



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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January 2, 2018

IN RESPONSE, PLEASE REFER TO: 03161857

Scott Gordon
CEO
Mastery Charter Schools
5700 Wayne Avenue
Philadelphia, PA 19144

Dear Mr. Gordon:

This is to notify you of the resolution of the complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against the Mastery Charter Schools (Mastery). The Complainant alleged that Mastery discriminated against his client, XXXXXX (the Student), XXXXXX (the School).

OCR enforces Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, and its implementing regulation, 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. As a recipient of Federal financial assistance from the Department, Mastery is subject to these laws.

OCR applies a preponderance of the evidence standard to determine whether the evidence is sufficient to support a particular conclusion. Specifically, OCR examines the evidence in support of and against a particular conclusion to determine whether the greater weight of the evidence supports the conclusion or whether the evidence is insufficient to support the conclusion.

In reaching a determination in this complaint, OCR reviewed documentation provided by you and Mastery. OCR also interviewed the Student's parent and relevant Mastery staff. After carefully considering all of the information obtained during the investigation, OCR identified areas of non-compliance. Mastery agreed to resolve these areas of non-compliance through the enclosed Resolution Agreement.

Legal Standard

Sexual Harassment

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

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

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.

Title IX Coordinator

The Title IX regulation at 34 C.F.R. § 106.8(a) requires schools to designate at least one employee to coordinate efforts to comply with Title IX and to notify students and employees about that designated coordinator. A Title IX coordinator's core responsibilities include overseeing the recipient's response to Title IX reports and complaints and identifying and addressing any patterns or systemic problems revealed by such reports and complaints. The Title IX coordinator must have knowledge of the requirements of Title IX, of the recipient's own policies and procedures on sex discrimination, and of all complaints raising Title IX issues throughout the recipient.

Title IX Grievance Procedures

The Title IX regulation at 34 C.F.R. § 106.8(b) requires that a recipient adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints of sex discrimination, including sexual violence. In evaluating whether a recipient's grievance procedures satisfy this requirement, OCR reviews all aspects of a recipient's policies and practices, including the following elements that are necessary to achieve compliance with Title IX:

1. notice to students and employees of the grievance procedures, including where complaints may be filed;
2. application of the grievance procedures to complaints filed by students or on their behalf alleging sexual harassment carried out by employees, other student, or third parties;
3. provision for adequate, reliable and impartial investigation of complaints, including the opportunity for both the complainant and alleged perpetrator to present witnesses and evidence;
4. designated and reasonably prompt time frames for the major stages of the complaint process;
5. written notice to the complainant and alleged perpetrator of the outcome of the complaint; and

6. an assurance that the school will take steps to prevent recurrence of any sexual harassment and remedy discriminatory effects on the complainant and others, if appropriate.

Notice of Non-Discrimination

The regulation implementing Title IX, at 34 C.F.R. § 106.9, requires a recipient to implement specific and continuing steps to notify all applicants for admission and employment, students and parents, employees, sources of referral of applicants for admission and employment, 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 of Non-Discrimination must also state that questions regarding Title IX may be referred to the recipient's Title IX coordinator or to OCR.

Findings of Fact

Background

Mastery is a network of elementary and intermediate/high school charter schools in Philadelphia, Pennsylvania and Camden, New Jersey, including XXXXXX (the School) in Philadelphia. The School XXXXXX.

Notice of Non-discrimination and Title IX Policies and Procedures

OCR's investigation found that neither Mastery nor the School have policies and/or procedures that are specifically designated as Title IX grievance procedures or that otherwise serve as Title IX grievance procedures. In addition, School staff acknowledged that Mastery does not have Title IX grievance procedures or any particular policy/procedures that are specific to Title IX and that there is no specific difference in practices when it comes to investigating a Title IX matter versus other kinds of misconduct. In addition, school staff conceded that none of the documents that are sent home to students and parents discuss Title IX or how to report sexual harassment, although students and parents are directed to the school principal for any general concerns.

