

enclosed Resolution Agreement (Agreement) which was signed by the District on December 28, 2015. The bases for our determinations are summarized below.

Applicable Legal Standards

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 is unwelcome conduct of a sexual nature. 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. Sexual harassment of a student creates a hostile environment if the conduct is sufficiently serious that it denies or limits a student's ability to participate in or benefit from the recipient's program.

In determining whether this denial or limitation has occurred, OCR examines all of the relevant circumstances from an objective and subjective perspective, including: the type of harassment (e.g., whether it was verbal or physical); the frequency and severity of the conduct; the age, sex, and relationship of the individuals involved (e.g., teacher-student or student-student); the setting and context in which the harassment occurred; whether other incidents have occurred at the school; and other relevant factors. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the harassment is physical.

If a recipient knows or reasonably should have known about sexual harassment that creates a hostile environment, Title IX requires the recipient to take immediate action to eliminate the harassment, prevent its recurrence, and address its effects. 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, a recipient must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring. These duties are a recipient's responsibility regardless of whether a student has complained, asked the recipient to take action, or identified the harassment as a form of discrimination. A law enforcement investigation does not relieve the recipient of its independent Title IX obligation to investigate the conduct. A recipient should not wait for the conclusion of a criminal investigation or criminal proceeding to conduct its own Title IX investigation; and if needed, must take immediate steps to protect the complainant from further harassment prior to the completion of the Title IX investigation/resolution.

In addition to the nondiscrimination provisions, the Title IX regulation, at 34 C.F.R. §106.8(b), requires recipients to adopt and publish a policy against sex discrimination and grievance procedures providing for prompt and equitable resolution of complaints of discrimination on the basis of sex. Further, the regulation, at 34 C.F.R. §106.8(a), requires that recipients designate at least one employee to coordinate compliance with the regulation, including

coordination of complaints alleging noncompliance, and to notify all students and employees of the name or title, office address, and telephone number of the designated employee or employees. Under 34 C.F.R. §106.9, a recipient must maintain a notice of nondiscrimination.

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 opportunity to present witnesses and evidence; (d) designated and reasonably prompt timeframes for major stages of the grievance process; (e) written 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 if appropriate. While Title IX does not require a recipient to provide separate grievance procedures for sexual harassment complaints, a recipient's grievance procedures for handling discrimination complaints must provide effective means for preventing and responding to sexual harassment. Also, in order for a recipient's grievance procedures to be consistent with the Title IX evidentiary standard, the recipient must use a preponderance of the evidence standard for investigating allegations of sexual harassment or violence. If a recipient provides for appeal of the findings or remedy, it must do so for both parties. The recipient must maintain documentation of all proceedings.

Pending the outcome of an investigation, Title IX requires a recipient to take steps to protect the complainant from further harassment as necessary, including taking interim steps before the final outcome of the investigation. The recipient should undertake these steps promptly once it has notice of a sexual harassment allegation. It should notify the complainant of his or her options to avoid contact with the alleged perpetrator, and allow students to change academic or living situations as appropriate. For instance, the recipient may prohibit the alleged perpetrator from having contact with the complainant pending the results of the investigation. When taking steps to separate the complainant and the alleged perpetrator, a recipient should minimize the burden on the complainant and thus should not, as a matter of course, remove the complainant from classes while allowing the alleged perpetrator to remain. If an accused student is found responsible and a recipient determines that he/she must be separated from the complainant, it must do so in a manner that minimizes the burden on the complainant. In addition, recipients should ensure that complainants are aware of their Title IX rights and any available resources, such as counseling services, and their right to file a complaint with local law enforcement.

In addition, if there is an incident involving potential criminal conduct, the school must determine, consistent with state and local law, whether appropriate law enforcement or other authorities should be notified. But a school's Title IX investigation is different from any law enforcement investigation, and a law enforcement investigation does not relieve a school of its independent Title IX obligation to investigate the conduct. A school therefore should not wait for the conclusion of a criminal investigation or criminal proceeding to begin its own Title IX

investigation; and if needed, must take immediate steps to protect the complainant in the educational setting. These duties are a school’s responsibility, regardless of whether a student has complained, asked the school to take action, or identified the harassment as a form of discrimination.

