



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION III
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April 6, 2018

IN RESPONSE, PLEASE REFER TO: 03161886

Dr. Michael J. Martirano
Interim Superintendent
Howard County Public School System
10910 Route 108
Ellicott City, MD 21042

Dear Dr. Martirano:

This is to notify you of the resolution of the above-referenced complaint filed with the U.S. Department of Education (the Department), Office for Civil Rights (OCR), against the Howard County Public School System (the District). The Complainant, the Student's attorney, alleged that the District discriminated against his client, XXXXXX (the Student), XXXXXX.

OCR enforces Title IX, as amended, 20 U.S.C. § 1681 et seq., and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in education programs and activities receiving financial assistance from the Department. Title IX also prohibits retaliation. The District is a recipient of financial assistance from the Department. Therefore, OCR has jurisdiction to investigate this complaint under Title IX.

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.

During the investigation of this complaint, OCR conducted interviews with XXXXXX and relevant District staff. XXXXXX With regard to the Complainant's allegation of sex discrimination, consistent with OCR's procedures, prior to OCR's completion of the investigation of the complaint, the District requested to resolve the complaint through a Voluntary Resolution Agreement. On April 4, 2018, the District signed an Agreement.

LEGAL AUTHORITY

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 academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient. The regulation implementing Title IX, at 34 C.F.R. § 106.31(b), prohibits recipients from: treating one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service; providing different aid, benefits, or services or providing aid, benefits, or services in a different manner; denying any person any such aid, benefit, or service; or otherwise limiting any person in the enjoyment of any right, privilege, advantage, or opportunity.

Sexual Harassment and Sexual Violence

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 and/or sexual violence 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/or sexual violence 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:

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. notice to the complainant and alleged perpetrator of the outcome of the complaint; and
6. 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.

Title IX's Prohibition Against Retaliation

To establish a *prima facie* case of retaliation, OCR must divide the analysis into four stages and use the preponderance of the evidence standard in each stage. To find a *prima facie* case of retaliation, OCR must determine that: (1) an individual experienced an adverse action caused by the recipient; (2) the recipient knew that the individual engaged in a protected activity or believed the individual might engage in a protected activity in the future; and (3) there is some evidence of a causal connection between the adverse action and the protected activity.

In order for an activity to be considered "protected," the Student's mother 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 Student's mother compared to other similarly situated individuals, the recipient's deviation from established policies or practices, and changes to the treatment of the Student's mother after the protected activity occurred.

If the evidence demonstrates a *prima facie* case of retaliation, a presumption or inference of unlawful retaliation or interference is raised. OCR must then determine whether the recipient had a legitimate non-discriminatory reason for the adverse action. If OCR finds that the recipient did have a legitimate reason for the adverse action, OCR must determine whether the recipient's reason is a pretext for retaliation. Alternatively, if OCR finds that the recipient had both a legitimate non-discriminatory reason and an illegitimate, retaliatory reason, OCR must determine whether the recipient would have made the same decision even without taking into account the retaliatory motive. If the recipient would have made the same decision even if it had not considered the retaliatory motive OCR cannot conclude that a violation occurred. However, if the retaliatory motivation was a determining factor in the adverse action, such that "but for" the retaliatory motive the recipient would not have taken the adverse action, OCR must conclude that a violation occurred.

XX – paragraphs redacted – XX

This concludes OCR's investigation of the complaint and 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 Student's mother 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 Student's mother may file another complaint alleging such treatment.

OCR is committed to prompt and effective service. 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
Philadelphia Office

cc: Mark Blom, Esq.

Enclosure