed between the Complainant’s protected activity and the adverse action. As a result, OCR found sufficient evidence to support a prima facie case of retaliation

D. The Facially Legitimate, Non-Retaliatory Reason for the Adverse Action

The District explained to OCR that XXXX was promoted to XXXXXXXXXXXX because (1) XXXX had more points on the Teacher Vacancy / Job Assignment Rubric (Rubric); and (2) XXXX had a XXXXXXXX and a XXXXXXXX was preferred for the position. As a result, OCR found that the District presented facially legitimate, non-retaliatory reasons for why the Complainant was not promoted to XXXXXXXXXXXX.

Title IX compliance, as required; however, OCR found that the District did not adequately provide notice of this employee to students and parents in 2016-2017, and did not provide adequate Title IX training to the designated employee for 2015-2016 or 2016-2017.

A. Designation of an EEO Officer

OCR found that the District appropriately designated at least one employee to coordinate its Title IX compliance. OCR found that the District designated its Assistant Superintendent as the District's "Equal Employment Opportunity / Affirmative Action Officer" (EEO Officer). The District's EEO Officer is charged with ensuring the District's compliance with Title IX, among other non-discrimination laws. During the 2015-2016 academic year, the District's EEO Officer was Dr. Lawrence Filippelli, who was the District's Assistant Superintendent at the time. During the 2016-2017 academic year, the District's EEO Officer was Dr. Michael Sollitto, who was the District's Assistant Superintendent at the time. As a result, OCR found that the District properly designated an employee to coordinate the District's efforts to comply with Title IX during the 2015-2016 and 2016-2017 academic years.

B. Notice to Students and Employees of the EEO Officer

OCR found that the District did not provide adequate notice of the employee charged with Title IX compliance during the 2016-2017 academic year, as required. OCR found that the District provided students and employees notice of the name, office address, and telephone number of the District's EEO Officer through its program of studies, which lists the courses to be offered during the upcoming academic year. OCR reviewed the program of studies distributed to students in spring 2015, spring 2016, and spring 2017. On the second page of each program of studies is a notice of non-discrimination that explains that the District "names Dr. Lawrence Filippelli as the Equal Employment Opportunity / Affirmative Action Officer" and includes his office address and telephone number.

In July 2016, however, Dr. Sollitto became the District's Assistant Superintendent, and thus also the District's EEO Officer. The District confirmed that it did not revise its program of studies distributed in spring 2016 to reflect this change and the program of studies distributed in spring 2017 still listed Dr. Filippelli as the District's EEO Officer. As a result, students and employees looking to the program of studies during the 2016-2017 academic year did not have notice of the District's EEO Officer. As a result, OCR found that the District violated Title IX because it did not adequately notify students, parents/guardians, and employees of the District's EEO Officer.

C. Training of the EEO Officer

OCR found that employees charged with overseeing Title IX compliance did not receive sufficient training. As noted in the Legal Standards section, above, an employee charged with overseeing Title IX compliance must be able to adequately explain how a district's grievance procedures operate. Here, Dr. Filippelli, who was the District's EEO Officer during the 2015-2016 academic year, attended training at the Rhode Island Superintendent Association's Legal Institute. The District also explained in its data response that Dr. Filippelli attended Title IX trainings in September 2015, October 2016, and November 2016. While OCR found that Dr.

Filippelli was familiar with Title IX principles and basic aspects of the District's grievance procedures, in an interview with OCR, Dr. Filippelli was unable to explain in detail how the District's grievance procedures operated, except to say that after a complaint was reported to the principal, the principal would initiate an investigation and communicate the outcome of that investigation to the student.

OCR also found that Dr. Sollitto, who was the District's EEO Officer during the 2016-2017 academic year, attended the Rhode Island School Principals Association and the Rhode Island Interscholastic Association sessions on legal issues within the past five years and attended the Northeastern Educational Research Association Conference in or about 2011 and 2012 where research was presented on Title IX. OCR found that Dr. Sollitto was familiar with Title IX principles and some but not all key aspects of the District's grievance procedures. Specifically, in an interview with OCR staff, Dr. Sollitto explained that the initial investigation under the District's grievance procedures would be completed by the principal, but could not explain whether the Assistant Superintendent would also conduct an investigation and he did not know if the School Committee would get involved in an investigation or only on appeal.

