

January 11, 2016

Dr. Craig Carr
Superintendent of Schools
Central Islip Public Schools
Alfano Administration Building
50 Wheeler Road
Central Islip, New York 11722

Re: Case No. 02-13-1179
Central Islip Public Schools

Dear Dr. Carr:

This letter is to notify you of the determination made by the U.S. Department of Education, New York Office for Civil Rights (OCR) in the above-referenced complaint filed against Central Islip Public Schools. The complainant alleged that the District failed to respond appropriately to her complaint, filed on or about February 28, 2013, that another student subjected her daughter (the Student) to sexual harassment.

OCR is responsible for enforcing 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 U.S. Department of Education (the Department). The District is a recipient of financial assistance from the Department. Therefore, OCR has jurisdictional authority to investigate this complaint under Title IX.

The regulation implementing Title IX, at 34 C.F.R. § 106.31(a), provides 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. Sexual harassment that creates a hostile environment is a form of sex discrimination prohibited by Title IX.¹ Sexual harassment is unwelcome conduct of a sexual nature. Sexual harassment can

¹ The applicable legal standards described herein are more fully discussed in OCR's 2011 Dear Colleague Letter on Sexual Violence, which is available at: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html> (Apr. 4, 2011). *See also* OCR's 2010 Dear Colleague Letter on Harassment and Bullying, which is available at: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html> (Oct. 26, 2010); OCR's Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties at:

include unwelcome sexual advances; requests for sexual favors; and, other verbal, nonverbal, or physical conduct of a sexual nature, such as sexual assault or acts of sexual violence. Sexual harassment of a student creates a hostile environment if the conduct is sufficiently serious that it denies or limits a student's ability to participate in or benefit from the recipient's program.

In determining whether this denial or limitation has occurred, OCR examines all of the relevant circumstances from an objective and subjective perspective, including: the type of harassment (e.g., whether it was verbal or physical); the frequency and severity of the conduct; the age, sex, and relationship of the individuals involved (e.g., teacher-student or student-student); the setting and context in which the harassment occurred; whether other incidents have occurred at the school; and, other relevant factors. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the harassment is physical.

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. When responding to alleged sexual harassment, a recipient must take immediate and appropriate action to investigate or otherwise determine what occurred. If an investigation reveals that discriminatory harassment has occurred, a recipient must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring.² 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.³

Pending the outcome of an investigation, Title IX requires a recipient to take steps to protect the complainant from further harassment as necessary, including taking interim steps before the final outcome of the investigation. A district also should tell the complainant that Title IX prohibits retaliation, and that district officials will not only take steps to prevent retaliation but also take strong responsive action if it occurs.

Throughout the recipient's investigation and in any hearing, both parties must have equal opportunity to present relevant witnesses and other evidence. Also, in order for a recipient's grievance procedures to be consistent with the Title IX evidentiary standard, the recipient must

<http://www.ed.gov/about/offices/list/ocr/docs/shguide.html> (Jan. 19, 2001); and, OCR's Questions and Answers on Title IX and Sexual Violence, at <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

² OCR's Questions and Answers on Title IX and Sexual Violence states that "if a school delays responding to allegations of sexual violence or responds inappropriately, the school's own inaction may subject the student to a hostile environment. If it does, the school will also be required to remedy the effects of the sexual violence that could reasonably have been prevented had the school responded promptly and appropriately. See Section A-5 of OCR's Questions and Answers on Title IX and Sexual Violence at <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

³ OCR's Questions and Answers on Title IX and Sexual Violence states, "If school officials receive a credible report that a student has perpetrated several acts of sexual violence against different students, that pattern of conduct should trigger an inquiry as to whether other students have been subjected to sexual violence by that student." Section A-4 of OCR's Questions and Answers on Title IX and Sexual Violence, at <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

use a preponderance of the evidence standard for investigating allegations of sexual harassment. If a recipient provides for appeal of the findings or remedy, it must do so for both parties. The recipient must maintain documentation of all proceedings.

