



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

32 OLD SLIP, 25<sup>TH</sup> FLOOR  
NEW YORK, NEW YORK 10005

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DIRECTOR  
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September 28, 2023

*Sent via email only to: [Vcaravana@lufsd.org](mailto:Vcaravana@lufsd.org)*

Vincent A. Caravana  
Interim Superintendent  
Lindenhurst Union Free School District  
McKenna Administration Building  
350 Daniel Street  
Lindenhurst, New York 11757

Re: Case No. 02-21-1147  
Lindenhurst Union Free School District

Dear Superintendent Caravana:

By letter dated November 8, 2021, the U.S. Department of Education, Office for Civil Rights (OCR) notified you that it would investigate a complaint filed against the Lindenhurst Union Free School District. The Complainant alleged that the District discriminated against her son by failing to respond appropriately to her complaints that students subjected her son to harassment on the bases of disability (Allegation 1), sex (Allegation 2), and race (Allegation 3) during school year 2020-2021. For the remainder of this letter, OCR will refer to the Complainant's son as the Student.

With respect to Allegations 1 and 2, the Complainant alleged that other students called the Student a "[redacted content]" and a "[redacted content]" on a daily basis during school year 2020-2021. With respect to Allegation 3, the Complainant alleged that the Student witnessed other students bullying [redacted content] students in the District. Specifically, the Student witnessed another student tell a [redacted content] student "aren't you supposed to be [redacted content]?" and showing the [redacted content] student "[redacted content]." The Complainant alleged that the District failed to address these incidents because it does not have a consistent procedure. On December 2, 2022, the District and the Complainant entered into a mediation agreement that resolves Allegations 1, 2, and 3, as they relate specifically to the Student.

During the mediation of the individual aspects of Allegations 1, 2, and 3, OCR continued its investigation of possible systemic concerns relating to these allegations and identified concerns with respect to the District's response to complaints of harassment on the bases of disability, race, and sex. As discussed further below, OCR's investigation also determined that the District has not complied with the procedural requirements of Title VI of the Civil Rights Act of 1964 (Title VI), at 34 C.F.R. § 100.6(d); Title IX of the Education Amendments of 1972 (Title IX), at 34 C.F.R.

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§§ 106.8(a), 106.8(b)(1), and 106.45; Section 504 of the Rehabilitation Act of 1973 (Section 504), at 34 C.F.R. §§ 104.7(a)-(b) and 104.8(a)-(b); and Title II of the Americans with Disabilities Act of 1990 (Title II), at 28 C.F.R. §§ 35.106 and 35.107(a)-(b).

Prior to OCR completing its investigation of the potential systemic concerns, the District expressed an interest in voluntarily resolving OCR's concerns and the two violations noted above. OCR determined that resolution is appropriate under Section 302 and 303(b) of OCR's *Case Processing Manual (CPM)*<sup>1</sup> to resolve OCR's concerns regarding the District's response to complaints of harassment on the bases of disability, race, and sex and the District's violations of the Title VI regulations at 34 C.F.R. § 100.6(d); Title IX regulations at 34 C.F.R. §§ 106.8(a), 106.8(b)(1), and 106.45; Section 504 regulations at 34 C.F.R. §§ 104.7(a)-(b) and 104.8(a)-(b); and Title II regulations, at 28 C.F.R. §§ 35.106 and 35.107(a)-(b). The District signed the enclosed resolution agreement (the Agreement) to resolve this complaint.

OCR enforces Title VI, as amended, 42 U.S.C. §§ 2000d-2000d-7, and its implementing regulations at 34 C.F.R. Part 100, which prohibit discrimination on the bases of race, color, and national origin in programs and activities receiving financial assistance from the Department. OCR also enforces Title IX, 20 U.S.C. §§ 1681-1688, and its implementing regulations at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any education program or activity operated by a recipient of federal financial assistance. In addition, OCR enforces Section 504, as amended, 29 U.S.C. § 794, and its implementing regulations at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities receiving financial assistance from the Department. OCR also enforces Title II, 42 U.S.C. § 12131 *et seq.*, and its implementing regulations at 28 C.F.R. Part 35. Under Title II, OCR has authority to investigate complaints alleging discrimination on the basis of disability that are filed against certain public entities. As a public entity that receives federal financial assistance from the Department, the District is subject to Title VI, Title IX, Section 504, Title II and their implementing regulations.

## **I. Legal Standards**

### **Title VI**

The regulation implementing Title VI, at 34 C.F.R. § 100.3, provides that no person shall, on the basis of race, color, or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program to which Title VI applies. The regulations implementing Title VI, at 34 C.F.R. § 100.3(b)(1)(i),(ii) and (iv), states that a recipient may not, directly or through contractual or other arrangements, on ground of race, color, or national origin, deny an individual any service, aid, or benefit provided under the program; provide any service or benefit to an individual that is different, or is provided in a different manner, from that provided to others under the program; or restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit under the program.

