



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION II

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REGION II
NEW JERSEY
NEW YORK
PUERTO RICO
VIRGIN ISLANDS

March 22, 2016

Tony Trongone
Superintendent
Pemberton Township School District
One Egbert Street
Pemberton, New Jersey 08068

Re: Case No. 02-15-1358
Pemberton Township School District

Dear Superintendent Trongone:

This letter is to notify you of the determination made by the U.S. Department of Education, New York Office for Civil Rights (OCR) regarding the above-referenced complaint filed against the Pemberton Township School District. The complainant alleged that the District discriminated against her daughter (the Student), on the bases of her disability and sex, by failing to respond appropriately to the complaints she made on or about xxxx, xxx, that a student (Student A) subjected the Student to bullying and harassment because of her disability and sex (Allegation 1); and on or about xxxx, xxxx, that a different student (Student B) subjected the Student to bullying and harassment because of her disability and sex (Allegation 2). The complainant also alleged that the District retaliated for her complaints of sex and disability harassment, by reporting her to the New Jersey State Division of Youth and Family Services (NJSDYF) in or around xxx xxxx (Allegation 3).

OCR is 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 U.S. Department of Education (the Department). OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35. Under the ADA, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against certain public entities. In addition, 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 Department. The District is a recipient of financial assistance from the Department, and is a public elementary and secondary education system. Therefore, OCR has jurisdictional authority to investigate this complaint under Section 504, the ADA, and Title IX.

In reaching a determination regarding this complaint, OCR interviewed the complainant and District staff. OCR also reviewed documentation that the complainant and the District submitted.

Title IX and Section 504/ADA Procedural Requirements

The regulation implementing Title IX, at 34 C.F.R. § 106.8(a), requires a recipient to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX and its implementing regulation, including the investigation of any complaint communicated to such recipient alleging its noncompliance with Title IX or alleging any actions which would be prohibited by Title IX. The recipient must notify all of its students and employees of the name, office address, and telephone number of the employee or employees appointed. Additionally, recipients should provide the electronic mail (email) address of the designated Title IX coordinator. Further, the regulation implementing Title IX, at 34 C.F.R. § 106.8(b), requires a recipient to 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.

The regulation implementing Title IX, at 34 C.F.R. § 106.9(a), requires each recipient to implement specific and continuing steps to notify applicants for admission and employment, students, employees, sources of referral of applicants for admission and employment, and all unions and professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of sex in the educational programs or activities which it operates and that it is required by Title IX not to discriminate in such a manner. Such notification shall state at least that the requirement not to discriminate in the education program or activity extends to employment therein, and to admission thereto unless Subpart C does not apply to the recipient, and that inquiries concerning the application of Title IX and this part to such recipient may be referred to the employee designated pursuant to § 106.8, or to OCR's Assistant Secretary.

Similarly, the regulation implementing Section 504, at 34 C.F.R. § 104.7(a), states that a recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with the requirements of Section 504 and its implementing regulation. The regulation implementing Section 504, at 34 C.F.R. § 104.8(a), also requires each such recipient to take appropriate and continuing steps to notify participants, beneficiaries, applicants, employees, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of disability; and, that this notice should also include the identity of its designated coordinator(s). The regulation, at 34 C.F.R. § 104.8(b), requires recipients to publish this notice in any recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees. The regulation implementing the ADA has similar provisions, at 28 C.F.R. §§ 35.106 and 35.107.

The regulation implementing Section 504, at 34 C.F.R. § 104.7(b), requires that a recipient adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504 and its implementing regulation. The regulation implementing the ADA has similar provisions, at 28 C.F.R. § 35.107.

