



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

April 29, 2019

Jeffrey J. Marsden  
Superintendent  
Medfield Public Schools  
459 Main Street, Third Floor  
Medfield, MA 02052

*Via e-mail: [jmarsden@email.medfield.net](mailto:jmarsden@email.medfield.net)*

Re: Complaint No. 01-19-1047  
Medfield Public Schools

Dear Superintendent Marsden:

This letter is to advise you of the outcome of the investigation of the complaint that the U.S. Department of Education (Department), Office for Civil Rights (OCR) received against the Medfield Public Schools (the District). The Complainant alleges that the District discriminated against XXX (the Student) on the basis of his sex. Specifically, the Complainant alleges that the District (a) failed to respond promptly and equitably to complaints that the Student was subjected to sexual harassment on the school bus in XXX 2018, and implement appropriate safety measures for the Student; (b) does not have a Title IX Coordinator; and, (c) does not have Title IX grievance procedures.

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 any education program or activity receiving federal financial assistance from the Department. Because the District receives financial assistance from the Department, OCR has jurisdiction to investigate this complaint pursuant to Title IX.

Because OCR determined that it has jurisdiction and that the complaint was timely filed, OCR opened the following legal issues for investigation:

- Whether the District failed to promptly and equitably respond to complaints that the Student was subjected to sexual harassment on the school bus in XXX 2018, in violation of 34 C.F.R. Sections 106.31(a) and 106.8(b).
- Whether the District failed to designate one or more employees to coordinate its efforts to comply with its responsibilities under Title IX, in violation of 34 C.F.R. Section 106.8(a).

- Whether the District failed to adopt and publish grievance procedures that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Title IX, in violation of 34 C.F.R. Section 106.8(b).

### **Background**

During the XXX school year, the Student was a XXX student in the District. In XXX 2018, the Student told his parents that a XXX student (the Respondent) XXX him on multiple occasions on the school bus, he told the bus driver what was going on, and he asked the Respondent to stop, but the Respondent had continued.

On XXX, 2018, the Complainant reported these incidents to the school Principal by phone and electronic mail message (email). She also requested the name of the District's Title IX coordinator, a full investigation, and support so that the Student would not have to ride the bus with the Respondent. That same day, she also called the District's central offices and asked to speak with the District's Title IX investigator. The Complainant alleges that during this call, she was told that the Superintendent was in charge of Title IX issues, so she left him a message regarding her complaint. Her call was returned by the District's Director of Finance and Operations; the Complainant alleges that he told her that he screens Title IX cases but that the Superintendent handles Title IX issues. Subsequently, in an XXX, 2018 email to the Principal and Superintendent, the Complainant expressed her concern that the District did not have a designated and trained Title IX investigator. The Superintendent responded via email, explaining that although he usually handles Title IX issues, he was out of the office when the Complainant called on XXX.

The District informed OCR that the District's Director of Student Services/Civil Rights Coordinator,<sup>1</sup> with the Superintendent's support, designated the Principal to investigate the Complainant's complaint. The Principal conducted her investigation from XXX through XXX, which included interviews with the Student, his parents, the Respondent, the Respondent's mother, student witnesses, and the bus driver. On XXX, the Principal shared her findings with the parents of both students. Her investigative report (Report) stated that although the Respondent acknowledged XXX the Student XXX, the Principal determined that the Respondent's actions were not "sexual in nature."

The Complainant contacted the Civil Rights Coordinator to "reject" the Report on XXX. The Civil Rights Coordinator responded that she and the Superintendent would review the Report. On XXX, the Superintendent emailed the Complainant to explain that he "agreed with [the Principal's] assessment." The Complainant responded asking whether "there is actually no appeal process" because the Superintendent had not spoken with her about her appeal.

On XXX, the Superintendent and Civil Rights Coordinator met with the Complainant. It is unclear whether the Respondent's parents also attended the meeting. On XXX, the Superintendent upheld the Principal's finding that the Respondent's actions were not "sexual in

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<sup>1</sup> As noted below, for clarity and consistency, the Director of Student Services/Civil Rights Coordinator will be referred to herein to as the "Civil Rights Coordinator."

nature.” It is unclear if this appeal and the appeal decision were communicated to the Respondent’s parents.