The existence of a hostile environment that is created, encouraged, accepted, tolerated, or left uncorrected by a recipient constitutes discrimination on the basis of race, color, or national origin in violation of Title VI. To establish a violation of Title VI under the hostile environment theory,

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<sup>1</sup> See *CPM* (July 18, 2022) at <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

OCR must find that: (1) a hostile environment based on race, color, or national origin existed; (2) the recipient had actual or constructive notice of a hostile environment based on race, color, or national origin; and (3) the recipient failed to respond adequately to redress the hostile environment based on race, color, or national origin.

Once a recipient has notice of a hostile environment, the recipient has a legal duty to take reasonable steps to eliminate it. OCR evaluates the appropriateness of the responsive action by assessing whether it was reasonable, timely, and effective. The appropriate response to a hostile environment based on race, color, or national origin must be tailored to redress fully the specific problems experienced as a result of the harassment.

The regulation implementing Title VI, at 34 C.F.R. § 100.6(d), requires recipients to maintain a notice of nondiscrimination and provides that each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this regulation and its applicability to the program for which the recipient receives Federal financial assistance, and make such information available to them in such manner as the responsible Department official finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this regulation.

## **Title IX**

The current regulations implementing Title IX contain a number of procedural requirements, including a requirement that recipients designate at least one employee to coordinate the recipient's efforts to comply with Title IX, including the investigation of any complaint communicated to such recipient alleging its noncompliance with Title IX or any actions that Title IX would prohibit. *See* 34 C.F.R. § 106.8(a). The Title IX regulations also require each recipient to notify all of its students and employees of the name, office address, and telephone number of the employee or employees so designated (the Title IX Coordinator(s)). *See id.* In addition, the Title IX regulations require recipients to publish a notice of nondiscrimination covering Title IX, *see* 34 C.F.R. § 106.8(b)(1), and 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 and a grievance process that complies with 34 C.F.R. § 106.45 for formal complaints as defined in 34 C.F.R. § 106.30, *see* 34 C.F.R. § 106.8(c).

The regulation implementing Title IX, at 34 C.F.R. § 106.31(a), states 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 academic, extracurricular, or other education program or activity operated by a recipient that receives federal financial assistance. Sexual harassment is a form of sex discrimination under Title IX. The Title IX regulation, at 34 C.F.R. § 106.30(a), defines "sexual harassment" in relevant part as "conduct on the basis of sex" that includes "(2) unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity." This definition of sexual harassment may include nonsexual harassment based on sex or sex

stereotyping if a reasonable person would determine that the harassment is so severe, pervasive, and objectively offensive that it denies a person equal educational access.<sup>2</sup>

The regulation implementing Title IX, at 34 C.F.R. §106.44(a), requires a recipient with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States, to respond promptly in a manner that is not deliberately indifferent. In the elementary and secondary school context, the regulations define “actual knowledge” as notice of sexual harassment or allegations of sexual harassment to the Title IX coordinator or any employee of an elementary or secondary school. 34 C.F.R. § 106.30(a). The regulations state that a recipient is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances. 34 C.F.R. § 106.44(a).

Once a recipient has actual knowledge of sexual harassment in its education program or activity against a person in the United States, the recipient must offer “supportive measures” to the “complainant.” 34 C.F.R. § 106.44(a). The regulation defines “complainant” as “an individual who is alleged to be the victim of conduct that could constitute sexual harassment.” 34 C.F.R. § 106.30(a). The regulation defines “supportive measures” as “non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. *Id.* Supportive measures are designed to restore or preserve equal access to the recipient’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient’s educational environment, or deter sexual harassment. *Id.* Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and similar measures. *Id.*

When the Title IX coordinator or an employee of an elementary or secondary school has actual knowledge of conduct that could constitute sexual harassment in the recipient’s education program or activity, the Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures, consider the complainant’s wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint. 34 C.F.R. § 106.44(a). The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures. 34 C.F.R. § 106.30(a).

If the conduct alleged in the formal complaint would not constitute sexual harassment as defined in § 106.30 even if proved, did not occur in the recipient’s education program or activity, or did not occur against a person in the United States, then the recipient must dismiss the formal

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<sup>2</sup> See Preamble to the 2020 Title IX regulation at 85 Fed. Reg. 30179 (“These final regulations include sexual harassment as unwelcome conduct on the basis of sex that a reasonable person would determine is so severe, pervasive, and objectively offensive that it denies a person equal educational access; this includes but is not limited to unwelcome conduct of a sexual nature, and may consist of unwelcome conduct based on sex or sex stereotyping.”); see also *id.* at 30179 (“Nothing in these final regulations, or the way that sexual harassment is defined in § 106.30, precludes a theory of sex stereotyping from underlying unwelcome conduct on the basis of sex that constitutes sexual harassment as defined in § 106.30.”).