Title IX and Section 504/ADA Coordinator(s)

During the course of OCR's investigation, OCR determined that the District failed to designate a Title IX Coordinator as required by the regulation implementing Title IX, at 34 C.F.R. § 106.8(a). On March 4, 2016, the District informed OCR that its Board of Education (Board) had designated a Title IX Coordinator; however, the District did not provide and OCR did not find contact information for the Title IX Coordinator. Additionally, although the District identified a Section 504/ADA Coordinator to OCR, the District did not provide and OCR did not find contact information for the Section 504/ADA Coordinator.

Accordingly, OCR determined that the District failed to provide appropriate notice of the name, office address, and telephone number of the District's Title IX Coordinator, as required by Title IX and its implementing regulation, at 34 C.F.R. § 106.8(a). OCR further determined that the District failed to provide appropriate

notice of the District's Section 504/ADA Coordinator as required by Section 504 and its implementing regulation, at 34 C.F.R. § 104.8, and the ADA and its implementing regulation, at 28 C.F.R. §35.107(a). On March 20, 2016, the District agreed to implement the enclosed resolution agreement, which addresses the compliance concerns identified with respect to the District's Title IX and Section 504/ADA Coordinator(s). OCR will monitor the implementation of the resolution agreement.

Non-Discrimination Notice

During the course of the investigation, the District did not provide, and OCR did not find that the District had a notice of non-discrimination that that complied with the regulations implementing Title IX, Section 504 and the ADA, at 34 C.F.R. § 106.9(a); 34 C.F.R. § 104.8(a) and (b); and 28 C.F.R. § 35.106, respectively.¹ On March 20, 2016, the District agreed to implement the enclosed resolution agreement, which addresses the compliance concerns with respect to the District's non-discrimination notice. OCR will monitor the implementation of the resolution agreement.

Grievance Procedures

OCR has identified a number of elements in evaluating whether a recipient's grievance procedures are prompt and equitable, including whether the procedures provide for: (1) notice of the procedure, including where complaints may be filed, that is easily understood, easily located, and widely distributed; (2) application of the procedure to complaints alleging discrimination or harassment carried out by employees, other students, or third parties; (3) adequate, reliable, and impartial investigation of complaints, including an opportunity to present witnesses and 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 (both parties must be notified, in writing, about the outcome of both the complaint and any appeal); and (6) an assurance that the district will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

OCR determined that the District has a Student Harassment, Intimidation & Bullying Policy 5131.9 (the Policy) that prohibits all forms of harassment, intimidation or bullying (HIB), that is motivated by any actual or perceived characteristic such as gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability. Pursuant to the Policy, any District employee, pupil, Board Member, or volunteer who has witnessed, or has reliable information that a pupil has been subject to HIB has a duty to report the incident to the appropriately designated administrator or his/her designee; and all acts of HIB are to be reported orally to the school principal on the same day, and in writing within two (2) school days of the date witnessed or in possession of reliable information. The Policy states that oral reports, written reports or electronic reports will be taken, and requires that all violations and complaint reports of HIB be investigated promptly by the designated administrator. The Policy provides that an investigation is to be initiated by the principal within one school day of the report of the incident and the investigation is to be completed within ten school days from the date of the written report of the incident of HIB. The results are to be reported to the Superintendent within 2 school days from the date of the completion of the investigation. The results of each investigation are to be reported to the Board no later than the date of the next Board meeting following the completion of the investigation.

¹ OCR further determined that the District did not have a notice of non-discrimination that would satisfy the requirements of the regulation implementing the Age Discrimination Act, at 34 C.F.R. § 110.25, and Boy Scouts of America Equal Access Act, at 34 C.F.R. § 108.9. The regulation implementing the Boy Scouts Act, at 34 C.F.R. § 108.9, requires this by reference to the regulation implementing Title VI at 34 C.F.R. § 100.6(d).

