



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

October 7, 2021

Superintendent Christi Michaud
By email: Christi.michaud@milfordk12.org

Re: Complaint No. 01-18-1175
Milford School District

Dear Superintendent Christi Michaud:

This letter is to advise you of the outcome of the complaint that the U.S. Department of Education, Office for Civil Rights (OCR) received against Milford School District. The Complainant alleged that the District discriminated against XXXXXXXX (Student) on the basis of sex. Specifically, the complaint alleged that the District failed to promptly and equitably respond to complaints that the Student was repeatedly harassed by his peers on the basis of sex during XXXXXXXXXX school year (Allegation 1). The Complainant also alleged that the District did not publish its grievance procedures for resolving complaints of sex discrimination (Allegation 2), and did not designate an employee to coordinate its compliance under Title IX of the Education Amendments of 1972 (Title IX) (Allegation 3).

As explained further below, before OCR completed its investigation of the complaint, the District expressed a willingness to resolve the allegations by taking the steps set out in the enclosed Resolution Agreement.

Jurisdiction

OCR enforces Title IX, 20 U.S.C. Section 1681 *et seq.*, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any program or activity receiving federal financial assistance from the Department.¹ Because the District receives federal Financial assistance, OCR has jurisdiction over it pursuant to Title IX.

Legal Standards

The regulation implementing Title IX, at 34 C.F.R. § 106.31(a), states: “Except as provided elsewhere in this part, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives Federal financial assistance.”

¹ Amendments to the Title IX regulation went into effect on August 14, 2020 and can be viewed [here](#). However, OCR is evaluating this case based on the Title IX regulation that was in effect when the alleged actions occurred. You can find that regulation [here](#). For more information about Title IX, including the new Title IX regulation and related resources, visit OCR’s website at <https://www2.ed.gov/policy/rights/guid/ocr/sexoverview.html>.

Both sexual harassment and sex stereotyping are forms of sex discrimination prohibited by Title IX. Sexual harassment can include unwelcome sexual advances, and other verbal, nonverbal, or physical conduct of a sexual nature, such as sexual assault or acts of sexual violence. Sex stereotyping can include harassment and other forms of discrimination for not conforming to stereotypical notions of masculinity and femininity.

At the time of the incidents in this case, the Title IX regulation included a number of procedural requirements, including a requirement that recipients adopt and publish procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any actions prohibited by Title IX and its implementing regulation. *See former* 34 C.F.R. § 106.8(b). There is no fixed time frame to determine whether a resolution has been prompt; rather, OCR will evaluate a recipient's good faith efforts under the circumstances. An equitable response requires a trained investigator to analyze and document the available evidence to support decisions, including inculpatory and exculpatory evidence; and any rights or opportunities that a recipient makes available to one party during an investigation should be made available to the other party on equal terms. OCR evaluates on a case-by-case basis whether the resolution of a sexual harassment complaint is prompt and equitable.

At the time of the incidents in this case, the Title IX regulation also required each recipient to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX, and to notify all its students and employees of the name, office address, and telephone number of the employee(s) designated as the recipient's coordinator of its Title IX responsibilities. *See former* 34 C.F.R. § 106.8(a).

Findings of Fact to Date

During the investigation, OCR reviewed documents provided by the Complainant and the District; interviewed the Complainant and District staff; and reviewed publicly available information on the District's website.

Allegations of Harassment in XXXXXXXXXX and XXXXXXXX XXXX

On or about XXXXXXXXXXXXXXXX, while the Student was in the XXXXXX grade, XXXXX XXXXXXXX reported to the XXXXXX school principal (Principal) that Peer 1 made comments in gym class about XX The District represented that, at this time, the Principal and XXXXXXXX school assistant principal (Assistant Principal) were the building-level Title IX employees responsible for addressing Title IX complaints, and that they had both received training in Title IX investigations. Contemporaneous District files indicate that the Principal investigated the XXXXXXXXXX allegations that same day. According to these materials, the Principal spoke with the Student, Peer 1, the gym teacher, and three other students who were in gym class. The District's incident log indicates that the Student and Peer 1 reported conflicting versions of what occurred during gym class, with each accusing the other of inappropriate language or gestures. The gym teacher and three other students reported that they did not hear the comments made by the Student and/or Peer 1, or see inappropriate interactions between them. The incident log also indicates that the District did not substantiate that inappropriate XXXXXX comments were made, and the Assistant

Principal told OCR that the District could only confirm that the students had fought. Notice was orally provided to both families within several days, but the Complainant and District dispute what was conveyed. Specifically, the Complainant asserts that she was told Peer 1 was disciplined; the District denies this, and its logs indicate that Peer 1 was not disciplined.

