



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION III
DELAWARE
KENTUCKY
MARYLAND
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WEST VIRGINIA

April 11, 2017

William R. Hite, Jr., Ed.D.
Superintendent
The School District of Philadelphia
440 N. Broad St.
Philadelphia, PA 19130

RE: OCR Complaint No. 03-16-1123

Dear Dr. Hite:

This is to advise you of the outcome of the complaint that the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) received on February 11, 2016 against the School District of Philadelphia (the District). The Complainant alleged that:

1. The District subjected the Student to a XXXXXX.
2. XXX—paragraph redacted--XXX

OCR enforces Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any program or activity receiving Federal financial assistance from the Department. The laws enforced by OCR also prohibit retaliation against any individual who asserts rights or privileges under Title IX or who files a complaint, testifies, or participates in an OCR proceeding under Title IX. Because the District receives Federal financial assistance from the Department, it is subject to Title IX and the Department's implementing regulation.

Before OCR completed its investigation, the District expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement. The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Resolution Agreement.

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.¹

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 district; 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. For example, a single instance of rape is sufficiently severe to create a hostile environment. Title IX also protects all students at recipient institutions from sex harassment, including male and female students.

If a recipient knows or reasonably should have known about sexual harassment that creates a hostile environment, 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 recipient has notice of peer sexual or third party harassment if a responsible employee actually knew or, in the exercise of reasonable care, should have known about the harassment. If a recipient delays responding to allegations of sexual harassment or responds inappropriately, the recipient's own action may subject students to a hostile environment. If it does, the recipient will be required to remedy the effects of both the initial sexual harassment and the effects of the recipient's failure to respond promptly and appropriately. A recipient's

¹ The applicable legal standards described herein are more fully discussed in OCR's 2011 Dear Colleague Letter on Sexual Violence, which is available at: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html> (April 4, 2011); for further clarification on this topic, see "Questions and Answers on Title IX and Sexual Violence," at <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf> (April 29, 2014). See also OCR's 2010 Dear Colleague Letter on Harassment and Bullying, which is available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html> (October 26, 2010), and OCR's Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, at <http://www.ed.gov/about/offices/list/ocr/docs/shguide.html> (January 19, 2001).

obligation to respond appropriately to sexual harassment complaints is the same regardless of the sex or sexes of the parties involved.

The Title IX regulation, at 34 C.F.R. § 106.8(b), requires recipients to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints alleging any action that would be prohibited by Title IX, including sex discrimination, sexual harassment, and sexual assault/violence. Title IX does not require a school district to provide separate grievance procedures for sexual harassment complaints, including sexual assault/violence complaints.

The regulation implementing Title IX, at 34 C.F.R. § 106.9, requires that recipients notify applicants for employment, students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of sex in its education programs or activities, and that it is required by Title IX not to discriminate in such a manner. The notice must also state that questions regarding Title IX may be referred to the recipient's Title IX Coordinator or to OCR.

Title IX's implementing regulation at 34 C.F.R. § 106.71 (incorporating the procedural provisions applicable to title VI of the Civil Rights Act of 1964 reference) prohibit retaliation. No recipient or other person shall "intimidate, threaten, coerce, or discriminate against" any individual:

- (1) "because [an individual] has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under" OCR's regulations (the participation clause); *or*
- (2) "for the purpose of interfering with any right or privilege secured by" the statutes and regulations enforced by OCR (the interference clause).

When investigating a complaint of unlawful retaliation, OCR determines whether: (1) an individual experienced an adverse action caused by the recipient; (2) the Complainant engaged in a protected activity; (3) a recipient was aware of the protected activity; and (4) there is some evidence of a causal connection between the adverse action and the protected activity. If one of the above elements cannot be established, then OCR finds insufficient evidence of a violation. If all four elements are present, then a prima facie case of retaliation is established, and OCR next considers whether the recipient has identified a legitimate, nondiscriminatory reason for taking the adverse action. If so, OCR then considers whether the reason asserted is a pretext for discrimination.

In order for an activity to be considered "protected," the complainant must have either opposed conduct prohibited by one of the laws that OCR enforces or participated in an investigation conducted under the laws that OCR enforces. Notice of the protected activity to the recipient, and not necessarily to the alleged individual retaliator(s), is sufficient to establish the notice requirement. In determining whether an action taken by a recipient is adverse, OCR considers whether the alleged adverse action caused lasting and tangible harm, or had a deterrent effect. Merely unpleasant or transient incidents usually are not considered adverse. OCR follows the general principle that as the time period between the protected activity and

the materially adverse action increases, the likelihood that there is a causal link between these two activities decreases. Other evidence of a causal connection may include the recipient's treatment of the complainant compared to other similarly situated individuals, the recipient's deviation from established policies or practices, and changes to the treatment of the complainant after the protected activity occurred.

XXX-paragraphs redacted—XXX

Conclusion

Pursuant to Section 302 of OCR's *Case Processing Manual*, the District signed the enclosed Resolution Agreement on April 3, 2017 which, when fully implemented, will resolve the allegations raised in this complaint. The provisions of the Agreement are aligned with the allegations and issues raised by the Complainant and the information discussed above that was obtained during OCR's investigation, and are consistent with applicable law and regulation. OCR will monitor the District's implementation of the Agreement until the District is in compliance with the statutes and regulations at issue in the case. Failure to implement the Agreement could result in OCR reopening the complaint.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. 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, or participates in an OCR proceeding. If this happens, the individual may file a retaliation complaint 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, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

We appreciate the District's cooperation in the resolution of this complaint. If you have any questions, please contact Michael Wesley, the OCR investigator assigned to this complaint, at 215-656-6908 or michael.wesley@ed.gov.

Sincerely,

/s/

Melissa M. Corbin
Team Leader
Philadelphia Office
Office for Civil Rights

Enclosure

cc: Audrey Buglione, Esquire (via email)