

September 29, 2016

Dr. Edwin M. Quezada  
Superintendent  
Yonkers Public School District  
One Larkin Center  
Yonkers, New York 10701

Re: Case No. 02-16-1243  
Yonkers Public School District

Dear Dr. Quezada:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR), regarding the above-referenced complaint filed against the Yonkers Public School District (the District). The complainant alleged that the District failed to respond appropriately to her complaints, made on November 23, 2015, January 11, 2016, February 5, 2016, and March 14, 2016, that a student subjected her son (Student A) 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.

In its investigation, OCR interviewed the complainant and District staff, and reviewed documentation that the complainant and the District submitted. OCR made the following determinations.

*Title IX Coordinator*

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 (a Title IX coordinator), 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 designated Title IX coordinator. Additionally, recipients should provide the electronic mail (email) address of the designated Title IX coordinator.

OCR determined that the District has designated a Title IX Coordinator as required by the regulation implementing Title IX, at 34 C.F.R. § 106.8(a). The District's Grievance Procedures for Resolution of Complaints Alleging Discrimination Based on Race, Color, Religion, National Origin, Sex (including Sexual Harassment), Sexual Orientation or Disability (the grievance procedures) contained the Title IX Coordinator's contact information, but the grievance procedures were not widely disseminated to students or parents. The District does not publish the designated Title IX Coordinator's contact information (including name, office address, phone number and email address) in its Sexual Harassment Policy 0110, Student Harassment Policy 0115, Student Code of Conduct, or on its website. Further, the District's designated Title IX Coordinator informed OCR that he is only responsible for overseeing complaints of sex discrimination and harassment that are filed by employees; he does not oversee student complaints. The District did not provide OCR with information regarding whether there is a separate Title IX Coordinator responsible for student complaints. Accordingly, OCR determined that the District is not in compliance with the regulation implementing Title IX, at 34 C.F.R. § 106.8(a).

#### Notice of Nondiscrimination

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 program or activity which it operates and that it is required by Title IX not to discriminate in such a manner. Such notification shall also state that inquiries 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 it makes available or is otherwise used in connection with the recruitment of students or employees.

OCR determined that the District has a notice of nondiscrimination, found in its policies and grievance procedures, and on its website, which states that the District does not discriminate on the basis of sex. The notice identified the District's Title IX Coordinator (referred to as the District's Civil Rights Compliance Officer), and indicated that inquiries concerning the application of the regulation may be referred to the Title IX Coordinator/Civil Rights Compliance Officer; however, it did not state that such inquiries could be referred to OCR as required by regulation implementing Title IX, at 34 C.F.R. § 106.9(a). Accordingly, OCR determined that the District is not in compliance with the regulation implementing Title IX, at 34 C.F.R. § 106.9(a).

Grievance Procedures

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. 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 school 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's grievance procedures are easily located on the District's website; and, contain an explanation to students, parents or guardians as to how to file a complaint, including the name, title, office address, email address and telephone number of the Title IX Coordinator. Pursuant to the grievance procedures, students who believe they have been subjected to discrimination/harassment (or parents on behalf of those students) are able to make written, but not oral complaints. OCR determined that the requirement that a complaint be in writing could result in the District failing to investigate discrimination or harassment of which it has notice because of an oral complaint.

OCR determined that the grievance procedures have designated and reasonably prompt timeframes for major stages of the grievance process; and, provide for written notice of the outcome to both parties. The grievance procedures, however, do not state that the procedures apply to complaints by third parties; that there will be an opportunity for the parties to present witnesses and other evidence; or, provide an assurance that the school will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate. Accordingly, OCR determined that the District is not in compliance with the regulation implementing Title IX, at 34 C.F.R. § 106.8(b).

Other concerns OCR noted regarding the grievance procedures include that the procedures do not state that: the preponderance of the evidence standard will be used for investigating alleged sex discrimination and sexual harassment; the District will take appropriate interim measures during the District's investigation of possible sexual harassment or assault/violence (such as how to obtain counseling and academic assistance in the event of a sexual assault, and what interim measures can be taken if the alleged perpetrator attends classes with the victim), and that such interim measures will not disproportionately affect the complainant; an assurance that any appeal will be conducted in an impartial manner by an impartial decision maker; or that retaliation is prohibited against any individual who files a sex discrimination complaint under Title IX or participates in a complaint investigation in any way.



Incident 2:

On or about January 10, 2016, the complainant emailed Student A’s teacher, the assistant principal, and the principal<sup>3</sup> and reported that on January 8, 2016, Student B took Student A’s XXXXXXXXXXXXXXXX, from a third student (Student C) who was holding the XXXXXXXX for Student A (Incident 2(a)); and, that Student B had XXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX to other students in class, including Student A (Incident 2(b)).

