



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

THE WANAMAKER BUILDING, SUITE 515  
100 PENN SQUARE EAST  
PHILADELPHIA, PA 19107-3323

REGION III  
DELAWARE  
KENTUCKY  
MARYLAND  
PENNSYLVANIA  
WEST VIRGINIA

**September 27, 2017**

**IN RESPONSE, PLEASE REFER TO: 03161266**

Dr. Richard W. Fry  
Superintendent  
Big Spring School District  
45 Mount Rock Rd.  
Newville, PA 17241

Dear Dr. Fry:

This is to notify you of the resolution of the above-referenced complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Big Spring School District (the District). XXXXXX (the Complainant) filed the complaint on behalf of XXXXXX (the Student), a student at XXXXXX (the School). The Complainant alleges that the District discriminated against the Student on the basis of XXXXXX:

1. XXXXXX; and
2. XXXXXX.

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;
- Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department; and
- Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department.

Because the District receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction pursuant to Title IX, Section 504, and Title II.

**Legal Standards**

Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 et seq., and its implementing regulations, 34 C.F.R. Part 106, prohibit discrimination on the basis of sex in

education programs or activities operated by recipients of Federal financial assistance. Sexual harassment is unwelcome conduct of a sexual nature and is a form of sex 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, including acts of sexual violence.

When a student sexually harasses another student, the harassing conduct creates a hostile environment if the conduct is sufficiently serious that it interferes with or limits a student's ability to participate in or benefit from the recipient's program. If a recipient knows or reasonably should know about student-on-student or third party harassment that may create a hostile environment, Title IX requires the recipient to respond in a prompt and equitable manner by taking immediate action to eliminate the harassment, prevent its recurrence, and address its effects. These duties are a recipient's responsibility, regardless of whether a student has complained, asked the recipient to take action, or identified harassment as a form of discrimination. If, upon actual or constructive notice, a recipient delays responding to allegations of sexual harassment or responds inappropriately, the recipient's own action may subject a student(s) 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 obligation to respond appropriately to sexual harassment complaints is the same regardless of the sex or sexes of the parties involved.

In determining whether a recipient has subjected an individual to discrimination on the basis of disability, OCR looks at whether there were any apparent differences in the treatment of similarly situated individuals on the basis of disability. If different treatment is established, OCR then considers whether the recipient has a legitimate, nondiscriminatory reason for the apparent difference in treatment and whether the reason provided by the recipient is a pretext for discrimination based on disability. When examining pretext, OCR examines whether the recipient treated the individual in a manner that was consistent with established policies and procedures, and whether there is any other evidence of disability discrimination.

### **Factual Background**

XX – paragraphs redacted – XX

### **Request to Resolve Complaint through a Voluntary Resolution Agreement**

Under OCR procedures, a complaint may be resolved before the conclusion of an investigation if a recipient asks to resolve the complaint by signing a Resolution Agreement and OCR determines that such a resolution is appropriate. The provisions of the Resolution Agreement must be aligned with the complaint allegations, the information obtained in the investigation to date, and be consistent with applicable regulations. Such a request does not constitute an admission of a violation on the part of the District, nor does it constitute a determination by OCR of any violation of our regulations.

Consistent with OCR's procedures, on December 14, 2016, the District requested to resolve the complaint through a Resolution Agreement. On September 26, 2017, the District signed this Agreement. As is our standard practice, OCR will monitor the District's implementation of the Agreement, a copy of which is enclosed. Accordingly, OCR is concluding its investigation of the allegation as of the date of this letter.

This letter is not intended nor should it be construed to cover any other issues regarding the District's compliance with Title IX, Section 504 and Title II, which may exist and are not

discussed herein. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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.

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, the Complainant may file another complaint alleging such treatment.

If you have any questions or concerns, please call me at (215) 656-6935.

Sincerely,

/s/

Beth Gellman-Beer  
Team Leader/Supervisory Attorney  
Philadelphia Office

Enclosure

cc: Gareth D. Pahowka, Esq.