Mastery provided three documents in response to OCR's request for Mastery's and the School's Notice of Non-discrimination and Title IX policies and procedures: (1) *Mastery Charter School PA Employee Handbook - Revised 8/5/16 (Employee Handbook)*; (2) *Mastery Culture 2016-2017*; and (3) *Mastery Charter School Student-Parent Handbook 2016-2017*. However, for the reasons explained below, none of these policies meet the requirements of Title IX grievance procedures.

Mastery Charter School PA Employee Handbook - Revised 8/5/16

The *Employee Handbook* contains policies and procedures applicable to Mastery employees, including a Non-discrimination Policy, Grievance Process, a Policy against Harassment and Discrimination, and a Sexual Harassment Policy. The *Employee Handbook's* Non-discrimination Policy states that Mastery is committed to being fair and impartial in all of its relations with its employees and applicants for employment and to making all employment-related decisions without regard to race, religion, color, national origin, age, sex, disability or any other categories protected by federal, state or local law. It also states that employees can raise

concerns without fear of reprisal and directs employees to raise concerns about discrimination to their immediate supervisor or the Human Resource Manager. The Non-discrimination Policy, however, does not contain any reference to Title IX, Title IX complaints, or the Title IX Coordinator.

The *Employee Handbook's* Grievance Process is the process to be followed if a staff member is unable to resolve an issue or has a grievance. The Grievance Process directs individuals to first attempt to address the issue with the party concerned and if that is not successful to report it up the chain of command designated by the Grievance Process. The final deciding figure in the chain of command is the Chief Executive Officer (CEO), and the Grievance Process indicates that the CEO's decision is final. However, the *Employee Handbook's* Grievance Process does not contain any reference to Title IX, Title IX complaints, or the Title IX Coordinator. In addition, although it provides notice to employees of the grievance procedures, including where complaints may be filed, it does not provide for the adequate, reliable, and impartial investigation of complaints, including the opportunity for the parties to present witnesses and evidence, designated and reasonably prompt timeframes with the exception of five (5) days for the Deputy Chief of Human Resources to respond and 10 days for the CEO to respond, written notice of the outcome to the parties, or an assurance that Mastery will take steps to prevent the recurrence of any sexual harassment and remedy its discriminatory effects on the complainant and others, if appropriate.

The *Employee Handbook's* Policy against Harassment and Retaliation states in pertinent part that Mastery intends to foster a work environment free of harassment, discrimination, intimidation and insult, and its definition of harassment includes sexual harassment. It also states that harassment on a number of bases, including sex, will not be tolerated and is strictly prohibited. The Policy against Harassment and Retaliation also directs employees who have been a victim of any kind of discriminatory conduct to bring the conduct to the immediate attention of his/her supervisor or the Human Resources Department. Mastery will then conduct a prompt and thorough investigation and if the investigation finds that harassment or discrimination occurred, disciplinary action will be imposed. The Policy against Harassment and Discrimination also states that retaliation is prohibited.

The *Employee Handbook's* Sexual Harassment Policy states that Mastery prohibits any employee from making unwelcome and unsolicited sexual advances, unwelcome, offensive, or inappropriate comments regarding an employee's gender, or engaging in other verbal or physical conduct of a sexual or gender-offensive nature. It also states that Mastery prohibits conduct when an individual's submission to that conduct is made explicitly or implicitly a term or condition of that individual's employment, or when that conduct creates an intimidating, hostile, or offensive working environment. The Sexual Harassment Policy also includes a definition for sexual harassment and directs employees who have been the victim of any kind of discriminatory conduct, including sexual harassment, to bring the conduct to the attention of his/her supervisor, the Human Resources manager, or any member of management. The Sexual Harassment Policy also provides that if any employee has violated the policy, the violator will be subject to appropriate disciplinary action, up to and including termination and prohibits retaliation. The Sexual Harassment Policy does not set forth the procedures that will be followed to investigate the report of sexual harassment.

The *Mastery Culture* document lays out Mastery's disciplinary philosophy, disciplinary processes/responses, and code of conduct. The Assistant Principal explained that the *Mastery Culture* document gives "high level definitions of certain things" for all Mastery schools and then "each campus has jurisdiction to tweak those." The Assistant Principal told OCR that the *Mastery Culture* document is "the template of high level identifying the culture of discipline cycle of Mastery" and that it is overreaching for all Mastery schools. He explained that the *Mastery Culture* document is internal and that some, but not all, aspects of it are included in the Student-Parent Handbook. In addition, there was a *Mastery Culture* 2015-2016 document.