Accordingly, the Policy provides for reasonably prompt time frames for the completion of the investigation and submission of the written report of the incident to the Superintendent and to the Board. It further provides that parents/guardians of the students who are parties to the investigation are entitled to receive written notice of the outcome of the investigation, and the parties will be provided information regarding their rights if they are not satisfied with the outcome. The Policy also contains a prohibition against retaliation. OCR determined, however, that the Policy does not apply to complaints alleging other kinds of discrimination, or alleging harassment by employees or third parties; and does not provide for the parties to submit witnesses or other evidence, or an assurance that the School will take steps to correct the discriminatory effects of any harassment on the complainant and others, if appropriate.

On February 9, 2016, the District provided a copy of a “Proposed Anti -Discrimination Policy” (the Proposed Policy); however, OCR determined that the Proposed Policy does not comply with the requirements of the regulations implementing Title IX, at 34 C.F.R. § 106.8(b); Section 504, at 34 C.F.R. § 104.7(b); or the ADA, at 28 C.F.R. § 35.107(b). Specifically, while the Proposed Policy serves as a statement of the District’s position that discrimination and harassment is prohibited, it is not actually a grievance procedure in that it does not provide notice to students and employees of where complaints may be filed; it does state what steps will be taken to provide for an adequate, reliable, and impartial investigation of complaints, including an opportunity for both the complainant and respondent to present witnesses and other evidence; it does not designate reasonably prompt timeframes for major stages of the complaint process; it does not indicate that written notice of the outcome will be provided to both parties; and it does not provide an assurance that the institution will take steps to prevent recurrence of any discrimination or harassment found to have occurred, and to correct its discriminatory effects on the complainant and others if appropriate. On March 20, 2016, the District agreed to implement the enclosed resolution agreement, which addresses the compliance concerns with respect to the District’s grievance procedures. OCR will monitor the implementation of the resolution agreement.

Allegations 1 and 2

The complainant alleged that the District discriminated against her daughter (the Student), on the bases of her disability and sex, by failing to respond appropriately to the complaints she made on or about xxxxx, xxxx, that Student A subjected the Student to harassment because of her disability and sex (Allegation 1); and on or about xxxx, xxxx, that Student B subjected the Student to harassment because of her disability and sex (Allegation 2).

Title IX and its implementing regulation, at 34 C.F.R. § 106.31, prohibit discrimination based on sex, including sexual harassment, in educational programs and activities. Disability harassment is a form of discrimination prohibited by Section 504, the ADA, and their implementing regulations, at 34 C.F.R. § 104.4 and 28 C.F.R. § 35.130, respectively. Harassment based on sex and disability can include verbal, written, graphic, physical, or other conduct by an employee, a student, or a third party. Harassment can create a hostile environment if it is sufficiently serious to limit an individual’s ability to participate in, or receive benefits, services, or opportunities in the recipient’s program. If OCR determines that harassing conduct occurred and the recipient had actual or constructive notice of the harassment, OCR will examine additional factors to make a determination as to whether a hostile environment existed and whether the recipient took prompt and effective action to stop the harassment, prevent its recurrence and, as appropriate, remedy its effects.

OCR determined that during school year 2014-2015, the Student was enrolled in the xxxxx grade at the District’s Pemberton Township High School (the School). The Student’s individualized education program (IEP) for school year 2014-2015 classified her as xxxx, with xxxxxx. The Student’s IEP states that she is “xxxx and xxxx xxxxxx.”

The complainant alleged that on the afternoon of xxxxx, xxxx, while the Student was about to get on the bus, another student “kicked the Student to the ground,” injuring her knees and breaking the Student’s cellular

telephone (Incident 1). The complainant stated that as a result of her injuries, the Student missed school for five days, from xxxxx to xx xxxx, and required physical therapy.

The Assistant Principal stated that on or about xxxx, xxxx, he received a telephone call from the complainant stating that Student A had “tripped” the Student in the area of the school parking lot. The Assistant Principal stated that the complainant did not allege that Incident 1 constituted harassment, intimidation or bullying on the bases of the Student’s sex and/or disability.

