



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

October 17, 2017

SENT VIA EMAIL

Dr. Alicia M. Roy
Superintendent
New Fairfield Board of Education
Three Brush Hill Road
New Fairfield, Connecticut 06812
Email: roy.alicia@newfairfieldschools.org

Re: Complaint No. 01-17-1023
New Fairfield Board of Education

Dear Dr. Roy:

This letter is to advise you of the outcome of the complaint that the U.S. Department of Education (Department), Office for Civil Rights (OCR) received against the New Fairfield Public School District (District), in which the Complainant alleged that the District discriminated against her daughter (Student) based on sex and disability during the 2015-2016 school year and the fall of the 2016-2017 school year.

Specifically, the Complainant alleged that she reported many incidents of peers harassing the Student on the school bus, including students calling her sexually explicit names and spreading rumors of a sexual nature, causing a sexually hostile environment, but that the District failed to respond in accordance with its legal obligations. In addition, the Complainant alleged that the Student's educational team failed to meet to discuss the impact the harassment may be having on the Student's education.

OCR enforces Title IX of the Education Amendments of 1972 (Title IX), as amended, 20 U.S.C. § 1681 *et seq.*, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in programs and activities receiving financial assistance from the Department. OCR is also responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs or activities receiving financial assistance from the Department. Furthermore, pursuant to Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The District is a recipient of financial assistance from the Department and is a public elementary and secondary education system. Therefore, OCR had jurisdictional authority to investigate this complaint under Title IX, Section 504, and Title II.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Accordingly, OCR opened an investigation into two allegations:

- Whether the District failed to promptly and equitably respond to notice of sexual harassment, and, if so, whether the Student was subjected to a sexually hostile environment, in violation of 34 C.F.R. §§ 106.8(b), 106.31(a) and (b) (Allegation 1); and
- Whether the District denied the Student a free appropriate public education (FAPE) by failing to convene a team meeting to determine the effect the sexual harassment may have had on her education, in violation of 34 C.F.R. §§ 104.33 (a) and (b), and 28 C.F.R. § 35.130 (Allegation 2).

As explained below, before OCR completed its investigation, the District expressed a willingness to resolve Allegation 1 by taking the steps set out in the enclosed Resolution Agreement. In addition, during its investigation, OCR determined that there was insufficient evidence to support Allegation 2.

Legal Standards

Title IX and its implementing regulation prohibit discrimination based on sex, including sexual harassment. Sexual harassment is unwelcome conduct of a sexual nature and can include sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct. Hostile environment sexual harassment is sexually harassing conduct that is sufficiently severe, persistent, or pervasive to limit a student's ability to participate in or receive benefits, services, or opportunities in the recipient's program. When responding to alleged sexual harassment, a recipient must take immediate and appropriate action to investigate or otherwise determine what occurred. If a recipient knows or reasonably should have known about sexual harassment that creates a hostile environment, Title IX requires the recipient to take immediate action to eliminate the harassment, prevent its recurrence, and address its effects. These duties are a recipient's responsibility regardless of whether a student has complained, asked the recipient to take action, or identified the harassment as a form of discrimination.

In addition, the Section 504 regulation, at 34 C.F.R. § 104.33, requires school districts to provide a free appropriate public education (FAPE) to students with disabilities. An appropriate education is regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met and that are developed in compliance with Section 504's procedural requirements. OCR interprets the Title II regulation, at 28 C.F.R. §§ 35.103(a) and 35.130(b)(1)(ii) and (iii), to require school districts to provide a FAPE to the same extent required under the Section 504 regulation. The Section 504 regulation, at 34 C.F.R. § 104.35(a), requires a school district to evaluate any student who needs or is believed to need special education or related services due to a disability. A district must conduct an evaluation before initially placing the student in regular or special education and before any subsequent significant change in placement.