The *Mastery Culture* document classifies "inappropriate sexual behavior" as a Level II misbehavior and defines "inappropriate sexual behavior" as "consensual sexual advances, requests for sexual favors, or verbal and physical conduct of a sexual nature on school property." The *Mastery Culture* document classifies indecent exposure, obscene/sexual materials/performance, sexual harassment, obscenity, indecent exposure, and pornography as Level III misbehavior. The *Mastery Culture* document states that Level III misbehaviors involve actions that are very serious misbehaviors of the School's Code of Conduct and/or criminal misbehaviors of Pennsylvania law. It further states that when criminal behavior occurs, Mastery is required to report the incident to the State and it will become part of the student's permanent record. The *Mastery Culture* document includes definitions for sexual harassment and sexual misconduct. The *Mastery Culture* document, however, does not contain any reference to Title IX, Title IX complaints, or the Title IX Coordinator.

Mastery Charter School Student-Parent Handbook

The *Student-Parent Handbook* contains the Code of Conduct, as well as information about Mastery's discipline system. The *Student-Parent Handbook* is sent home by mail prior to the start of the school year. There were no significant changes between the 2015-2016 and 2016-2017 *Student-Parent Handbooks*. The *Student-Parent Handbook* Notice of Non-discrimination states that Mastery does not discriminate on the basis of sex, but it does not reference Mastery's education programs or activities, Title IX, or the Title IX Coordinator.

The *Parent-Student Handbook* categorizes offenses into Level I, Level II, and Level III offenses. The Assistant Principal explained that Level I offenses are "low hanging offenses" and that the consequence would typically involve having a conversation with the student; Level II offenses are those for which a parent would be called due to the student's behavior; and Level III offenses are those for which there would be potential police involvement. However, the *Parent-Student Handbook* does not provide specific information regarding the consequences of committing a disciplinary violation.

The *Parent-Student Handbook* lists "inappropriate sexual behavior" as a Level II offense and defines "inappropriate sexual behavior" as "consensual sexual advances, requests for sexual favors, or verbal and physical conduct of a sexual nature on school property." The *Parent-Student Handbook* lists "sexual harassment" as a Level III misbehavior and provides a definition. The Assistant Principal told OCR that sexual harassment/misconduct would be considered a Level III offense. School staff explained that, in response, the School would contact the parents for both students and would issue a consequence for the offending student. In addition, school staff explained that the School would obtain statements from all individuals involved and interview the relevant students after obtaining parental consent and bring the parties in for a meeting, which may or may not include the police. The Principal further explained that there is a restorative response as well, in which the parties would be brought

together for a restorative dialogue, if all parties consented. The *Parent-Student Handbook* contains a section entitled Due Process: Discipline that sets forth the process for disciplinary hearings, suspensions, in-school suspensions, expulsions, and expulsion hearings. It is not clear from the *Parent-Student Handbook*, however, when these procedures would be invoked or for what types of conduct they would be invoked. The Assistant Principal told OCR that the Due Process section of the *Parent-Student Handbook* was applied to the underlying incidents that are the basis for this complaint.

Title IX Coordinator

Mastery's Director of Compliance serves as its Title IX Coordinator. Mastery provided OCR with a document detailing the Director of Compliance's duties, which include: overseeing the implementation of Mastery's affirmative action plan to increase minorities in Mastery; overseeing the development and implementation of Mastery's equity plan; monitoring implementation of the plan and related strategies for improvement; maintains communication with staff, students, and community; ensuring mandated in-service training for all certified and non-certified staff; has full knowledge of Mastery's grievance procedures and employment policies and is the point person for students and staff filing grievance procedures; maintaining confidential records and reports data as required; assuring that Mastery maintains fair and impartial hiring practices; and performing other duties as deemed necessary.