The regulation implementing Title IX establishes procedural requirements for the prompt and equitable resolution of complaints of discrimination on the basis of sex, including sexual harassment. OCR examined the District's policies and procedures to determine whether, pursuant to the regulation implementing Title IX, the District had: (a) designated a Title IX Coordinator; (b) provided notification of the name/title, office address, and telephone number of the Title IX Coordinator; (c) provided notice that it does not discriminate on the basis of sex; and, (d) adopted and published grievance procedures providing for the prompt and equitable resolution of complaints of discrimination/harassment on the basis of sex.

OCR also interviewed the complainant, the assistant superintendent for personnel/Title IX Coordinator (Assistant Superintendent 1), the assistant superintendent for education and administration who is also the District's Dignity Act Coordinator (Assistant Superintendent 2), the school principal (the Principal), and the Student's classroom teacher (the Teacher). Additionally, OCR reviewed documentation that the complainant and the District submitted. OCR made the following determinations.

Designation of Title IX Coordinator

The regulation implementing Title IX, at 34 C.F.R. § 106.8(a), requires that each recipient designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX. The District identified Assistant Superintendent 1 as its Title IX Coordinator responsible for addressing complaints of discrimination on the basis of sex, including sexual harassment. Accordingly, OCR determined that the District has designated at least one person to coordinate its efforts to comply with and carry out its responsibilities under Title IX, as required at 34 C.F.R. § 106.8(a).

Notification of the Name/Title, Office Address, and Telephone Number of the Designated Title IX Coordinator

The regulation implementing Title IX, at 34 C.F.R. § 106.8(a), requires the recipient to notify all students and employees of the name/title, office address, and telephone number of the designated Coordinator(s). Additionally, OCR has determined that the recipient should provide the electronic mail (email) address of the designated Coordinator(s).

OCR determined that a page on the District's website, titled "Title IX and [Section] 504 Information" identifies Assistant Superintendent 1 as the Title IX Coordinator and lists his telephone number; however, the office address and email address are not included. OCR determined that the District's 2013-2014 school calendar, which is published online, identifies Assistant Superintendent 1 as the Title IX Coordinator, but only lists his telephone number.

Board Policy 0100 "Equal Opportunity and Nondiscrimination", which the District posts online, indicates that "contact information for the Assistant Superintendent for Personnel is available on

the District’s website.” However, Board Policy 0100 does not explicitly identify Assistant Superintendent 1 as the Title IX Coordinator.

OCR determined that Board Policy 0110 “Sexual Harassment”, which is available on the District’s website, identifies Assistant Superintendent 1 as the Title IX Coordinator, but does not provide any contact information. Board Policy 0110 also fails to provide any information about whom the District has designated as the individual with whom to file a complaint of discrimination/harassment on the basis of sex. However, Policy 0110 includes multiple references to “Sexual Harassment Regulation 0110-R”, which identifies Assistant Superintendent 1 as the designated Title IX Coordinator. Regulation 0110-R includes a provision requiring the District to inform students and employees of the regulation in “student and employee handbooks, on the [D]istrict website and student registration materials . . . [and] a poster summarizing the policy [] posted in a prominent location at each school.” However, the District was unable to provide documentation of Regulation 0110-R’s publication in any of the aforementioned locations. Therefore, OCR determined that the District fails to adequately notify all students, employees, and beneficiaries of the name/title, office address, telephone number, and email address of its designated Title IX Coordinator, as required by 34 C.F.R. § 106.8(a).

Nondiscrimination Notice

The regulation implementing Title IX, at 34 C.F.R. § 106.9(a), requires that a recipient implement specific and continuing steps to notify applicants for employment, students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of sex in the education programs or activities it operates; that the prohibition against discrimination extends to employment; and that inquiries to recipients concerning the application of Title IX and its implementing regulation may be referred to the Title IX Coordinator or to OCR. The regulation implementing Title IX, at 34 C.F.R. § 106.9(b), requires recipients to include the notice of nondiscrimination 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.

The District provided OCR with a copy of Board Policy 0100 “Equal Opportunity and Non-Discrimination,” which includes its nondiscrimination notice. The notice is made available in the “C.I. Board Policies” section of the District’s website. However, Board Policy 0100 does not provide notice that inquiries concerning the application of Title IX and its implementing regulation may be referred to the Title IX Coordinator or to OCR. The District did not provide, and OCR did not find, any other examples of publications in which it provides the District’s notice of nondiscrimination, including the student or employee handbooks or applications for employment. Accordingly, OCR determined that the District’s notice of nondiscrimination does not comply with the regulation implementing Title IX.