Factual Background

During its investigation, OCR learned that on September 26, 2016 the Complainant informed the Principal that while on the school bus, several male students were calling her daughter such names as “lesbian,” “transgender,” “pervert,” and “ugly.” Later that week, the Complainant received a letter from the Assistant Superintendent informing her that an investigation had found bullying behaviors, but not sexual harassment, and proposing a safety plan for the Student, which included assigned seating on the bus, increased supervision by the bus driver, weekly check-ins with the school’s social worker, weekly check-ins with the Principal for the month of October and monthly after that, and monthly communication with the Complainant.

The Complainant believed the safety plan was insufficient to keep the Student safe. She requested that the offending students be removed from the bus for the remainder of the year and that the Student not be required to have an assigned seat. The Principal and Assistant Superintendent did revise the Plan to allow the Student to sit with friends. However, the Complainant was told that there was no other bus the boys could take, and that the safety plan was otherwise sufficient to resolve the matter. The Complainant also disagreed with the requirement in the safety plan that the Student create a “pay it forward”¹ plan, as an apology for kicking one of the boys that harassed her.

On October 15, 2016, the Complainant appealed the investigation’s findings to the Superintendent. In early November, the Superintendent issued a letter concluding that the conduct violated both the District’s bullying and sexual harassment policies. The Superintendent kept the safety plan in effect, but removed the Student’s requirement to engage in a “pay it forward” activity. The letter also stated that a Planning and Placement Team meeting would be scheduled and the District would address the school bus climate by speaking with all students in the middle school and with school bus drivers.

The Complainant told OCR that the safety plan was never implemented; she alleged that no staff ever contacted the Complainant or checked in with the Student.² In addition, the assigned seating did not work; at first the Student was not allowed to sit with her friends, so she took it upon herself to move to a seat near her friends. Regardless, even from their assigned seats, the offending students continued to shout insults at her, as did some of their friends.³

Conclusion

With respect to Allegation 1, prior to the conclusion of OCR’s investigation and pursuant to Section 302 of OCR’s *Case Processing Manual*, the District expressed an interest in resolving this complaint. Subsequent discussions between OCR and the District resulted in the District

¹ The Student admitted to kicking another student on the bus. The Assistant Superintendent included in the safety plan a requirement that the Student think of something nice to do for somebody else as a way of “paying it forward.”

² In interviews with District staff, there was some evidence that the Principal spoke to the Complainant weekly for the month of October. However, all District staff interviewed were under the impression, based on information from the Student, that there were no further issues on the bus.

³ In interviews with other students on the bus, including with the Student’s friends, the District learned that the shouting went back and forth between students, and was not always aimed at the Student. In addition, the Student admitted that at times she participated and was at times the instigator.

signing the enclosed Agreement which, when fully implemented, will resolve the Title XI issues raised in this complaint. The terms of the Agreement are aligned with the complaint allegations and are consistent with the applicable laws and regulations. OCR will monitor the District's implementation of the Agreement and continue to do so until it has determined that the District has complied with the terms of the Agreement. Failure to implement the Agreement could result in OCR reopening the complaint.

With respect to Allegation 2, OCR investigated the Complainant's allegation that the Student's educational team failed to meet to discuss the impact the harassment may be having on the Student's education. Based on the documents provided and interviews with District staff, the Student, and the Complainant, there is insufficient evidence to support the Complainant's allegation that the District denied the Student a FAPE by failing to convene a team meeting to determine the effect the harassment may have had on her education. The evidence shows that in December 2016, a team of people knowledgeable about the Student convened and discussed whether the Student needed additional services based on the harassment she endured on the school bus. The team determined that she did not. As a matter of policy, OCR does not second-guess evaluation, placement, and other educational decisions as long as the District follows the procedures required by Section 504. Disagreements over a student's evaluation, services, placement, or educational program are more appropriately addressed through an impartial hearing, such as a due process hearing. As such, OCR is dismissing this allegation and will take no further action on it as of the date of this letter.

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 must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

If you have any questions, you may contact Carol Kennedy-Merrill, Civil Rights Investigator, at (617) 289-0048 or by e-mail at Carol.Kennedy-Merrill@ed.gov.

Sincerely,

/s/ Adrienne Mundy-Shephard

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

Enclosure

cc: Leander A. Dolphin