According to OCR's investigation, the District advised the students' teachers to watch for interactions between the two students and instructed the students to report any future concerns to the front office. The District also asked the school counselor (School Counselor) to meet with both students.

On XXXXXXXXXXXXXXXX, the Complainant reported additional concerns to the Principal, which appear in the District's incident log as: "Parent complaint about sexual harassmen[t]." The Complainant alleged that in the locker room after gym class, Peers 2 and 3 told the Student that XX. The Complainant also alleged that Peers 2 and 3 made comments to the Student such as: XXXXXXXXXXXXXXXXXXXXXXXX XX. The Assistant Principal immediately investigated the alleged incident and interviewed the gym teacher, Peers 2 and 3, and all nine of the students' gym class classmates within three days.

According to the investigative file, most students did not witness any interactions with the Student during gym class and/or did not report observing any inappropriate comments directed at the Student. "A couple students" reported that the Student and Peers 2 and 3 XXXXXXXXXXXXXXXX comments XXXXXXXXXXXXXXXXXXXXXXXX. One student reported that a peer called the Student XXXXXXXX in gym class and XXXXXXXXXXXXXXXX in the locker room. Peer 3 said that XXXXXXXX comments XXXXXXXXXXXXXXXX the locker room. The gym teacher and classroom teacher denied observing or being aware of any incidents. In an interview with OCR, the gym teacher explained that some gym classes had two teachers on duty, but that the Student's gym class only had one teacher on duty and that it was more difficult to monitor the locker room as a result.

The incident log stated that "[t]here was no evidence of any XXXXXXXX comments being made towards [the] Student. No one could verify those types of statements." The District took various actions, including: contacting all parents; removing Peer 2 from the Student's gym class and instructing both Peers 2 and 3 not to engage the Student; asking the classroom teacher to separate the Student and Peer 2 in class and to monitor their interactions; revising all students' schedules so they were enrolled in different XXXXXXXX classes; having school counselors be available to support all three students, and asking the gym teacher to speak to students again about locker room behavior.

While finalizing the investigation report, the Assistant Principal was notified of additional allegations on XXXXXXXXXXXXXXXX. The School Counselor informed the Assistant Principal that the Student reported that Peer 3 called him a XXXXXXXXXXXXXXXX when changing in the locker room. The Assistant Principal immediately interviewed several students and determined that Peer 3 warned students not to call anyone XXXXXXXXXXXXXXXX or they might get in trouble, said that he was XXXXXXXX and told the Student: XXXXXXXXXXXXXXXXXXXXXXXX Peer 3 was subsequently instructed not to engage with the Student comments XXXXXXXXXXXXXXXXXXXXXXXX was removed from

the Student's gym class, and received a two-day in-school suspension. The students' schedules were also reviewed to ensure they did not share any classes.

The Assistant Principal finalized an investigation report regarding the XXXXXXXXX and XXXXXXXXX incidents on XXXXXXXXXXXXXXXX, and provided a copy to the Student's parents. The investigation report included all of the information above except for the determination of whether harassment occurred for the XXXXXXXXX allegations. District materials indicate that Peer 3's parents were notified about the incident(s) and his discipline. OCR has not yet reviewed information on the notice provided to Peer 2's parents.

Around one week later, on XXXXXXXXXXXXXXXX, the Assistant Principal met with the Student and the Complainant, who alleged that two students (Peers 4 and 5) approached him at recess, called him XXXXXXXXXXXXXXXX and said that he wants to XXXXXXXX XXXXXXXX. The Student said that Peer 4 told him to XXXXXXXX. The incident log reports these concerns as a "Parent complaint of XXXXXX harassmen[t]."

The Assistant Principal investigated the incident and interviewed several students, including Peer 5. A student witness told the Assistant Principal that both the Student and Peer 5 were both saying XXXXXXXXXXXXXXXX, and the Assistant Principal told OCR that Peer 5 was the primary aggressor. The incident log stated that XXXXXXXXXXXXXXXX comments being made between them or by another student" and that "[t]his was not considered a XXXXXXXXXXXXXXXX The Student and Peer 5 were encouraged to meet with a counselor and XXXXXXXXXXXXXXXX According to the Assistant Principal, the investigation was completed in one or two days and she notified the Student's parents of the outcome. The Complainant told OCR that she was orally told that "the students were being disciplined"; however, the District denies this, and its logs indicate that Peer 5 was not disciplined. OCR has not yet reviewed information on the notice provided to the parents of Peers 4 or 5.