As a result, OCR found that the District's EEO Officers during the 2015-2016 and 2016-2017 academic years received some but, ultimately, insufficient training on Title IX through outside organizations and legal institutes, which did not enable them to explain the District's grievance procedures in adequate detail.

Allegation 4: Notice of Non-Discrimination

OCR found that during the 2015-2016 and 2016-2017 academic years, the District disseminated its notice of non-discrimination in the following locations: in the program of studies distributed to students in spring 2016 and spring 2017 and posted on the high school's website in spring 2017²; and in a footer on the District's letterhead. OCR notes that there is no notice of non-discrimination in the District's 2015-2016 or 2016-2017 high school student handbooks.

OCR found that the District satisfied some but not all requirements under Title IX regarding its notice of non-discrimination. As explained below, OCR found that the District's notices of non-discrimination contained language prohibiting discrimination based on sex, but lacked a statement that the District is required by Title IX not to discriminate and did not adequately identify the District employee charged with overseeing Title IX compliance or OCR.

² The spring 2017 Program of Studies is available at <https://sites.google.com/view/shspos/program-of-studies>.

A. Notice of Non-Discrimination in the Program of Studies

OCR reviewed the program of studies distributed to students in spring 2016 and spring 2017. On page two, both versions of the program of studies contained language prohibiting discrimination on the basis of sex. However, the District violated Title IX because the notice of non-discrimination in both versions of the program of studies lacked a statement that the District is required by Title IX not to discriminate on the basis of sex in its programs and activities, as required by 34 C.F.R. § 106.9(a).

In addition, the notice of non-discrimination in both versions of the program of studies “names Dr. Lawrence Filippelli as the Equal Employment Opportunity / Affirmative Action Officer” and includes his office address and telephone number. As discussed above, in July 2016, Dr. Sollitto became the District’s Assistant Superintendent and EEO Officer. The District did not revise its program of studies to reflect this change and the program of studies distributed in spring 2017 still listed Dr. Filippelli as the District’s EEO Officer, rather than Dr. Sollitto. As a result, the District violated Title IX because the District did not revise its program of studies to refer to the District’s new EEO Officer.

Finally, while the notice of non-discrimination in both versions of the program of studies identified OCR as a referral resource, OCR is concerned because the telephone number the District provided for OCR is incorrect and the District did not provide OCR’s full office address.

B. Notice of Non-Discrimination on District Letterhead

The District represented in its data response that it included notice of non-discrimination on all District letterhead. The notice of non-discrimination in footer of the District’s letterhead contained language prohibiting discrimination on the basis of sex. However, the District violated Title IX because this notice of non-discrimination lacked a statement that the District is required by Title IX not to discriminate on the basis of sex in its programs and activities, as required by 34 C.F.R. § 106.9(a).

In addition, this notice of non-discrimination failed to provide notice that questions regarding Title IX may be referred to the District’s EEO Officer or to the Assistant Secretary of OCR, as required. Rather this notice of non-discrimination explained that “[i]f you require accommodation in order to attend a meeting or program at a school, call the Affirmative Action Office at 647-4100 at least two business days in advance of the meeting or program.” While this statement identified and provided the phone number for the District’s Affirmative Action Office, its phrasing suggested that the Affirmative Action Office was responsible for handling accommodations for meetings and programs, and it did not explain that the Affirmative Action Office was also responsible for handling complaints of sex discrimination. In addition, this statement did not identify the District’s EEO Officer or include his name, title, or office address. Finally, this statement did not provide information about OCR. As a result, the District violated Title IX because this notice of non-discrimination failed to provide notice that questions regarding Title IX may be referred to the EEO Officer or to the Assistant Secretary of OCR.

Allegation 5: Title IX Grievance Procedures

OCR found that the District’s applicable Title IX grievance policy – Policy #9000 “Non-Discrimination – Affirmative Action Policy” (Policy #9000) – did not contain all six elements that are required under Title IX to ensure that the District provides a prompt and equitable response to complaints of discrimination based on sex.