complaint with regard to that conduct for the purposes of sexual harassment under Title IX. 34 C.F.R. § 106.45(b)(3)(i). However, such a dismissal does not preclude action under another provision of the recipient's code of conduct. *Id.*

## **Section 504/Title II**

The regulation implementing Section 504, at 34 C.F.R. § 104.4(a), states that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity that receives federal financial assistance. The regulation implementing Title II, at 28 C.F.R. § 35.130(a), contains a similar provision. Employee harassment of a student based on disability in the context of carrying out their job duties for providing aid, benefits, or services to students is a form of discrimination prohibited by Section 504, Title II, and their implementing regulations if the harassment denies or limits the student's ability to participate in or benefit from the school's program. Harassing conduct can include oral, written, graphic, physical, or other conduct that is physically threatening, harmful or humiliating. If OCR determines that harassing conduct occurred and that the recipient had actual or constructive notice of the harassment, OCR will examine whether the recipient took prompt and effective action that was reasonably calculated to stop the harassment, prevent its recurrence and, as appropriate, remedy its effects.

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 Title II, at 28 C.F.R. § 35.107(a), contains a similar requirement in the instance of a public entity that employs 50 or more persons.

The regulation implementing Section 504, at 34 C.F.R. § 104.8(a), requires each recipient to take appropriate steps to notify participants, beneficiaries, applicants, and employees 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 implementing Section 504, 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 Title II also contains a notice requirement that applies to all entities of state or local government, whether or not they receive federal financial assistance. *See* 28 C.F.R. § 35.106.

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 Title II, at 28 C.F.R. § 35.107(b), contains a similar requirement for public entities.

## **II. Investigative Findings, Legal Analysis and Conclusions**

In its investigation OCR reviewed documentation that the Complainant and the District submitted. OCR also interviewed the Complainant and District staff.

The District Policy 0115 – Bullying Prevention (the Policy) prohibits acts of harassment, hazing, and bullying, including but not limited to harassment on the bases of race, color, national origin, disability, and sex.<sup>3</sup> The Policy prohibits such harassment on school grounds, school buses, and at all school-sponsored activities, programs, and events. The Policy prohibits discrimination, harassment, hazing, or bullying that takes place at locations outside of school grounds, such as cyberbullying, that creates or can be reasonably expected to create a material and substantial interference with the requirements of appropriate discipline in the operation of the school or impinge on the rights of other students. The Policy encourages students, parents, and others who observe harassing behavior to make an oral and/or written complaint to any school personnel. The Policy provides that the building principal or the building Dignity Act Coordinator will carry out an equitable and thorough investigation, and that if either of the parties disagrees with the results of the investigation, they can appeal the findings.

The Policy provides that students who violate the Policy will receive in-school guidance in making positive choices in their relationships with others; and where appropriate, the District will take disciplinary action that is measured, balanced, and age-appropriate, in accordance with the District's Code of Conduct.<sup>4</sup> The District's Code of Conduct enumerates the range of disciplinary sanctions that the District may impose for engaging in prohibited conduct. Sanctions for violations of the Code of Conduct range from oral warnings to permanent suspensions. The Code states that responses to student violations of the Code are progressive in nature and based on the student's age; the nature of the offense and the circumstances that led to the offense; the student's prior disciplinary record; the effectiveness of other forms of discipline; information from parents, teachers and/or others, as appropriate; and other extenuating circumstances.

District witnesses stated that at the time it received notice of the instant OCR complaint, the District had policies and procedures in place but did not have a uniform method of responding to complaints of discrimination, harassment, or bullying on the bases of disability, race, and sex. The District advised OCR that once on notice of the OCR complaint, it began taking steps to standardize its complaint process. This included revising its complaint incident form and developing an intake form; creating a centralized process for maintaining investigative records so that the appropriate personnel at the elementary, middle, and high school level had access to the records;<sup>5</sup> putting a process in place for issuing written notifications to parents; modifying its reporting system so that it could track the students making reports; implementing a process for creating official reports for written findings, discipline imposed, interim and supportive measures taken, and follow-up; and revising its training regarding the process for harassment complaints.

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<sup>3</sup> See <https://go.boarddocs.com/ny/linden/Board.nsf/Public#> (last visited on September 28, 2023).

<sup>4</sup> See [https://lindenhurstschools.org/Assets/2021-22 District Documents/042922 Lindenhurst Code of Conduct - December 2021.pdf?t=637868356371130000](https://lindenhurstschools.org/Assets/2021-22%20District%20Documents/042922%20Lindenhurst%20Code%20of%20Conduct%20-%20December%202021.pdf?t=637868356371130000) (last visited on September 28, 2023).