If the complainant requests confidentiality or asks that the complaint not be pursued, a recipient should take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation. If the complainant insists that his or her name or other identifiable information not be disclosed to the alleged perpetrator, a recipient should inform the complainant that its ability to respond may be limited. A recipient also should tell the complainant that Title IX prohibits retaliation, and that school officials will not only take steps to prevent retaliation but also take strong responsive action if it occurs.

Grievance procedures generally may include voluntary informal mechanisms (e.g., mediation) for resolving some types of sexual harassment complaints; however, it is improper for a complainant to be required to work out the problem directly with the alleged perpetrator, and certainly not without appropriate involvement by the recipient (e.g., participation by a trained counselor, a trained mediator, or, if appropriate, a faculty member or administrator). The complainant must be notified of the right to end the informal process at any time and begin the formal stage of the complaint process. Moreover, in cases involving allegations of sexual assault/violence, mediation is not appropriate even on a voluntary basis. OCR recommends that recipients clarify in their grievance procedures that mediation will not be used to resolve sexual assault/violence complaints.

Findings of Fact

XXXXXXXXXXXXXXXXXX

XXX-paragraph deleted

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XXX-paragraph deleted

Legal Analysis

XXX – paragraph deleted

District Policies and Procedures

1. Notice of Nondiscrimination

The 2015-2016 Parent Handbook contains a statement entitled “Equal Opportunity” that states:

Central Bucks School District provides equal opportunities to all children in its educational programs and services. The District does not discriminate on the basis of race, color, gender, national origin, religion, age or disability in its programs or services, or in its hiring and employment practices.

The district provides to eligible students with physical or mental disabilities, without cost to the student or family, the related aids, services and accommodations needed to afford the student equal opportunity to participate in and obtain the benefit of the school program and extracurricular activities without discrimination.

Information regarding the rights of students with disabilities may be obtained from TBD, Director of Special Education, 16 Welden Drive, Doylestown, PA 18901, 267-893-2021. The Director of Special Education is the Chapter 15-504 ADA Coordinator and the Title IX Coordinator for students. For other ADA information, please contact Ms. Andrea Didio, Director of Human Resources, 20 Welden Drive, Doylestown, PA 18901, 267-893-2084.

At the time that the Handbook was published, the position of the Director of Special Education was vacant which is why the statement says “TBD” and does not have an individual’s name. The District recently hired a Special Education Director, who also serves as the Title IX Coordinator for complaints filed by students/parents/third parties.

At OCR’s request, the District provided its nondiscrimination statement for employees and staff. The documents states:

Central Bucks School District provides equal employment opportunities (EEO) to all employees and applicants for employment without regard to race, color, religion, sex, national origin, age, disability or genetics. In addition to federal law requirements, Central Bucks School District complies with applicable state and local laws governing nondiscrimination in employment in every location in which the school district has facilities. This policy applies to all terms and conditions of employment, including recruiting, hiring, placement, promotion, termination, layoff, recall, transfer, leaves of absence, compensation and training. Central Bucks School District expressly prohibits any form of workplace harassment based on race, color, religion, gender, sexual orientation, gender identity or expression, national origin, age, genetic

information, disability, or veteran status. Improper interference with the ability of Central Bucks School District’s employees to perform their job duties may result in discipline up to and including discharge.

2. Complaint Procedures for Sex Discrimination

The District employs several policies that address complaints of sex discrimination and/or harassment, to varying degrees. First, the Parent Handbook contains a provision entitled “local complaint procedure,” which includes the following sections: 1) referral; 2) acknowledgment; 3) investigation; 4) opportunity to present evidence; 5) report and recommended resolution; 6) right to appeal; 7) follow up; and, 8) time limit. The provision also includes contact persons for filing complaints. This procedure appears to relate specifically to federal programs. This process does not have specific timeframes for the major stages of the grievance process. Rather, it states under “Time Limit” that the period between a complaint being filed and the resolution of the complaint shall not be more than 60 days. In addition, the procedure only provides the complainant the right to appeal.