Grievance Procedures

The regulation implementing Title IX, at 34 C.F.R. § 106.8(b), requires that each recipient adopt and publish grievance procedures providing for prompt and equitable resolution of student,

employee, and third party complaints that allege any action which would be prohibited by the regulation. OCR has identified a number of elements in determining if grievance procedures are prompt and equitable, including whether the procedures provide for: (a) notice to students and employees of the procedures, including where complaints may be filed; (b) application of the procedures to discrimination by employees, students, and third parties; (c) adequate, reliable, and impartial investigation, including an opportunity to present witnesses and evidence; (d) designated and reasonably prompt timeframes for major stages of the grievance process; (e) notice to parties of the outcome; and (f) assurance that the institution will take steps to prevent further harassment and to correct its effects if appropriate.

OCR determined that the District's grievance procedures for complaints of sexual harassment, which apply to students, employees and third parties, are outlined in "Sexual Harassment Regulation 0110-R." OCR determined that on its face, the procedures for Regulation 0110-R provide for: notice of procedures, including where complaints may be filed; adequate, reliable, and impartial investigation, including an opportunity to present witnesses and evidence; designated and reasonably prompt timeframes for major stages of the grievance process; notice to parties of the outcome; and assurance that the District will take steps to prevent further harassment and to correct its effects if appropriate. However, as noted above, the District failed to furnish evidence to establish that Regulation 0110-R is made available to students, employees, and/or beneficiaries.

Accordingly, OCR determined that although the District has adopted grievance procedures providing for the prompt and equitable resolution of complaints of sexual harassment, the District has failed to demonstrate that notice of the existence of the grievance procedures is provided to students, employees, and third parties, or that the grievance procedures are published. Therefore, OCR will negotiate a resolution agreement to address this compliance concern.

On December 23, 2015, the District signed an agreement, a copy of which is enclosed herewith, which when fully implemented will resolve the aforementioned concerns relating to the allegation. OCR will monitor the implementation of the resolution agreement.

The Complaint

The complainant alleged that the District discriminated against the Student, on the basis of her sex, by failing to respond appropriately to her complaint, made on or about February 28, 2013, that a male student (Student 2) in the Student's class subjected the Student to sexual harassment. OCR determined that the Student was in the third grade at Cordello Avenue School during school year 2012-2013.

OCR determined that on the morning of February 28, 2013, the complainant, her boyfriend, and the Student met with the Principal and the Teacher to report that on February 27, 2013, at the end of the school day, Student 2 made unwanted, physical contact of a sexual nature with the Student. During the meeting, the Student stated Student 2 had pushed her and touched her between her legs, while the class was in the hallway transitioning from the art room to their homeroom. The Student identified two male students (Student 3 and Student 4) and one female

student (Student 5) who had allegedly witnessed the incident on February 27, 2013. The Student further reported that Student 2 had touched her between her legs every day since the first week of school year 2012-2013, but did not state when or where the alleged prior incidents occurred. The Student stated that she had not previously reported the alleged incidents to the complainant or her teachers because she feared retaliation from Student 2. During the meeting, the Student also alleged that on multiple occasions during the course of the school year, Student 2 had also touched Student 5 between her legs.

OCR determined that following the meeting on February 28, 2013, the Principal initiated an investigation of the complaint by individually interviewing Students 2, 3, 4 and 5.

Student 2 denied touching the Student between the legs or any intimate part of the body on February 27, 2013, or at any time during school year 2012-2013. With respect to the incident on February 27, 2013, Student 2 informed the Principal that after leaving the art room, the class lined up behind the Teacher and began walking towards their homeroom. Student 2 stated that all of the students in line were pushing one another and that another student had pushed him from behind into the Student. Student 2 stated that the incidental contact was on the Student's back and above her waist.