The Assistant Principal, who is responsible for investigating violations of the School’s Student Code of Conduct (the Code), initiated an investigation of Incident 1 that same day by reviewing surveillance video from the School’s security system. The Assistant Principal stated that the video depicted Student A with his foot behind the Student, and the next thing that was visible was the Student running after Student A. The Assistant Principal stated that he interviewed Student A, who informed him that he and the Student are friends and that he was “playing” with the Student. On xxx, xxxx, the Assistant Principal also attempted to interview the Student, and requested a written statement from her. The Student refused to be interviewed or to provide a written statement, and did not return to school until xxxx, xxxx. On xxxxx, xxxx, the Assistant Principal again attempted to discuss Incident 1 with the Student, but she refused, stating that the police had her full report. The Assistant Principal stated that based on the information he obtained from Student A, and his review of the security video, he concluded that Incident 1 was a matter of two teenagers engaged in horseplay. The Assistant Principal stated that he disciplined Student A with an “in-school suspension” for “horseplay,” in accordance with the Code.

In an email message dated xxxxx, xxxxx, the Assistant Principal informed the complainant of the outcome of his investigation of Incident 1, which focused on whether it involved any violations of the Code. The complainant then informed the Assistant Principal during a discussion on xxxx, xxx, for the first time, that she believed Student A had bullied the Student because of her disability; however, the complainant did not raise sexual harassment in this complaint. The Assistant Principal directed the complainant to the District’s website to file an HIB complaint. On or about xxx, xxxx, the complainant sent an email to the District’s HIB Coordinator, stating that she had reported Incident 1 to the Assistant Principal. She also stated her intent to file an HIB complaint based on Incident 1. OCR determined that the complainant did not use the District’s specific HIB complaint form, but instead spoke to the District’s HIB Coordinator (the Coordinator) on or about xxx, xxxx, who followed up on her HIB complaint by opening on the same date an HIB case in HIBster, the District’s computer software program used for tracking and reporting HIB investigations.

Pursuant to the Policy, Incident 1 was assigned for investigation to the School’s appointed HIB counselor (the Counselor) on or about xxxx, xxxx. The Assistant Principal stated that the School’s practice is that the Counselor conducts the investigation, and he and the Counselor may discuss issues that arise along the way. Once the investigation is complete, the Assistant Principal reviews the Counselor’s conclusions, and if he is in agreement he sends the report to the superintendent. The superintendent then reviews the HIB investigation results before submission to the Board. At a Board meeting, the Board makes the final determination about whether to accept or reject the findings, and informs the parent accordingly.

The Counselor initiated her investigation on xxx xx, xxx. The Counselor interviewed Student A, who reiterated what he had said during his interview with the Assistant Principal -- that he and the Student frequently played and he was playing with her. The Counselor also interviewed the Student, who stated that Student A “tripped her” while she was walking to the bus, and that once she got to the bus with pants torn on both knees, she called [the complainant] to report the “accident.” The Counselor also reviewed the security video. She noted that another student (Student C) was in close proximity to the alleged incident; however, she did not interview Student C. Neither the Assistant Principal nor the Counselor interviewed staff or other students regarding whether the Student and Student A were actually friends and played frequently, as Student A had stated; nor did

they ask questions of anyone who may have been in the parking area at the time of the incident. The Counselor concluded her investigation on xxx, xxxx, and reported that Student A engaged in conduct that may be considered inappropriate, rude, disrespectful or unkind, but the behavior did not constitute harassment, intimidation or bullying. Therefore, she concluded that the HIB complaint was unfounded.

OCR determined that the investigation does not reflect any inquiry of the motivation for or sufficient development of the facts surrounding the reasons that the Student was tripped, including whether it was on the basis of her disability as the complainant alleged in her HIB complaint to the School. The record of the investigation reflects that District staff failed to conduct interviews of potential witnesses, including students and teachers familiar with the Student and Student A and those in close proximity to the students during the alleged incident. Further the record of the investigation reflects that District staff failed to review physical evidence, such as the Student's torn and bloody clothing and smashed phone.