A. The District’s Applicable Title IX Grievance Policy

For the purposes of analyzing the District’s grievance procedures for compliance with Title IX, OCR sought to determine which District policy would apply to a complaint alleging discrimination based on sex in the course selection process, such as a complaint that alleged that female students were counseled against enrolling in certain courses or a complaint that alleged that District policies and practices had a disproportionate impact on female students enrolling in certain courses.

Dr. Sollitto confirmed to OCR in his interview that Policy #9000 would apply to complaints alleging discrimination based on sex in the course selection process. Policy #9000 prohibits discrimination on the basis of sex, along with other forms of discrimination, in the District’s “employment policies, admissions, curricular programs, extracurricular activities including athletics, counseling and any other school function and activities.” Policy #9000 further explains that the District “shall not discriminate in admissions, treatment or access to educational programs, activities and facilities or in regard to employment opportunities on the basis of sex, as required by Title IX of the Education Amendments of 1972.”

B. Violations in Policy #9000

Policy #9000 raised a variety of compliance issues, most of which are due to the fact that Policy #9000 does not have any procedures to explain how it is implemented and how complaints are investigated.

First, Policy #9000 did not provide sufficient notice to students, parents/guardians, and employees of the grievance procedures that apply, including where complaints may be filed. Policy #9000 was not in the program of studies, the high school’s student handbook, or online, and this lack of availability may prevent students, parents/guardians, and employees from bringing complaints of sex discrimination to the District. In addition, Policy #9000 did not provide sufficient notice about where complaints may be filed because it did not include the name, title, and contact information for the District’s EEO Officer and it listed the Office of Civil Rights at the U.S. Department of Health and Human Services as the resource at the Federal level, rather than OCR. As a result, the District failed to ensure that students, parents/guardians, and employees had sufficient notice of Policy #9000, including where complaints may be filed.

Second, while it is clear that Policy #9000 would apply to a complaint alleging discrimination based on sex in the course selection process, it is not clear what procedures would apply. Dr. Filippelli and Dr. Sollitto explained in interviews with OCR that the principal would investigate complaints. However, Dr. Filippelli and Dr. Sollitto seemed uncertain about what would occur

after the principal’s investigation, including whether the Assistant Superintendent / EEO Officer and the School Committee would conduct their own investigations or just serve as avenues for appeals. In addition, Dr. Sollitto explained in his interview that he was not sure whether these procedures were “delineated in any detail.” As a result, the District failed to develop and publish written procedures to implement Policy #9000, and as such failed to ensure the adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; designate reasonably prompt timeframes for the major stages of the complaint process; and ensure that all parties were provided notice of the outcome of the complaint.

Allegation 6: Prompt and Equitable Resolution of the Complainant’s Reports of Sex Discrimination

OCR found that the District failed to provide a prompt and equitable response Complainant’s allegation that District policies and practices were having a disproportionate impact on female students seeking to enroll in Computer Programming.

A. The Complainant’s Reports to the District

In two complaints to the District, the Complainant alleged that the District’s policies and procedures discriminated against female students who wanted to enroll in Computer Programming.³ As described below, OCR found that the District responded to the first complaint, but not the second.

On June 21, 2016, the Complainant emailed Dr. Sollitto, who was the District’s high school principal at the time (Complainant’s First Report). In the Complainant’s First Report, the Complainant alleged that “[i]n the past several weeks district-level policies have shut out aspiring female coders disproportionately” and that “it appears Scituate may be in violation of Title IX.” In support of his allegations, the Complainant referenced course request and course enrollment information for his Computer Programming course for the upcoming 2016-2017 academic year and noted that female enrollment in Computer Programming dropped from 13 female students to 7 female students.

Later that day, Dr. Sollitto responded to the Complainant’s First Report and copied the former Math Department Chairperson, the Guidance Department Chairperson, and Dr. Filippelli. Dr. Sollitto explained that he looked into the course requests and enrollment for Computer Programming and determined that “**ALL** changes were per student request” (emphasis in original) and that several students “chose to take band or chorus instead of the Computer Programming Class.” As a result, Dr. Sollitto noted in his response that he did not “see this as a Title IX issue in any way, shape, or form.” Dr. Sollitto added that he was “not sure what ‘district-level policies have shut out’ female students.”