Although XXX students usually sit toward the front of the bus, the Student was allowed to sit in the back with XXXXX during the investigation, the appeal, and in the weeks thereafter.<sup>2</sup> The Complainant and the Respondent’s parents reported issues with this seating arrangement because the bus driver was not adequately informed of the arrangement; other students were curious about why the Student was allowed to sit in the back of the bus; the Student was still upset riding the bus; and, the Respondent’s parents were not informed before this seating arrangement was implemented.

### **Legal Standards**

Title IX prohibits discrimination on the basis of sex in education programs or activities operated by recipients of federal financial assistance. The Title IX regulation, at 34 C.F.R. § 106.31(a), states that 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 education program or activity operated by a recipient of federal financial assistance. Sexual harassment that creates a hostile environment can be a form of sex discrimination prohibited by Title IX.

The Title IX implementing regulation, 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. A recipient must notify all students and employees of the name, office address, and telephone number of the designated coordinator.

The Title IX regulation, at 34 C.F.R. § 106.8(b), requires recipients to adopt and publish grievance procedures that provide for the prompt and equitable resolution of student and employee complaints of Title IX violations. In response to a complaint of sexual harassment, a recipient must take prompt and equitable responsive action. OCR evaluates on a case-by-case basis whether the resolution of a sexual harassment complaint is prompt and equitable.

### **OCR’s Investigation to Date**

Before OCR completed its investigation, the District expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement (Agreement). A description of OCR’s investigation to date follows.

#### **1. The District’s Title IX Coordinator**

OCR determined that the District designated Mary Bruhl, the Director of Student Services, as its “Civil Rights Coordinator”<sup>3</sup> responsible for coordinating the District’s efforts to comply with and carry out its responsibilities under Title IX. The District explained to OCR that because the Civil Rights Coordinator began in her position as Director of Student Services/Civil Rights

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<sup>2</sup> The District also ensured that the Student and Respondent were separated on the bus and in the bus line.

<sup>3</sup> For clarity and consistency, the Director of Student Services/Civil Rights Coordinator will be referred herein to as the “Civil Rights Coordinator.”

Coordinator on July 1, 2018, the District did not timely update the notice identifying the Civil Rights Coordinator in its “Non-Discrimination Policy and Grievance Procedure” (Grievance Procedure), which it acknowledged as a “clerical oversight.” While the Grievance Procedure the District initially submitted to OCR included incorrect contact information for the Civil Rights Coordinator, once the District recognized this error, it revised the Grievance Procedure to include the correct contact information and reposted the Grievance Procedure on its website.<sup>4</sup>

It is unclear whether and/or how the District notified all students and employees of the name, office address, and telephone number of the District’s Civil Rights Coordinator after she assumed this position. In addition, it is unclear whether the Superintendent misinformed the Complainant on XXX, that he handles Title IX issues instead of the Civil Rights Coordinator.

Because the District requested a voluntary resolution, and OCR deemed such a resolution appropriate, OCR has not fully investigated how students and employees were notified of the District’s Civil Rights Coordinator after she assumed this position and after the District recognized its error and revised the Grievance Procedure. The Agreement will ensure that the District provides appropriate notice of the District’s Civil Rights Coordinator; and, that the Civil Rights Coordinator and other District staff tasked with receiving, investigating, or adjudicating complaints of sexual harassment are appropriately trained on the Grievance Procedure.

## **2. The District’s Grievance Procedures**

OCR determined that the District intended to apply its Grievance Procedure<sup>5</sup> to its investigation of the Complainant’s complaint. OCR reviewed the version of the Grievance Procedure that the District provided to OCR in its data response, and noted the following:

- It included the incorrect contact information for the District’s Civil Rights Coordinator, as noted above.
- It provided complainants with certain rights that it did not similarly provide to respondents, including the right to present witnesses and other evidence to the person(s) conducting the investigation, the right to appeal the Civil Rights Coordinator’s decision, and the right to be informed if the investigation would last longer than thirty working days.