Based on the foregoing, OCR determined that the District was on notice of an allegation of disability harassment, but failed to take effective action to determine if harassing conduct occurred on the basis of the Student's disability, as alleged; whether it created a hostile environment for Student; and if so, to stop the harassment, prevent its recurrence, and as appropriate, remedy its effects. Accordingly, OCR determined that there was sufficient evidence to substantiate the complainant's allegation that the District failed to respond appropriately to the complainant's complaint of disability harassment filed on xxxx, xxxx. On March 20, 2016, the District agreed to implement the enclosed resolution agreement, which addresses the compliance concerns identified in Allegation 1. OCR will monitor the implementation of the resolution agreement.

With respect to the portion of complainant's allegation that the District failed to respond to her complaint of sexual harassment regarding Allegation 1, OCR determined that there was no evidence to substantiate that the complainant filed the complaint on this basis. Accordingly, the evidence is insufficient to substantiate the complainant's allegation on this basis, and OCR has dismissed this portion of Allegation 1.

The complainant alleged that she reported to school personnel on xxx, xxx, that on xxx, xxxx, Student B had bitten the Student while she was in the bathroom around 11:30 a.m., leaving marks on the Student's shoulder and neck and bruises on the Student's body. OCR determined that on xxxx, xxx, the Student filled out the District's HIB Incident Reporting Form, stating that on xxx, xxxx, at 11:30 a.m., she had gone to the bathroom, and upon entering, Student B came behind her, bit her on left shoulder, and then bit her on right side of neck. The Student did not indicate at this time that she believed that this alleged incident was harassment because of her sex and/or disability. OCR determined that the School's principal delegated the investigation of this complaint to another assistant principal (Assistant Principal 2); however, there is no evidence that the complaint was assigned to an HIB counselor or that an HIB case was opened for this complaint in accordance with the District's HIB procedures.

On xxx, xxxx, Assistant Principal 2 conducted an investigation of the information provided by the Student in her HIB complaint. Assistant Principal 2 interviewed teachers who may have witnessed the incident, and the teachers stated that Student B was absent on xxx, xxx. Assistant Principal 2 also determined that the bathroom in which the incident allegedly occurred had been closed for repairs for the past two weeks, including on the day of the alleged incident. The Student's HIB complaint was subsequently deemed unfounded.

The complainant informed OCR that the Student recanted her story and she learned that the Student had been on school premises (on a field) after school on xxxxxx, xxxx, with a male (Student D) and had received the bite marks at that time. The complainant alleged to OCR that she informed District staff that the Student did not go to math tutoring after school on xxxxxx, xxxx, and instead went behind the School building to a field with Student D. The complainant alleged to OCR that the Student was lured by Student D to go behind the School building, and Student D then took advantage of the Student and subjected her to sexual harassment by biting

and bruising her. The complainant alleged to OCR that xxxxxxxxxxxx students were nearby, witnessed the interaction, and ultimately intervened.

District staff acknowledged to OCR that they also learned that the Student had recanted her story and asserted that the Student had been with a male student with whom she had a romantic relationship and that male had given her “love-bites” on her neck while the two were “necking” on the field that afternoon. Further, the District acknowledged that District staff did not open an HIB case, or conduct any investigation in response to the complainant’s complaint regarding the incident with Student D on xxxx, xxxx. The Superintendent explained that an HIB case was not opened because it was not a harassment, intimidation or bullying incident; rather, the incident involved the Student spending time with her boyfriend and a parent not wanting her to spend time with Student D.

