



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

December 18, 2019

Via email only (jchambers@potsdam.k12.ny.us)

Joann Chambers
Superintendent of Schools
Potsdam Central School District
29 Leroy Street
Potsdam, New York 13676

Re: Case No. 02-19-1288
Potsdam Central School District

Dear Superintendent Chambers:

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 the Potsdam Central School District (the District). The complainant alleged that the District discriminated against her daughter (the Student), on the basis of her sex, by failing to respond appropriately to her report that another student (student A) subjected the Student to a sexual assault on XX XX, XXXX.

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), states as follows: “Except as provided elsewhere in this part, 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 academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives Federal financial assistance.” Sexual harassment is a form of discrimination prohibited by Title IX. Sexual harassment can 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. In determining whether harassment based on sex exists, OCR looks at the totality of the circumstances, and considers a variety of factors, including the degree to which the conduct affected one or more students’ education; the type, frequency, and duration of the conduct; the identity of and relationship between the alleged harasser and the subject or

deal” regarding the police investigation; however, the complainant did not know the specific terms of the “plea deal.”

The District informed OCR that because the allegation involved a physical act and an immediate response was required, it treated the Student’s allegation as an allegation of forcible touching and a violation of the District’s Code of Conduct (the code); it did not address the complaint under its sexual harassment grievance procedures. The District also informed OCR that the allegation that student A XXXXXXXXXXXXXXXXXXXXXXXX was not directly addressed; instead, the District focused on responding to what it considered to be the more severe offense, which it categorized as forcible touching.

The principal met with student A’s father on February 12, 2019, to discuss the incident. Student A’s father refused to permit the principal or any other District staff member to interview student A about the incident. On the same date, the principal issued a letter to student A’s father notifying him that student A was being charged under the code of engaging in the following acts of misconduct: “Insubordination to Rules” and “Endangering Others’ Health, Safety, Morals, and Welfare.” Further, on February 12, 2019, the principal reviewed a copy of the Student’s statement to the Potsdam Police Department that the complainant provided to the District. The principal stated that given the conduct the Student alleged and her statement to the police, he also determined on February 12, 2019, that student A should be suspended immediately for five days and referred to a superintendent’s hearing.² The District advised OCR that it had no information regarding the outcome of the police investigation.

By letter dated February 13, 2019, the superintendent informed student A’s father that student A’s superintendent’s hearing was scheduled for February 25, 2019. The principal informed OCR that in preparation for the superintendent’s hearing, he gathered information from student A’s English, government/economics, and physical education teachers in order to learn more about student A’s performance at school and obtain a holistic view of student A.³ The superintendent’s hearing was postponed from February 25, 2019, until February 28, 2019. In a pre-hearing conference on February 28, 2019, student A, student A’s father, and the superintendent signed an agreement stating, among other things, that student A waived his right to a superintendent’s hearing; and, that student A would be suspended for the remainder of school year 2018-2019, and would not enter the School or its grounds without the prior written permission of the superintendent.⁴ Though the District did not inform the complainant or the Student of the outcome of the superintendent’s hearing process, the District’s counsel informed the complainant that student A would no longer attend the School and that the District would notify her if he returned. While the District ensured

² According to the code, a student (offending student) will be referred to a superintendent’s hearing if the principal determines that the offending student should be suspended for more than five days. At the hearing, the offending student has the right to be represented by counsel, the right to question witnesses against him or her, and the right to present witnesses and other evidence on his or her behalf. The code does not provide for any rights for any student who was the victim of any alleged wrongdoing. OCR provided technical assistance to the District that any process made available to one party in the adjudication procedure for a matter involving sexual harassment should be made equally available to the other party.

³ Prior to the superintendent’s hearing scheduled for February 25, 2019, the School also received a copy of witness statements from XXXXXXXXXXXXXXXXXXXXXXXX taken by the Potsdam Police Department. According to their statements, XXXXXXXXXXXXXXXXXXXXXXXX.

⁴ The District informed OCR that student A moved to a different state at the end of school year 2018-2019.

that the Student would no longer have contact with student A at the School, the District acknowledged that it did not consider whether it was appropriate to offer either the Student or student A other interim measures, such as counseling.

On November 21, 2019, the District signed the enclosed resolution agreement (the Agreement) to resolve the compliance issues that OCR identified. 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 District may not harass, coerce, intimidate, or discriminate against any individual because the individual 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 Ernest King, Compliance Team Attorney, at (646) 428-3777 or ernest.king@ed.gov; or Coleen Chin, Senior Attorney, at (646) 428-3809 or coleen.chin@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

cc: Susan Johns, Esq.