The Student's family subsequently requested for the Student to transfer schools, and they attributed the request in part to the alleged harassment.

The District's Title IX Materials

During the XXXXXXX school year, the District's Title IX grievance procedures were published in some, but not all, school handbooks. The XXXXXX school handbooks for students and parents did not contain a copy of the procedures; instead, the XXXXXX school handbook for parents (but not the XXXXXX school handbook for students) stated that a complete copy of the District's policies, including the Title IX manual, was located at each school and was also available on the District's website. In addition, the District represented that the "Office of the Superintendent" was the District's designated Title IX Coordinator during that school year.

During OCR's investigation, the U.S. Department of Education promulgated amendments to the Title IX regulation on May 19, 2020, at 85 F.R. 30026, which became effective on August 14, 2020. The District has revised its Title IX procedures and published them on its Title IX website in an effort to comply with the amendments to the Title IX regulation.² The District has also

² <https://www.milfordk12.org/apps/pages/Non-Discrimination> (last visited September 1, 2021).

hired a new Title IX Coordinator and has published this employee's name, title, office address, telephone number, and e-mail on this same website.

Analysis

OCR's investigation to date indicates that the District's response to the XXXXXXXXXXXXXXX incident appears to have been prompt and equitable. Specifically, OCR's witness interviews and the District's contemporaneous records indicate that the District immediately initiated an investigation when it was alerted to the alleged harassment by the Student and his parent. The Principal interviewed relevant witnesses to the interaction(s) between the Student and Peer 1, treated all parties equally during the resolution process, was ultimately unable to conclude that the alleged comments and gestures had occurred due to a lack of corroboration by the witnesses, and provided oral notice of the outcome to the parties within several days.

The District also appears to have promptly resolved reports of sex-based harassment from XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX. OCR's investigation indicates that the Assistant Principal immediately commenced an investigation, interviewed multiple witnesses, treated all parties equally during the resolution process, and concluded the investigations within one to seven days. Nonetheless, it is unclear if the District appropriately analyzed whether harassment based on sex stereotyping is a form of sex-based harassment, in order to provide an equitable resolution. Here, the District concluded that there was insufficient evidence "of any sexual comments" to support a responsibility determination for allegations coded as "complaint[s] of sexual harassment." However, the Student and his parents also alleged, and the District's investigations confirmed, that the Student was repeatedly called XXXXXXXXXXXXXXX XXXXXXX OCR requires further investigation to understand if District staff recognized that these gendered taunts and epithets may have constituted harassment for not conforming to stereotypical notions of masculinity.

OCR is also concerned about whether the District's response to these incidents was adequately designed to prevent recurrence or to prevent the creation of a hostile environment. The District's investigation indicated that unwelcome conduct occurred, and recurred, during unstructured gym and locker room times when there was less adult supervision; however, it is unclear if the District considered whether additional monitoring of these areas may have been necessary.

Finally, OCR is concerned whether the District provided adequate notice of outcome to the parties. The Student's parents received written notice in two of the four incidents in this case, in the form of an investigation report. However, the investigation report did not indicate whether harassment was found to have occurred, and there is a dispute as to what information was orally communicated to the Student's parents for the remaining incidents. Further investigation is required to resolve these disagreements, as well as to understand what notice was provided to the parents of Peers 2, 4 and 5.

As noted above, the District expressed an interest to resolve this complaint pursuant to Section 302 of OCR's *Case Processing Manual*. Section 302 provides that allegations under investigation may be resolved before OCR completes its investigation when the recipient expresses an interest in resolving the allegations and OCR determines it is appropriate to resolve

them because OCR's investigation has identified concerns that can be addresses through a resolution agreement. OCR has determined that a voluntary resolution is appropriate prior to filling in information gaps with the concerns identified above. Relatedly, before OCR analyzed how the District's website appeared during the XXXXXXXXXXXXX school year (Allegation 2), and before OCR conducted interviews to determine which employee in the Superintendent's Office was designated as the Title IX Coordinator during the XXXXXXXXXXXXX school year (Allegation 3), OCR determined that it would be appropriate to resolve these allegations pursuant to Section 302 as well.

Subsequent discussions between OCR and the District resulted in the District signing the enclosed Resolution Agreement which, when fully implemented, will address OCR's concerns. OCR will monitor the District's implementation of the Resolution Agreement.

Conclusion

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. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

Sincerely,

/s/

Meighan A.F. McCrea
Compliance Team Leader

Enclosure

cc: Diane Gorrow, Esq.