



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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May 26, 2023

Mr. Johnny Branch
Superintendent
Mingo County Schools
110 Cinderella Road
Williamson, West Virginia, 05661
By Email Only to: jbranch@k12.wv.us

Re: OCR Compliance Review 03-20-5001
Mingo County Schools

Dear Superintendent Branch:

This letter is to notify you of the resolution of the above-referenced compliance review of Mingo County Schools (the District) initiated in March 2020 by the U.S. Department of Education (Department), Office for Civil Rights (OCR). This compliance review examined the District's handling of sexual assault cases, including incidents involving both student and staff sexual misconduct.

OCR conducted this compliance review pursuant to Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.*, and its implementing regulation at 34 C.F.R. Part 106 (Title IX), which prohibit discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance from the Department.¹ Because the District is a recipient of Federal financial assistance from the Department, OCR has jurisdictional authority to conduct this compliance review.

SUMMARY OF FINDINGS AND CONCERNS

OCR determined that the District violated Title IX as follows:

- The District did not issue a notice of nondiscrimination that complied with 34 C.F.R. § 106.9.
- The District did not identify a Title IX Coordinator prior to August 2020, in violation of 34 C.F.R. § 106.8(a).

¹ Amendments to the Title IX regulation went into effect on August 14, 2020, and can be viewed [here](https://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html). However, OCR is investigating this compliance review complaint based on the prior Title IX regulation that was in effect at the time when the alleged acts occurred. You can find that regulation [here](https://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html). For more information about Title IX, including the new Title IX regulation and related resources, visit OCR's website at https://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html and <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/index.html>.

- The District did not adopt and publish grievance procedures that complied with 34 C.F.R. § 106.8(b).
- The District's recordkeeping practices with regard to Title IX complaints were not compliant with 34 C.F.R. § 106.71 (incorporating 34 C.F.R. § 100.6(b)).

OCR also identified the following concerns:

- The District did not adequately train District staff on Title IX and the District's Title IX policies.
- The District did not respond equitably to complaints of sexual assault during the 2017-18, 2018-19, and 2019-20 academic years.

Because OCR identified both violations of Title IX and compliance concerns during its investigation of this compliance review, OCR determined that it was appropriate to resolve the allegations in this compliance review pursuant to Section 303(c) of the *Case Processing Manual* (CPM), which provides that a 'mixed determination' is appropriate for complaints with multiple allegations where the allegations will be resolved in different ways.

LEGAL STANDARDS

In conducting this compliance review and evaluating the District's compliance with Title IX, OCR applied the Title IX regulation in effect during the 2017-2018, 2018-2019, and 2019-2020 school years. Citations in this section are to this prior regulation, and the legal standards discussed below were in effect during the school years subject to this compliance review.

The Title IX regulation contains a number of procedural requirements, including a requirement that recipients designate at least one employee to coordinate the recipient's efforts to comply with Title IX, including the investigation of any complaint communicated to such recipient alleging its noncompliance with Title IX or any actions that Title IX would prohibit. *See* 34 C.F.R. 106.8(a). In addition, the Title IX regulation requires recipients to publish a notice of nondiscrimination covering Title IX, and to adopt and publish procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any actions prohibited by Title IX and its implementing regulation. *See* 34 C.F.R. § 106.9(a); *see also* 34 C.F.R. § 106.8(b).

While the Title IX regulation in effect during the school years under review did not reference sexual harassment, OCR interpreted Title IX at that time to require school districts to respond to complaints or other notice of sexual harassment involving students and employees. Sexual harassment 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, such as sexual assault or acts of sexual violence. Sexual harassment can create a hostile educational environment based on sex when the harassment is sufficiently serious to deny or limit the individual's ability to participate in or benefit from the recipient's education program or activity.