³ “Computer Programming” has also been formally known as “Computer Science A,” and informally known as “Java.” During the 2016-2017 academic year, the District also began offering “Introduction to Computer Science,” an introductory course.

The next day, on June 22, 2016, the Complainant responded to Dr. Sollitto and copied the former Math Department Chairperson, the Guidance Department Chairperson, and Dr. Filippelli (Complainant's Second Report). In the Complainant's Second Report, he alleged that the following district policies and practices were having a negative impact on female students seeking to take Computer Programming: (1) "an outdated and inconsistently applied minimum class size policy" (Minimum Class Size Practice); and (2) policies regarding whether to run two sections of a course when twenty-six or more students request a course (Maximum Class Size Practice). The Complainant alleged that the Minimum and Maximum Class Size Practices lead to "[a] record number of singletons,"⁴ so students were forced to choose between elective courses in a way that broke "along district norms and stereotype lines."

No one at the District responded to the Complainant's Second Report. Although Dr. Sollitto initially explained to OCR that he had responded to the Complainant's Second Report, after reviewing his email correspondence, the District's counsel confirmed with Dr. Sollitto that there was no record of Dr. Sollitto responding to the Complainant's Second Report and that Dr. Sollitto did not send the Complainant a response.

The District's administrators circulated the Complainant's First Report and Second Report to the District's School Committee and amongst themselves. The School Committee was first notified of the Complainant's First and Second Reports on June 22, 2016. Dr. Filippelli, who was the District's Assistant Superintendent and EEO Officer at the time, forwarded the Complainant's First and Second Report to the members of the District's School Committee and copied Dr. Sollitto and Dr. Lescault, who was the District's Superintendent at the time. In this email, Dr. Filippelli explained that neither he nor Dr. Sollitto believed that "there are any Title IX issues" in the Complainant's First and Second Reports, but rather that the Complainant was using Title IX as a "threat" to get the School Committee to change the Minimum Class Size Practice.

On July 1, 2016, various District administrators assumed new positions. Dr. Filippelli became the District's Superintendent, Dr. Sollitto became the District's Assistant Superintendent and EEO Officer, and Mr. Hassell became the high school principal. Following these appointments, on July 9, 2016, Dr. Filippelli emailed Mr. Hassell the information he had sent on June 22, 2016 to the District's School Committee. Dr. Filippelli explained that the Complainant was "off base and basically not liking the cutting of courses due to budgetary constraints." In his interview with OCR, Mr. Hassell explained that he did not respond to Dr. Filippelli's email or investigate the Complainant's First and Second Reports because he believed Dr. Filippelli and Dr. Sollitto were handling those reports.

The District explained the reasons for its inaction in its data response to OCR. Specifically, the District noted that the Complainant only communicated his concerns by email, "[a] formal, written complaint was not filed" with the District's administration or School Committee, and the Complainant "never requested a hearing or meeting to address his concerns."

B. Application of Policy #9000 to the Complainant's Reports to the District

⁴ The term "singletons" refers to a course that only runs during one course period. For example, during the 2016-2017 academic year, Computer Programming only ran during period 2 and Introduction to Computer Programming only ran during period 3, whereas Band ran during periods 3 and 4 and Chorus ran during periods 3 and 4.

The Complainant's allegation in his First and Second Reports to the District was that the District's policies and practices – the Minimum and Maximum Class Size Practices – were having a disproportionate impact on female students seeking to take Computer Programming. As discussed above, Policy #9000 would apply to complaints alleging discrimination based on sex in the course selection process.

In analyzing whether the District responded promptly and equitably to the Complainant's First and Second Reports of sex discrimination, OCR considered (1) whether the District's Policy #9000 included elements necessary to provide for the prompt and equitable resolution of complaints of discrimination under Title IX; and (2) whether the District followed its Policy #9000 in responding to the Complainant's First and Second Reports, or otherwise provided a prompt and equitable resolution.

First, as OCR concluded above, the District failed to publish procedures to explain how the District would implement Policy #9000 and investigate complaints of sex discrimination that would fall under that policy. As a result, the District's grievance policy and procedure failed to include elements necessary to provide for the prompt and equitable resolution of complaints of discrimination under Title IX and violated Title IX.