Students 3, 4, and 5 denied any knowledge of Student 2's touching the Student between her legs at any time during school year 2012-2013. Student 3 corroborated Student 2's account of the incident on February 27, 2013, indicating that while the class was walking in the hallway on that date, students were pushing and shoving one another playfully. Student 3 stated that although Student 2 had a tendency to "push[] girls hard," he had never seen Student 2 touch a female student between her legs or in another inappropriate area. Student 4 stated that he had seen Student 2 push the Student; he had not observed Student 2 touching the Student between her legs. Student 5 informed the Principal that she had not witnessed the incident on February 27, 2013. Student 5 denied that Student 2 had ever touched her between her legs or any other intimate part of the body; however, Student 5 stated that several weeks earlier, Student 2 had poked her in the buttocks with a pencil and had done the "nasty dance" behind her desk. Student 5 stated that she had not reported the incident to the Teacher because she considered Student 2 to be a friend. After interviewing Student 5, the Principal met again with Student 2 to address Student 5's allegation. Student 2 admitted that he had poked Student 5 in the buttocks with a pencil, and had performed a dance referred to as the "nasty" while standing behind her.

The Principal informed OCR that based on the investigation, she was unable to conclude that Student 2's conduct constituted sexual harassment; however, the investigation produced sufficient evidence to support that Student 2 had engaged in "inappropriate behavior" toward Students 2 and 5; i.e., making physical contact with the Student in the hallway and poking Student 5 in the buttocks with a pencil and dancing behind her. Accordingly, Student 2 was issued a three-day, out-of-school suspension on February 28, 2013. In addition, the Principal advised faculty and staff to monitor Student 2's behavior for any misconduct directed towards the Student.

On March 12, 2013, the Principal sent a written report of the results of her investigation to Assistant Superintendent 2, via email. On or about April 4, 2013, the complainant contacted the

superintendent's office to complain that the Principal had not adequately responded to the Student's sexual harassment complaint. On April 5, 2013, Assistant Superintendent 1 and Assistant Superintendent 2 held a telephone conference with the complainant to discuss her concerns; and advised the complainant that the Principal would meet with her to discuss the results of the investigation.

OCR determined that the Principal met with the complainant on April 5, 2013, to discuss the outcome of the complaint investigation and the corrective action taken, including the disciplinary sanctions imposed on Student 2; and provided her with a written copy of the final determination. The Principal advised the complainant that while she was unable to conclude that Student 2's conduct constituted sexual harassment, there was sufficient evidence to support that Student 2 had engaged in "inappropriate behavior." The complainant insisted that the Principal remove Student 2 from the class immediately, although she did not allege that there had been any further incidents of alleged sexual harassment by Student 2. The Principal advised the complainant that because the claims of sexual harassment against Student 2 could not be corroborated, it would not be appropriate to move Student 2 to another class with less than two months remaining in the school year; the Principal offered to move the Student to another class, but the complainant declined. The Principal then offered to have the Student and Student 2 placed in separate classes for their upcoming two years at the school. At the end of the meeting, the complainant provided her written consent for the Student to meet with the social worker, and the Principal arranged for the Student to receive counseling services.⁴ Additionally, starting on April 8, 2013, a 1:1 aide was assigned to the class to monitor the Student and Student 2 for the remainder of the school year. OCR determined that no subsequent incidents occurred.

Based on the foregoing, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the District discriminated against the Student, on the basis of her sex, by failing to respond appropriately to the Student's sexual harassment complaint against Student 2. Rather, OCR determined that the District promptly conducted a thorough investigation of the Student's allegation of sexual harassment, but could not substantiate that the conduct occurred as alleged. OCR determined that the Principal disciplined Student 2 consistent with the student code of conduct when she determined that he had engaged in "inappropriate behavior." OCR determined that there were no further incidents or complaints of alleged harassment involving the Student and Student 2 once the Principal's investigation was completed. Accordingly, OCR will take no further action with respect to the complainant's allegation.

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

⁴ During the course of the meeting on February 28, 2013, the Principal offered to have the school social worker meet with the Student for counseling. The complainant asserted that the social worker did not contact her to schedule a meeting with the Student until she complained to the office of the superintendent on April 4, 2013; however, the Principal asserted that the complainant was supposed to contact the social worker to arrange the counseling if she wanted the Student to receive counseling. The Principal stated that the complainant did not indicate that she wished to obtain the counseling services until the meeting on April 5, 2013.

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, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the complainant may file another complaint alleging such treatment.

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 regarding OCR's determination, please contact Gary Kiang, Senior Compliance Team Attorney, at (646) 428-3761 or gary.kiang@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

cc: Kevin A. Seaman, Esq.