The assistant principal initiated an investigation of Incident 2(a) on January 11, 2016, by interviewing Student A, Student B, and Student C. The assistant principal confirmed that Student B took Student A’s XXXXXXXX from Student C; and that when Student A tried to retrieve the XXXXXXXX from Student B, Student B pushed Student A and XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX. OCR determined that the complainant did not report Incident 2(a) as alleged sexual harassment.

The assistant principal advised OCR that Student B’s misconduct with respect to taking Student A’s XXXXXXXX from Student C constituted a “Level 3” offense in terms of the District’s Code of Conduct, because it involved a student’s inappropriately touching or putting his hands on another student. OCR determined that a result of this incident, the assistant principal assigned Student B a one-day out-of-school (OSS) suspension, re-assigned Student B to a different classroom from Student A’s, and assigned Student B to use a restroom on another floor of the School. OCR determined that at a meeting on January 11, 2016, the assistant principal advised the complainant that Student B was suspended; however, the complainant advised the assistant principal that she wanted Student B removed from the school. The assistant principal advised the complainant that the District did not believe that Student B’s misconduct regarding Incident 2(a) warranted Student B’s removal from the school. OCR did not find evidence that the District investigated Incident 2(b).

Incident 3:

On February 5, 2016, at a school dance<sup>4</sup>, the complainant witnessed Student B approaching Student A and engaging in conversation with Student A about wrestling. The complainant notified the principal of the school that Student B had approached Student A and tried to talk to him. The complainant did not report this incident as alleged sexual harassment. The District advised OCR that notwithstanding that Student B’s conduct did not violate the Code of Conduct, at the complainant’s request, the principal spoke to Student B’s parents and directed them to instruct Student B to have no further interaction with Student A.

Incident 4:

On XXXXXXXXXXXXXXXX, the complainant filed a police report regarding the events of November 23, 2015, January 8, 2016, and February 5, 2016. OCR determined that the Yonkers

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<sup>3</sup> The complainant also copied the District’s superintendent.

<sup>4</sup> The complainant, the complainant’s husband, and Student B’s parents were all present during the school dance.

Police Department (YPD) conducted an investigation into the events, and three separate police officers visited the school and interviewed the assistant principal. The complainant alleged that during the YPD’s investigation, on or about March 14, 2016, when Student B’s mother was having a meeting at the school with Student B, Student B waved at Student A as he and the complainant left school, and was “rubbing his stomach,” and “licking his lips.” The complainant reported this conduct to the YPD.<sup>5</sup> The complainant did not allege that she reported this incident to the school.<sup>6</sup>

Based on the above, OCR determined that the District promptly investigated Incident 1, and concluded that a preponderance of the evidence did not substantiate that Incident 1 occurred as alleged; nevertheless, the District arranged a meeting with all parties to attempt to encourage the students to interact appropriately. OCR determined that the complainant did not report Incident 2(a) as alleged sexual harassment; nevertheless, the District investigated Incident 2(a) and disciplined Student B for his misconduct. OCR determined that the complainant did not report Incident 3 as alleged sexual harassment, and the alleged act would not rise to sexual harassment in the context described; nevertheless, the District directed Student B to have no further interaction with Student A. OCR determined that the complainant did not report Incident 4 to the District and there was no evidence to indicate that the District was otherwise aware of the alleged conduct. The District is not obligated to investigate an allegation of sexual harassment for which it is not on notice. The District provided no evidence to support that it investigated Incident 2(b), which was a complaint of sexual harassment. Accordingly, OCR determined that the District is not in compliance with the regulation implementing Title IX, at 34 C.F.R. § 106.31(a).

On September 28, 2016, the District agreed to implement the enclosed resolution agreement in order to resolve the compliance concerns. OCR will monitor the implementation of the resolution agreement.

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 happens, the complainant may file another complaint alleging such treatment.

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<sup>5</sup> OCR determined that notwithstanding his report, the Yonkers District Attorney, in response to the YPD’s investigation, advised the complainant that the students were too young for the District Attorney to prosecute Student B.

<sup>6</sup> The complainant did not report any further incidents between the Student A and Student B for the balance of school year 2015-2016; however, the complainant advised OCR that she withdrew Student A from the school because of Student B’s conduct, and enrolled him in a XXXXXXXXXXXXXXXXXXXX at the end of school year 2015-2016. The complainant advised OCR that Student A received XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX with Student B during school year 2015-2016.

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 about OCR's determination, please contact Crystal Johnson, Senior Investigator, at (646) 428-3821 or [crystal.johnson@ed.gov](mailto:crystal.johnson@ed.gov); or James Moser, Compliance Team Attorney, at (646) 428-3792 or [james.moser@ed.gov](mailto:james.moser@ed.gov).

Sincerely,

/s/

Timothy C. J. Blanchard

Encl.