On xxx, xxxx, the complainant spoke during the public comment period at a Board meeting and generally expressed her concerns regarding the District’s procedures for investigating HIB complaints. She also expressed concerns about the Student’s safety. Subsequently, on xxxxxx, xxxx, at the direction of the Superintendent, the HIB Coordinator and a District Case Study Team (CST) case manager met with the complainant to discuss the complainant’s concerns regarding her HIB complaints and the District’s HIB procedures. District staff expressed to the complainant their belief that the Student and Student D were involved in a romantic relationship; and acknowledged that the Student and Student D were seen on a video leaving the School together on xxx, and that the Student had “xxx” visible on her neck. At the meeting on xxxxx, xxxx, the complainant expressed her concerns that Student D, who she believed was from another school, was with the Student on school property after school on xxxx, xxxx. The HIB Coordinator and the case manager informed the complainant that video footage showed the Student and Student D “meeting by the gym and exiting the rear doors and moving across the field out of view,” but did not capture any additional images of them. According to the District’s HIB Coordinator’s memorandum of her meeting with the complainant on xxxxx, xxx, the complainant stated, “[Student D] put his hands on my daughter in Pemberton Township HS like it’s a club. You don’t think it’s a big problem that a boy almost 18 years old is luring my daughter.” The Coordinator’s memorandum states that she repeated what was noted on the video and said there is no indication of force or luring, and then “the complainant became irate.” The Coordinator’s memo also contains an addendum from the District’s HIB Coordinator, dated xxxxxxxxxxx, xxxx, which states, “The incident at that time [mentioned]... a boy from [another program in the District] and entailed [the Student] being beaten and bruised and bitten.” OCR determined that the District thereafter did not conduct any additional investigation based on the new information received regarding the alleged incident.

Based on the above, OCR determined that the complainant expressed her concern that Student D lured the Student to a field behind the School building, and then bit the Student in a manner which the District acknowledged to be “xxxxx.” District staff assumed, based on the video footage and the Student’s acknowledgement that her initial report of the incident was false, that the Student willingly went with Student D to the field and participated in activity that resulted in “xxxxx” to her neck and shoulder; and for those reasons, the District did not follow up on the complainant’s oral complaint. OCR determined that the District should have probed further prior to concluding that no additional action was warranted; such as by re-interviewing the Student, conducting an interview with Student D, and conducting interviews of other potential witnesses who may have been in the vicinity of the field at the relevant time, including the xxxxxxxxxxx members who may have been present and who allegedly intervened.

Therefore, OCR determined that the District was on notice of an allegation of sexual harassment, but failed to take effective action to determine if sexually harassing conduct occurred, as alleged; whether it created a hostile environment for the Student; and if so, to stop the harassment, prevent its recurrence, and as appropriate, remedy its effects. Accordingly, OCR determined that there was sufficient evidence to substantiate the complainant’s allegation that the District failed to respond appropriately to the complainant’s complaint of

sexual harassment made on xxx, xxxx. On March 20, 2016, the District agreed to implement the enclosed resolution agreement, which addresses the compliance concerns identified in Allegation 2. OCR will monitor the implementation of the resolution agreement.

With respect to the portion of complainant's allegation that the District failed to respond to her complaint of disability harassment regarding Allegation 2, OCR determined that there was no evidence to substantiate that the complainant reported the complaint on this basis. Accordingly, the evidence is insufficient to substantiate the complainant's allegation on this basis, and OCR has dismissed this portion of Allegation 2.

Allegation 3

The complainant alleged that the District retaliated for her complaints of sex and disability harassment, by reporting her to the NJDYFS in or around xxx xxxx. The regulations implementing Section 504, at 34 C.F.R. § 104.61, and Title IX, at 34 C.F.R. § 106.71, incorporate by reference 34 C.F.R. § 100.7(e) of the regulation implementing Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, which provides that no recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by regulations enforced by OCR or because one has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing held in connection with a complaint. The regulation implementing the ADA contains a similar provision at 28 C.F.R. § 35.134.

