



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
32 OLD SLIP, 26TH FLOOR
NEW YORK, NEW YORK 10005

TIMOTHY C. J. BLANCHARD
DIRECTOR
NEW YORK OFFICE

September 16, 2019

Via email only (gdepolo@manhattancharterschool.org)

Genie DePolo
Chief of Schools
Manhattan Charter School 2
220 Henry Street
New York, New York 10002

Re: Case No. 02-19-1241
Manhattan Charter School 2

Dear Ms. DePolo:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR), with respect to the above-referenced complaint filed against Manhattan Charter School 2 (the School). The complainant alleged that the School discriminated against her son (the Student), on the basis of his sex, by failing to respond appropriately to a complaint of sexual assault made against the Student on xxx, 2019, pertaining to an incident that allegedly occurred during school year 2017-2018.

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 School 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. Sexual harassment that creates a hostile environment is unwelcome conduct on the basis of sex that is so severe, pervasive, and objectively offensive that it effectively denies a student equal access to a recipient's education program or activity. 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, the school is responsible for remedying any effects of the harassment on the students, as well as for ending the harassment and preventing its recurrence.

During the course of its investigation, OCR interviewed the complainant and School staff members. OCR also reviewed documentation that the complainant and the School submitted.

The School is a charter school located in New York City, which is under the management of Manhattan Charter School, a network of charter schools. The School is not a part of the New York City Department of Education; rather, the School is considered its own local education agency by the State of New York. The School serves students in kindergarten through fifth grade. The Student was enrolled in xxx and xxx grades at the School during school years 2017-2018 and 2018-2019, respectively.

The complainant alleged that the School discriminated against the Student, on the basis of his sex, by failing to respond appropriately to a complaint of sexual assault made against the Student on xxx, 2019, pertaining to an incident that allegedly occurred during school year 2017-2018. Specifically, the complainant asserted that the School failed to timely notify her about the complaint filed against the Student; she stated that she only learned about the complaint when law enforcement officials from the New York City Police Department (NYPD) contacted her on March 6, 2019. The complainant also asserted that the School did not offer counseling to the Student.

On xxx, 2019, a student at the School (student A) and his parents met with the principal and the School's assistant principal and reported that student A had been sexually assaulted by the Student while at the School during school year 2017-2018. Specifically, student A alleged that xxx at some point during school year 2017-2018, xxx. OCR reviewed a copy of the assistant principal's contemporaneous notes from the meeting, which stated that student A initially reported that the Student engaged in multiple acts of sexual assault against him while they were xxx. The School informed OCR that student A could not recall specifically when the incidents occurred during the prior school year, and the principal stated that student A did not identify any witnesses to the incidents. The assistant principal's notes indicated that student A made statements at the end of the meeting that were inconsistent with his statements at the beginning of the meeting, including that he did not know if the Student actually had engaged in certain acts of sexual assault that he had initially alleged occurred.

The principal informed OCR that she spoke with the School's Chief of Schools (chief)¹ after her meeting with student A and his parents, and they determined that they were obligated as mandatory reporters to refer student A's report to New York City's Administration for Children's Services (ACS).² The principal made a report to ACS on xxx, 2019, and ACS notified her that the report would be referred to the NYPD's Special Victim's Unit. The principal informed OCR that she did not notify the Student's or student A's parents that she made the report to ACS, and that she had no additional follow-up correspondence with ACS following xxx, 2019.³

¹ The School is part of a charter school network that includes two schools in New York City. The chief oversees both schools, and she is also the principal of the other school within the network, Manhattan Charter School 1.

² ACS provides child welfare, juvenile justice, and early care and education services to children and families within New York City. ACS's Division of Child Protection conducts investigations of suspected child abuse or neglect.

[illegible]

The principal acknowledged that the School did not thereafter conduct an investigation of student A's report; stating that the information that student A provided was unclear and inconsistent, student A did not identify any witnesses to the incident, and the principal did not believe that any staff members at the School were capable of conducting an interview with the Student given the subject matter and nature of student A's report. The principal informed OCR that the School nevertheless implemented interim measures for the Student and student A beginning on xxx, 2019; namely, the School did not allow xxx grade students to go to the bathroom without an adult escort; and, School staff members made sure that the Student and student A (who were in separate xxx grade classrooms) did not interact with one another during shared lunch and recess time. The principal stated that these interim measures were in place through the end of school year 2018-2019. The principal did not offer counseling services to the Student.

OCR determined that after the report to ACS on xxx, 2019, the principal communicated with the NYPD when detectives came to the School on February 27, 2019. The principal stated that the detectives took photos of the School's xxx where the incident allegedly occurred, and they briefly spoke with her and the assistant principal. She stated that the detectives told them that student A's allegations were vague and could not be verified; they planned to interview the Student at a later date; and, they recommended that the Student and student A receive counseling through an NYPD program. The principal stated that she did not have any additional contact with the NYPD after February 27, 2019; and, she was not informed of the final outcome of the NYPD's investigation.

The complainant informed OCR that she first learned about student A's report when she received a call from an NYPD detective on March 6, 2019, requesting to interview the Student in connection with student A's report. The complainant stated that after the Student spoke with the detective the next day, March 7, 2019, the detective told her the Student would not be charged with anything; the investigation was being closed; and, counseling services were available to the Student through the NYPD.

OCR reviewed the complainant's email correspondence with the chief between March 7 and 13, 2019, which pertained to the School's response to student A's report. In her emails, the complainant complained that the School did not promptly notify her about student A's report. In an email response dated March 8, 2019, the chief stated that she appreciated the complainant's desire to have been notified of student A's report sooner; however, the School sought to avoid the appearance of interfering with an NYPD investigation by contacting the family of an accused student. The chief also informed the complainant that the School had not made any determination that the Student engaged in the conduct alleged by student A; and, the School considered the matter closed. In an email dated March 13, 2019, the chief also told the complainant that there were no generally applicable policies regarding the School's interactions with parents in circumstances where the School involves outside authorities; the School individually considers the particular facts and circumstances of each such case; and, the School exercised its discretion in good faith when it decided not to notify the complainant about student A's report prior to the time the detective contacted the complainant on March 6, 2019. The School advised OCR that the complainant withdrew the Student from the School at the conclusion of school year 2018-2019.

Based on the foregoing, OCR determined that the School promptly implemented certain interim measures to monitor the School's bathroom and prevent contact between the Student and student

A after it received notice of student A's allegation; however, the School did not complete its investigation before or after the NYPD informed the School on February 27, 2019 that its investigation was ongoing. The School also did not notify the complainant about student A's allegation. Therefore, OCR determined that the School failed to respond promptly and equitably to student A's report, in violation of the regulation implementing Title IX at 34 C.F.R. § 106.8(b).

On September 11, 2019, the School signed the enclosed resolution agreement (the Agreement). OCR will monitor implementation of the 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 have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the School 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, please contact Coleen Chin, Senior Attorney, at (646) 428-3809 or coleen.chin@ed.gov; or Logan Gerrity, Compliance Team Attorney, at (646) 428-3791 or logan.gerrity@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

cc: Lyle S. Zuckerman, Esq.; via email only (lylezuckerman@dwt.com)