During an interview with the Title IX Coordinator, he clarified that very few of the above duties relate specifically to Title IX, and that the percentage of his job performing Title IX related duties was low. In addition, he explained that, as the Director of Compliance, he ensures Mastery compliance with a large number of programmatic and civil rights issues and providing all mandated training to staff and students, such as bullying, reporting, sexual harassment, etc. He explained that he does not personally provide those trainings, but that he ensures the different departments know their training-related responsibilities. He explained that training is done internally. In addition, the Title IX Coordinator told OCR that he has had online Title IX training that pertains to his duties as a Title IX Coordinator, but that he has not had any live training. With respect to his training, the Title IX Coordinator told OCR that the training has consisted of "very little" on sexual harassment/sexual violence between students, but that there has been some. Moreover, the Title IX Coordinator does not play any role in the investigation of Title IX complaints, and he is only included in the process if Mastery staff ask for his input on legal responsibilities.

While the Principal was able to identify the identity of the Title IX Coordinator, the Assistant Principal told OCR that Master does not have a Title IX Coordinator. Both the Principal and Assistant Principal also told OCR that they did not have any training specific to Title IX.

XX – paragraphs redacted – XX

Legal Analysis

Notice of Non-Discrimination

As noted above, while Mastery's Notice of Non-Discrimination states that the Mastery does not discriminate on the basis of sex, the Notice does not reference Mastery's education programs or activities or Title IX, and does not refer to OCR or Mastery's Title IX Coordinator.

Title IX Grievance Procedures

Our investigation found that Mastery does not have Title IX grievance procedures. The Title IX Coordinator acknowledged that Mastery does not have Title IX grievance procedures or a particular policy/procedure separate and apart from its normal disciplinary policies/procedures that is specific to Title IX or sexual harassment. In addition, he acknowledged that there are no specific differences in Mastery's practices when it comes to investigating a Title IX matter versus other types of misconduct. Likewise, the Principal and Assistant Principal acknowledged that Mastery does not have a specific Title IX policy.

Mastery's Employee Handbook does provide some information that may be construed as a policy and procedure to address incidents of sexual harassment, however, other than providing notice to the victim of where to file a complaint and a statement prohibiting retaliatory harassment, the Employee Handbook does not meet any of the requirements of Title IX. Likewise, the Mastery Culture document and the Student-Parent Handbook address sexual harassment and sexual misconduct in that they provide that both are disciplinary offenses, but neither document provides for policies or procedures to address incidents of sexual harassment.

Title IX Coordinator and Training

OCR's review of the publications provided by Mastery and its website reveal that the identity and contact information of the Title IX Coordinator is not widely published, as it was not contained in any of the documents or on Mastery's website. Likewise, although the Principal was able to identify the Title IX Coordinator and explained his role as ensuring compliance with Title IX, the Assistant Principal was not able to identify him and did not know what the role of the Title IX Coordinator entails.

In addition, our investigation found that the Title IX Coordinator does not perform the functions of a Title IX Coordinator as required by Title IX. Although the Title IX Coordinator is responsible for ensuring Mastery's compliance with federal civil rights laws, he explained that although he has had some online training about Title IX, he has not had any live training. In addition, although he is responsible for ensuring that Mastery is providing training to staff and students, the Principal and Assistant Principal both told OCR that they have not had training specific to Title IX. With respect to record keeping, the Title IX Coordinator told OCR that he maintains records of incidents, but that the purpose of his record keeping is limited to reviewing descriptions of incidents to ensure that the label matches the conduct.

XX – paragraphs redacted – XX

Conclusion

To resolve the areas of non-compliance identified above, Mastery entered into the attached Resolution Agreement, signed on December 22, 2017. Once the Resolution Agreement is fully implemented, Mastery will be in compliance with Title IX with respect to the issues addressed in this letter. OCR will monitor Mastery's implementation of the Resolution Agreement until Mastery is in compliance with the statutes and regulations at issue in the case.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address Mastery'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 Mastery 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, to the extent provided by law, personal information that, if released, could constitute an unwarranted invasion of privacy.

Thank you for your cooperation in this matter. If you have any questions, please contact Amy Niedzalkoski at 215-656-8571 or by email at Amy.Niedzalkoski@ed.gov.

Sincerely,

/s/

Beth Gellman-Beer
Team Leader/Supervisory Attorney
Philadelphia Office

cc: Patrick T. Casey, Esq. (by email)