In analyzing whether retaliation occurred, OCR must first determine: (1) whether the complainant engaged in a protected activity; (2) whether the recipient was aware of the complainant's protected activity; (3) whether the complainant suffered an adverse action contemporaneous with, or subsequent to, the recipient's learning of the complainant's involvement in the protected activity; and (4) whether there is a causal connection between the protected activity and the adverse action from which a retaliatory motivation reasonably may be inferred. When there is evidence of all four elements, OCR then determines whether the recipient has a legitimate, non-retaliatory reason for the challenged action or whether the reason adduced by the recipient is a pretext to hide its retaliatory motivation.

OCR determined that the complainant engaged in protected activity by complaining to District staff on or about xxxxxx, that the Student was subjected to harassment because of her disability; and on or about xxxxxxxx, xxxx, that the Student was subjected to sexual harassment. OCR determined that the District was aware of the complainant's protected activity.

OCR determined that on xxx, xxxx, at 2:31 p.m., a District employee contacted the New Jersey Department of Children Protection and Permanency (DCPP),² and reported information indicating possible abuse by the parent of the Student. The Special Services DCPP Call Guide Sheet (Call Sheet) the District provided to OCR did not indicate the identity of the employee who reported the incident. District staff informed OCR that employees were not required by District regulations or policy to provide their names when they made a report to DCPP and could do so anonymously. District staff could not confirm the identity of the employee who made the report to DCPP. The Call Sheet stated that "mom was upset that [the Student] missed the bus and was verbally abusive and attacked [the Student] with a stick and threw water on her. Mom threatened to punch her in the face." The District asserted that its employee was required to report possible verbal and physical abuse of the Student in accordance with District regulations and New Jersey law.³

² The DCPP was formerly known as NJDYFS, an agency within the New Jersey Division of Children and Families (DCF).

³ District regulation 5141.4 requires District employees to report cases of suspected abuse or neglect to the former DCF; and pursuant to New Jersey State Law, District employees are mandated reporters of suspected child abuse and neglect.

On xxx, xxxx, the Guidance Counselor completed and submitted a report containing information concerning the Student at DCPD's request. In the report, the Guidance Counselor stated that the Student informed a faculty member that her mother was verbally abusive and attacked the Student with a stick and threw water on her because she missed her bus. The Guidance Counselor asserted that she provided this information because she was required to do so pursuant to District policy and in accordance with state regulations. The complainant advised OCR that she previously told the Child Study Team (CST) chair that she and the Student were having problems; and acknowledged that the Student had reported to an unidentified member of the CST that the complainant had hit the Student with a stick. The District provided information to OCR indicating that for school year 2014-2015, District staff reported incidents of alleged abuse/neglect to DCPD regarding approximately 54 students whose parents/guardians had not engaged in protected activity.

Based on the above, OCR determined that the District proffered a legitimate, non-retaliatory reason for reporting the complainant to the DCPD on xxxxxxxxxx; namely, the Student had reported to a faculty member that the complainant had hit her with a stick. OCR determined that the District's reason was not a pretext for retaliation, as its actions were consistent with District policy and applicable state regulations requiring District staff members to report cases of suspected abuse; the complainant acknowledged that the Student had reported to school staff that the complainant hit her with a stick; and, the District had reported incidents of alleged abuse/neglect for other students whose parents had not engaged in protected activity. Therefore, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the District retaliated for her complaints of sex and disability harassment, by reporting her to the DCPD in or around xxxx. Accordingly, OCR will take no further action with respect to Allegation 3.

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, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this should occur, the complainant may file a separate complaint alleging such harassment or intimidation.

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, please contact Genara Necos, Compliance Team Attorney, at (646) 428-3828 or genara.necos@ed.gov; Jane Tobey Momo, Senior Compliance Team Attorney, at (646) 428-3914 or jane.momo@ed.gov; or Nadjia Allen Gill, Compliance Team Leader, at (646) 428-3801 or nadjia.r.allen.gill@ed.gov.

Sincerely,

|s/
Timothy C.J. Blanchard

CC: xxxxxxxxxxxxxx