

August 10, 2017

Mark J. Silverstein
Superintendent
Glassboro School District
560 Joseph Bowe Boulevard
Glassboro, New Jersey 08028

Re: Case No. 02-17-1112
Glassboro School District

Dear Superintendent Silverstein:

This letter is to notify you of the determination made by the U. S. Department of Education, Office for Civil Rights (OCR), in the above-referenced complaint filed against the Glassboro School District (the District). The complainant alleged that the District discriminated against her son (the Student), on the basis of his sex, by reassigning him from his classroom on September 9, 2016, as an XXXXXXXXXXXX XXXXXXXXXXXX for an incident of XXXXXXX XXXXXXXXXXXX that occurred in XXXX (Allegation 1). The complainant also alleged that the District failed to adopt and publish grievance procedures providing for the prompt and equitable resolution of sex discrimination complaints, as required by the regulation implementing Title IX of the Education Amendments of 1972 (Title IX) (Allegation 2).

OCR is responsible for enforcing 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.

By letter dated May 4, 2017, OCR informed the District and the complainant that it had administratively closed Allegation 1 after the complainant and the District entered into an Early Complaint Resolution (ECR) agreement that resolved the allegation; however, as stated in OCR's letter dated May 4, 2017, OCR continued its investigation of Allegation 2.

During its investigation, OCR reviewed documentation that the District submitted. OCR also interviewed District personnel. OCR made the following determinations.

The regulation implementing Title IX, at 34 C.F.R. § 106.8(b), requires that a recipient adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action prohibited by the regulation implementing Title IX. 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, that is easily understood, easily located, and widely distributed; (b) application of the procedures to complaints alleging discrimination or harassment carried out by employees, students, and third parties; (c) adequate, reliable, and impartial investigation, including an equal 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 any appeal; and, (f) an assurance that the institution will take steps to prevent further harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

OCR requested that the District provide copies of policies and procedures governing the investigation of complaints of discrimination on the basis of sex, including sexual harassment; and, an explanation of the means by which the District informed students, parents, employees and third parties of the these policies and procedures. In response, the District provided numerous policies and procedures; and from those, OCR identified the following grievance procedures that appeared to govern the investigation of complaints of discrimination on the basis of sex, including sexual harassment: Policy 5751, entitled “Sexual Harassment of Pupils” (Policy 1); Policy 3362, entitled “Sexual Harassment of Teaching Staff Members Complaint Procedure” (Policy 2); Policy 4352, entitled “Sexual Harassment of Support Staff Members Complaint Procedure” (Policy 3); and, Policy 5512, entitled “Harassment, Intimidation, or Bullying Investigation Procedure” (Policy 4).¹ In addition, the District advised OCR that the District’s Code of Conduct contained a section entitled “Reporting/Harassment/Discrimination,” which discussed a procedure for filing formal grievances related to harassment, intimidation, bullying and discrimination. OCR determined that the District publishes these procedures on the District’s website, and the procedures are easily located.²

Policy 1

Policy 1 applies to complaints of sexual harassment filed by students and/or their parents/guardians against other students, employees or third parties. Policy 1 does not apply to other complaints of discrimination on the basis of sex. Policy 1 has been in effect since February 24, 2010, and is publicly available to students and/or their parents/guardians via a link on the District’s website.³ Policy 1 states that the District prohibits sexual harassment of students, and indicates that complaints should be filed with the school building principal, an immediate supervisor (if a staff member), or to the Affirmative Action Officer (AAO); however, Policy 1 does not provide contact

¹ The District advised OCR that Policy 9130, entitled “Public Complaints and Grievances”, applied to complaints of discrimination on the basis of sex and sexual harassment filed by third parties. OCR determined that this is a statement of policy, rather than a grievance procedure; and, it does not specifically apply to complaints of discrimination on the basis of sex and sexual harassment.

² <http://www.gpsd.us/domain/10>

³ <http://www.straussesmay.com/seportal/Public/DistrictRegulation.aspx?regulationid=5751&search=5751&id=c53fa2e000da48569866dcf904b45671>

information for any of these individuals. All complaints are referred to the AAO for further action. Upon receipt of a complaint, the AAO conducts an investigation of the allegations, during which she interviews all persons with potential knowledge of the alleged conduct; and, any person interviewed by the AAO is permitted to present witnesses and other evidence. Policy 1 provides reasonably prompt timeframes for the major stages of the grievance process, and provides for notice of the outcome of the investigation to both parties. Specifically, the AAO's investigation is to be completed and the parties are notified of the outcome within ten working days after receipt of the complaint. Both parties are permitted to appeal the determination of the AAO to the Superintendent; and, the Superintendent's determination of the appeal is to be rendered within ten working days of receipt of the appeal. Policy 1 does not specify that notice of the outcome of the appeal will be provided to the parties. Both parties may further appeal the decision of the Superintendent to the Board of Education (BOE), which issues its determination within forty-five (45) calendar days of receipt of an appeal of the Superintendent's determination. Policy 1 does not specify that notice of the outcome of the appeal will be provided to the parties. Policy 1 contains an assurance that District administrators will take steps to prevent any further sexual harassment, to address the effects of the harassment, and to prevent any retaliation against the student who made the complaint.