A document entitled Policies and Procedures from A-Z (which appears to be part of the student handbook) contains a provision called Bullying and Harassment. This provision defines bullying and harassment and states that “when the harassment is based on gender it is considered sexual harassment.”

A document entitled “Nondiscrimination in School and Classroom Practices” refers to both Title IX and its implementing regulations, and contains a prohibition against sex discrimination along with a complaint procedure for students and third parties. The document details the following four stages of complaint procedures, which are limited to student complaints: 1) reporting; 2) investigation; 3) investigative report; and, 4) district action.

Policy 248 prohibits all forms of unlawful harassment against students or third parties by students, staff members, vendors and contractors and third parties, and encourages victims to report harassment. Harassment is defined to include, among other bases, conduct relating to gender and sexual orientation. The policy defines harassment generally, and also provides a more in-depth definition for sexual harassment, and provides specific examples of sexually harassing conduct. Policy 248 also includes a complaint procedure that is identical to the process described in the “Nondiscrimination in School and Classroom Practices” complaint process.

Upon OCR’s request, the District provided copies of complaint and harassment procedures for faculty, staff and administrators. The District provided Policy Number 326 (administrative employees), Policy Number 426 (professional employees) and Policy Number 526 (classified employees), which each outline the complaint process for the respective groups. The policies are identical and identify the rules and protocols for resolving conflicts for the respective groups. The policies also establish the complaint process and the requirements for filing a complaint. None of the policies identify prohibitions against discrimination of any kind.

The District also provided policies relative to all forms of harassment; 1) District Policy 348 (administrative employees); District Policy 448 (professional employees) and District Policy 548 (classified employees). These policies are comparable to District Policy 248, the harassment policies for students and third parties. They include a definition of unlawful harassment along with a definition of sexual harassment, and procedures for resolving complaints.

When queried about whether the procedures pertain to sex discrimination generally, the Superintendent noted that the District uses Policy 248, the harassment procedures, for any complaints alleging sex discrimination other than harassment. He noted that in complaints in which he is the alleged discriminator, the Human Resources Director would handle the investigation and resolution.

Legal Analysis

1. Notice of Nondiscrimination

During our investigation, OCR reviewed the District's policies and procedures for addressing complaints of sex discrimination as well as the District's Notice of Non-Discrimination. OCR noted deficiencies in the District's notice, as well as its grievance procedures. The nondiscrimination statement for students/parents/third parties does not identify or provide the name of the Title IX Coordinator; and it does not reference sexual harassment or state that sexual harassment is a form of discrimination based on sex.

The nondiscrimination statement for employees and staff fails to provide contact information for the Title IX Coordinator for employee complaints, the Human Resources Director. The statement also fails to reference sexual harassment or state that sexual harassment is a form of discrimination based on sex.

2. Complaint Procedures for Sex Discrimination

The District provided several sets of procedures to OCR which all provided similar complaint processing procedures. In reviewing these, OCR notes the following deficiencies: 1) timeframes for the major stages of the investigation are not provided; 2) the opportunity to appeal is only provided to complainants; 3) the procedures do not specify that the parties will be notified in writing of the outcome; and, 4) the employee procedures specifically state that they apply to all complaints alleging sex discrimination (they only appear to deal with sexual harassment) and none of the procedures indicate that the parties will be notified of the outcome in writing.

The District has agreed to address these procedural compliance concerns by entering into the enclosed Agreement with OCR. When fully implemented, the Resolution Agreement will address all of OCR's compliance concerns. Consistent with our usual practice, OCR will monitor the implementation of the agreement until we have determined that the District is in

compliance with the requirements of the regulations of Title IX, at 34 C.F.R. §§ 106.8(b) and 106.9.

This letter sets forth OCR's determination in an individual OCR case and should not be construed to address any other issue(s) regarding the District's compliance other than those addressed in this letter. 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 you may file another 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, we 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.

OCR is committed to a high-quality resolution of every case. If you have questions or concerns about OCR's finding, you may contact Jacques Toliver, Team Attorney, at (215) 656-8512, or by email at: jacques.toliver@ed.gov.

Sincerely,

/s/

Melissa M. Corbin
Team Leader
Philadelphia Office

Enclosure