OCR also located additional District policies that could apply to complaints of sexual harassment – the “Nondiscrimination on the Basis of Sex” policy<sup>6</sup>, the “Sexual Harassment Policy,”<sup>7</sup> and the “Bullying & Harassment Policy.”<sup>8</sup> The procedures in these policies differ from each other and from the Grievance Procedure the District submitted to OCR. In addition, the District’s “Sexual Harassment Policy” cross references other procedures located in the District’s student handbook and the school bus policy.

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<sup>4</sup> <https://drive.google.com/file/d/1sy-inW4p9MsBCekSIIgkbL1UZs8Cw8uc/view>, last accessed 4/2/19.

<sup>5</sup> *Id.*

<sup>6</sup> [https://drive.google.com/file/d/1Badkok5Et8t4a5g-SmKgxcbAcBxmVZL\\_/view](https://drive.google.com/file/d/1Badkok5Et8t4a5g-SmKgxcbAcBxmVZL_/view), last accessed 4/2/19.

<sup>7</sup> [https://drive.google.com/file/d/1il\\_BDja9JD1F\\_pGy\\_y8DRPyRBDQSUhOX/view](https://drive.google.com/file/d/1il_BDja9JD1F_pGy_y8DRPyRBDQSUhOX/view), last accessed 4/2/19.

<sup>8</sup> <https://drive.google.com/file/d/1dHc8ZQs7gSITCRnYHvMeF0up32O9tllN/view>, last accessed 4/2/19.

Because the District requested a voluntary resolution, and OCR deemed such a resolution appropriate, OCR has not fully evaluated the District's Grievance Procedure or any other District policies that could apply to complaints of sexual harassment. The Agreement will ensure that the District's Grievance Procedure meets the requirements of Title IX, and that any conflicting District policies are clarified or include cross-references to the applicable policy/procedure.

### **3. Implementation of the District's Grievance Procedure in Investigating the Complainant's Sexual Harassment Complaint**

OCR determined that the Complainant reported her sexual harassment complaint to the Principal by email and phone. The Complainant also notified the Superintendent of her complaint when she contacted him while trying to find out information about Title IX on the District's website. The Principal conducted the investigation into the Complainant's complaint and the Superintendent handled the Complainant's appeal. OCR determined that the District's investigation of the Complainant's complaint and her subsequent appeal was prompt because it was initiated and concluded in XXX.

The evidence obtained to date indicates that the Complainant accompanied the Student to interviews with the Principal, but it does not indicate whether the Respondent's parents were notified of the allegations against the Respondent and provided a similar opportunity to accompany the Respondent, an elementary school student, to his two interviews with the Principal if they wished to attend. In addition, it is unclear when the District first provided the Report to the Respondent's parents and whether they were notified concurrent with the Complainant. Further, it is unclear whether the Respondent's parents were provided an equitable opportunity to participate in the appeal process, including receiving notice of the Complainant's appeal; notice and an opportunity to participate in the appeal meeting with the Superintendent and the Civil Rights Coordinator, and notice of the Superintendent's appeal decision.

Finally, although the District took steps to separate the Student and the Respondent on the bus, the District appears not to have clearly communicated to the bus driver, the Student, the Respondent, and the Respondent's parents about the steps it was taking, thus undermining both the equitability and efficacy of its actions.

Because the District requested a voluntary resolution, and OCR deemed such a resolution appropriate, OCR has not fully evaluated the equity of the District's investigation of the Complainant's complaint and the related appeal, if any. The Agreement will ensure that the District meets separately with the Complainant and the Respondent's family regarding the District's handling of the Complainant's complaint.

### **Conclusion**

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 and OCR determined that a voluntary resolution is appropriate. Subsequent discussions between OCR and the District resulted in the District signing the enclosed Agreement which, when fully

implemented, will address all of the allegations raised in the complaint. OCR will monitor the District's implementation of the Agreement.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. 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 Civil Rights Attorney Amy Fabiano at (617) 289-0007 or by e-mail at [Amy.Fabiano@ed.gov](mailto:Amy.Fabiano@ed.gov).

Sincerely,

/s/

Timothy Blanchard  
Acting Regional Director

Enclosure

cc: Elizabeth L. Sherwood, [esherwood@mhtml.com](mailto:esherwood@mhtml.com)