Policies 2 and 3

Policies 2 and 3 apply to complaints of sexual harassment filed by District staff members against other District staff members; Policies 2 and 3 do not apply to complaints filed by District staff members against students or third parties. Policy 2 specifically applies to teaching staff members, while Policy 3 applies to support staff members; however, the policies are otherwise identical. Policies 2 and 3 do not apply to other complaints of discrimination on the basis of sex. Policies 2 and 3 have been in effect since February 24, 2010, and are publicly available to District staff members via a link on the District's website.⁴ Both policies are also distributed to staff members at the start of each school year. Additionally, staff members attend training regarding these policies at the beginning of the school year and are also required to complete on-line training once a year. Both policies direct any person with information regarding actual or potential sexual harassment of a District staff member to report such information to the school building principal, an immediate supervisor, or to the AAO; however, Policies 2 and 3 do not provide contact information for any of these individuals. All complaints are referred to the AAO for further action. Upon receipt of a complaint, the AAO conducts an investigation of the allegations during which she conducts interviews of all persons with potential knowledge of the alleged conduct; and, any person interviewed by the AAO is permitted to present witnesses and other evidence. Policies 2 and 3 provide reasonably prompt timeframes for the major stages of the grievance process, and provide for notice of the outcome of the investigation to both parties. Specifically, the AAO's investigation is to be completed and the parties are to be notified of the outcome within ten working days after receipt of the complaint. Both parties are permitted to appeal the determination of the AAO to the Superintendent; and, the Superintendent's determination of the appeal is to be rendered within ten working days of receipt of the appeal. Both parties may further appeal the decision of the

⁴ <http://www.straussesmay.com/seportal/Public/DistrictRegulation.aspx?regulationid=3362&search=3362&id=c53fa2e000da48569866dcf904b45671>; and, <http://www.straussesmay.com/seportal/Public/DistrictRegulation.aspx?regulationid=4352&search=4352&id=c53fa2e000da48569866dcf904b45671>

Superintendent to the Board of Education (BOE), which issues its determination within forty-five (45) calendar days of receipt of an appeal of the Superintendent’s determination. Policies 2 and 3 do not specify that notice of the outcome of any appeal will be provided to the parties. Both Policies 2 and 3 contain an assurance that District administrators will take steps to prevent any further sexual harassment, to address the effects of the harassment, and to prevent any retaliation against the District staff member who made the complaint.

Policy 4

Policy 4 applies to complaints alleging harassment, intimidation, or bullying of a student; however, it does not specify that it applies to complaints alleging harassment by employees, students, and third parties.⁵ Policy 4 prohibits harassment, intimidation, or bullying on the basis of gender, sexual orientation, gender identity, and expression. However, it does not apply to other complaints of discrimination on the basis of sex. Policy 4 has been in effect since February 24, 2010, and is publicly available to students and/or their parents/guardians via a link on its website.⁶ Policy 4 is also distributed to parents/guardians and District staff at the start of each school year. Policy 4 states that the principal or principal’s designee, such as the school anti-bullying specialist, shall initiate an investigation within one school day of receiving a verbal report of an incident of harassment, intimidation, or bullying. However, Policy 4 does not provide contact information for any of these individuals. Pursuant to Policy 4, the principal or designee will conduct an investigation of the allegations, and the results of the investigation shall be reported to the District Superintendent, and then to the BOE. Policy 4 does not specify that the parties are permitted to present witnesses and other evidence. Policy 4 provides for reasonably prompt timeframes for the investigation process. Specifically, the investigation is to be completed within ten school days from the date of receipt of a written complaint,⁷ and the investigative report is to be forwarded to the Superintendent within two school days of completion of the investigation. However, Policy 4 does not provide reasonably prompt timeframes for the other stages of the grievance process. Policy 4 does not provide a specific timeframe for when the results of the investigation are reported to the BOE.⁸ Additionally, although Policy 4 states that the parties are notified of the outcome of the investigation within five school days after the results are reported to the BOE, this date is uncertain as it is dependent upon the date of the next BOE meeting, which is not specified in Policy 4. Both parties are permitted to appeal the decision of the Superintendent by submitting a request for a hearing to the BOE; and the BOE shall convene a hearing within ten school days of the request.⁹ However, Policy 4 does not specify when the BOE will issue its decision regarding the appeal; and, it does not indicate that both parties will be notified of the outcome of the appeal. Policy 4 contains

⁵ During OCR’s investigation, District staff informed OCR that Policy 4 applies to all complaints alleging harassment of a student by other students or staff.

⁶ <http://www.straussesmay.com/seportal/Public/DistrictPolicy.aspx?policyid=5512&search=5512&id=c53fa2e000da48569866dcf904b45671>

⁷ The written complaint is generated within two school days of receipt of an oral complaint.

⁸ Specifically, Policy 4 states that the investigation results are forwarded to the BOE “no later than the date of the next Board Of Education Meeting following the completion of the investigation.”

⁹ Policy 4 states, “at the next regularly scheduled Board of Education meeting following its receipt of the Superintendent’s report on the results of each investigation to the Board or following a hearing in executive session, the Board shall issue a decision, in writing, to affirm, reject, or modify the Superintendent’s decision.”

an assurance that the District will take steps to prevent any further harassment, to address the effects of the harassment, and to prevent any retaliation against the individual who made the complaint.

Based on the foregoing, OCR determined that the District failed to adopt grievance procedures that provide for the prompt and equitable resolution of complaints of discrimination and/or harassment on the basis of sex, in violation of the regulation implementing Title IX, at 34 C.F.R. § 106.8(b).

On July 27, 2017, the District agreed to implement the enclosed resolution agreement to remedy the compliance issues and other concerns identified in this investigation. OCR will monitor the implementation of the enclosed resolution agreement.

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 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 individual may file a 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 that, 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 Michele Ginter-Barbara, Compliance Team Investigator, at (646) 428-3816 or michele.ginter-barbara@ed.gov; Joy Purcell, Compliance Team Attorney, at (646) 428-3766 or joy.purcell@ed.gov; or Felice Bowen, Compliance Team Leader, at (646) 428-3806 or felice.bowen@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

cc: XXXXXXXXX XXXX, Esq.