Second, OCR analyzed whether the District followed its Policy #9000 in investigating the Complainant's First and Second Reports, or otherwise provided a prompt and equitable resolution. Because Policy #9000 does not have any procedures for investigation, OCR relied on Dr. Filippelli and Dr. Sollitto's explanations in their interviews with OCR about how the District conducts investigations under Policy #9000. According to their explanations, the high school principal would conduct an investigation and apply the preponderance of the evidence standard. After the investigation, Dr. Filippelli and Dr. Sollitto were uncertain about whether the Assistant Superintendent / EEO Officer and the School Committee would conduct their own investigations or just serve as avenues for appeals.

In the Complainant's case, upon receiving the Complainant's First Report on June 21, 2016, the principal at the time, Dr. Sollitto, investigated why students who initially requested Computer Programming ended up dropping the class. Dr. Sollitto explained to OCR in an interview that in conducting this investigation, he looked at the request and enrollment numbers from the guidance department and spoke to guidance counselors about why students changed their classes. Dr. Sollitto explained to the Complainant via email that he found that "3 boys and 6 girls chose to take a different elective when finalizing schedules" but "[i]t appears that **ALL** changes were per student request" (emphasis in original).

Dr. Sollitto's investigation did not include an investigation into whether any District policies and practices had a disproportionate impact on female students. Rather, in his response to the Complainant, Dr. Sollitto explained that he was "not sure what 'district-level policies have shut out' female students." In his Second Report on June 22, 2016, the Complainant clarified which policies and practices he was referring to – the District's Minimum and Maximum Class Size Practices.

Neither Dr. Sollitto nor anyone else in the District responded to the Complainant's Second Report. Rather, the District expected the Complainant to either file a formal complaint or to request a hearing or meeting with the School Committee. These options were not described in Policy #9000, so it is unclear how the Complainant would have known that he had to file a complaint in this manner. In any event, by July 2016, the relevant District administrators (Dr. Filippelli, Dr. Sollitto, and Mr. Hassell) and the members of the School Committee were aware of the Complainant's First and Second Report, but no one investigated the Complainant's allegation that the District's Minimum and Maximum Class Size Practices were disproportionately affecting female students and no one informed the Complainant that the District was not investigating his complaints.

As a result, OCR found that the District did not follow its Policy #9000, both as written and as described to OCR, or otherwise provide a prompt and equitable resolution to the Complainant's Second Report. Specifically, while Dr. Sollitto did investigate why female and male students who requested Computer Programming ended up dropping that class, Dr. Sollitto and the rest of the District administration failed to investigate whether the District's Minimum or Maximum Class Size Practices disproportionately affected female students.

Conclusion

On November 7, 2017, the District agreed to implement the enclosed Resolution Agreement, which commits the District to take specific steps to address the identified areas of noncompliance with respect to Allegations 3, 4, 5 and 6. The Resolution Agreement entered into by the District is designed to resolve the issues of noncompliance. Under Section 303(b) of OCR's *Case Processing Manual*, a complaint will be considered resolved and the District deemed compliant if the District enters into an agreement that, fully performed, will remedy the identified areas of noncompliance (pursuant to Section 303(b)). OCR will monitor closely the District's implementation of the Resolution Agreement to ensure that the commitments made are implemented timely and effectively. OCR may conduct additional visits and may request additional information as necessary to determine whether the District has fulfilled the terms of the Resolution Agreement and is in compliance with Title IX with regard to the issues raised. As stated in the Resolution Agreement, if the District fails to implement the Resolution Agreement, OCR may initiate administrative enforcement or judicial proceedings, including to enforce the specific terms and obligations of the Resolution Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10) or judicial proceedings, including to enforce the Resolution Agreement, OCR shall give the District 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 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. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District may not harass, coerce, intimidate, 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.

If you have any questions, you may contact Civil Rights Attorney Amy Fabiano at (617) 289-0007 or by e-mail at Amy.Fabiano@ed.gov.

Sincerely,

Meena Morey Chandra *w/p AMM*
Acting Regional Director

Enclosure

cc: David M. D'Agostino, daviddagostino@gorhamlaw.com