<sup>5</sup> Prior to this, investigators took notes in the margins of complaint forms and maintained records in the discipline file of the accused student only.

In addition to the reports the Complainant filed, the District identified two complaints of discrimination, harassment, or bullying on the bases of disability, sex, and race filed on behalf of students at the School during school year 2020-2021 and through November 2021. OCR determined that the District did some investigation of both complaints, but failed to document all steps taken in response to the complaints and did not provide written notice of the findings of its investigations to the parties.

Prior to the completion of OCR's investigation, OCR identified possible compliance concerns with the District's processes for responding to complaints of discrimination, including harassment, on the bases of disability, race and sex. Specifically, information the District provided indicated that the District may not be maintaining adequate documentation regarding complaints filed, the parties who filed them, witness statements, or all actions the District takes in response to complaints. OCR also has concerns regarding whether the District is providing notice of its investigative findings to the parties regarding complaints.

OCR's review of the District's website also indicated that the District is not in compliance with the procedural requirements of Title IX, namely that the District has not: provided notice of the Title IX Coordinator as required by the regulation implementing Title IX, at 34 C.F.R. § 106.8(a); published a notice of nondiscrimination covering Title IX as required by the regulation implementing Title IX, at 34 C.F.R. § 106.8(b)(1); updated its Title IX grievance procedures to comply with the amendments to the Title IX regulations that went into effect on August 14, 2020, at 34 C.F.R. § 106.45; and made publicly available on its website all materials used to train its Title IX Coordinator, investigators, and decision-makers as required by the record keeping requirements of Title IX, at 34 C.F.R. § 106.45(b)(10)(i)(D).

OCR also determined that the District is not in compliance with the procedural requirements of Section 504 and Title II, as the District has not provided notice of the Section 504/Title II Coordinator, as required by the regulations implementing Section 504, at § 104.7(a), and Title II, at 28 C.F.R. § 35.107(a); adopted and published grievance procedures to comply with Section 504, at 34 C.F.R. § 104.7(b), and Title II, at 28 C.F.R. § 35.107(b); and published a notice of nondiscrimination covering Section 504 and Title II as required by the regulations implementing Section 504, at 34 C.F.R. § 104.8(b), and Title II, at 28 C.F.R. § 35.106. OCR further determined that the District is not in compliance with the procedural requirements of Title VI, as the District has not published a notice of nondiscrimination addressing Title VI as required by the regulation implementing Title VI at 34 C.F.R. § 100.6(d).

After resolving the individual allegations in the complaint with the Complainant through mediation under Section 201(b) of the *CPM*, and before OCR had completed its investigation of potential systemic concerns, the District expressed an interest in resolving its Title IX violations and OCR's concerns. OCR determined that a resolution of the violations under Section 303(b) and the concerns under Section 302 was appropriate. Accordingly, the District signed the attached Agreement to resolve the complaint, in accordance with Sections 302 and 303(b) of OCR's *CPM*. Pursuant to the Agreement, the District agreed to: designate an individual to coordinate the District's efforts to comply with the requirements of Title IX, Section 504, and Title II; adopt and publish grievance procedures that comply with the regulations implementing Title IX, Section 504, and Title II; adopt and publish a notice of nondiscrimination as required by the regulations

implementing Title VI, Title IX, Section 504, and Title II; train all District staff involved in processing, investigating and/or resolving complaints of disability, race and/or sex-based discrimination/harassment; maintain and submit to OCR documentation of new complaints received by the District; and issue an anti-harassment statement.

OCR will monitor the District's implementation of the Agreement. OCR will close the case when OCR determines that the District is in compliance with the terms of the Agreement and the obligations at issue in this case under Title VI and its implementing regulations at 34 C.F.R. Part 100, Title IX and its implementing regulations at 34 C.F.R. Part 106, Section 504 and its implementing regulations at 34 C.F.R. Part 104, and Title II and its implementing regulations at 28 C.F.R. Part 35, which were at issue in this case.

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 must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint against the District with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If 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 questions, please contact Lisa Khandhar, Compliance Team Attorney, at (646) 428-3778 or [lisa.khandhar@ed.gov](mailto:lisa.khandhar@ed.gov); Karen McDowell, Compliance Team Attorney, at (646) 428-3735 or [karen.mcdowell@ed.gov](mailto:karen.mcdowell@ed.gov); Stacy Bobbitt, Compliance Team Investigator, at (646) 428-3823 or [stacy.bobbitt@ed.gov](mailto:stacy.bobbitt@ed.gov); or Jocelyn Panicali, Compliance Team Leader, at (646) 428-3796 or [jocelyn.panicali@ed.gov](mailto:jocelyn.panicali@ed.gov).

Sincerely,

/s/

Rachel Pomerantz

Attachment

cc: Eric Levine, Esq. (via email only)