In determining whether sexual harassment exists and has created a hostile environment based on sex for students, OCR looks at the totality of the circumstances, and considers a variety of

factors, including whether the conduct was unwelcome to the student(s), the degree to which the conduct affected one or more students' education; the type, frequency, and duration of the conduct; the identity of and relationship between the alleged harasser and the subject or subjects of the harassment; the number of individuals involved; the age and sex of the alleged harasser and the subject of the harassment; the size of the school, location of the incidents, and the context in which they occurred; other incidents at the school; and whether there were also incidents of gender-based but non-sexual harassment. OCR examines the conduct from an objective perspective and a subjective perspective.

When evaluating the extent of a recipient's responsibilities if an employee sexually harassed a student, OCR considers if the employee engaged in sexual harassment in the context of carrying out their day-to-day job responsibilities for providing aid, benefits, or services to students that denies or limits a student's ability to participate in or benefit from the school's program on the basis of sex. This type of sexual harassment includes "quid pro quo" harassment, which occurs if a teacher or other employee conditions an educational decision or benefit on the student's submission to unwelcome sexual conduct. Whether the student resists and suffers the threatened harm or submits and avoids the threatened harm, the student has been treated differently on the basis of sex. The following factors are considered in determining whether an employee has engaged in harassment in the context of the employee's provision of aid, benefits or services to students: 1) the type and degree of responsibility given to the employee, including both formal and informal authority, to provide aid, benefits, or services to students, to direct and control student conduct, or to discipline students generally; 2) the degree of influence the employee has over the particular student involved, including the circumstances in which the harassment took place; 3) where and when the harassment occurred; 4) the age and educational level of the student involved; and 5) as applicable, whether, in light of the student's age and educational level and the way the school is run, it would be reasonable to believe that the employee was in a position of responsibility over the student, even if the employee was not. When an employee sexually harasses a student outside of their daily job responsibilities, OCR evaluates if the harassment created a hostile environment for the student, using the factors discussed above with respect to hostile environment harassment.

Under the Title IX regulation in effect for the time period reviewed in this investigation, when the recipient has actual or constructive notice of sexual harassment, it must take appropriate steps to investigate or otherwise determine what occurred, and it may be appropriate for a school to take interim measures prior to or during the investigation of a complaint. Interim measures are individualized services offered as appropriate to either or both the reporting and responding parties involved in an alleged incident of sexual misconduct. Interim measures include counseling, extensions of time or other course-related adjustments, modifications of work or class schedules, campus escort services, restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar accommodations. For instance, if a student alleges that he or she has been sexually assaulted by another student, the school may decide to place the students immediately in separate classes, pending the results of the school's investigation. Similarly, if the alleged harasser is a teacher, allowing the student to transfer to a different class may be appropriate.

If a school's investigation or other appropriate steps to determine what occurred identify staff or student involved harassment that creates a hostile environment, schools are responsible for

taking prompt and effective action to stop the harassment and prevent its recurrence. A school also may be responsible for remedying the effects of the harassment on the student or employee who was harassed.

Once charged with notice of sexual harassment, a school should take steps to prevent any retaliation against the person who made the complaint (or was the subject of harassment) or against those who provided information as witnesses. At a minimum, the school's responsibilities include making sure that the harassed students know how to report any subsequent problems, conducting follow-up inquiries to see if there have been any new incidents or any instances of retaliation, and responding promptly and appropriately to address continuing or new problems. In cases where the harassment is widespread, the school may need to provide training for the larger school community to ensure that individuals can recognize harassment if it recurs and know how to respond.

FACTUAL FINDINGS

The District is in southern West Virginia and enrolls approximately 4,000 students across nine schools. The District has one elementary school, six schools that serve students in preschool through eighth grade, and two high schools.

Notice of Nondiscrimination

In 2020, the District had three versions of its notice of nondiscrimination: the "website/publication version," the version in three Nondiscrimination and Equal Employment Opportunity policies (Policies 1422, 3122, and 4122), and the version in its Nondiscrimination and Access to Equal Educational Opportunity policy (Policy 2260). The District reported that it published a notice of nondiscrimination on its website in the following locations: the page concerning Title IX, the pages concerning Students, Families, and For Employees, and the footer of all its webpages. It also stated that the notice was included in all digital and print publications, including all student handbooks.

OCR determined that none of the versions of the notice of nondiscrimination were compliant. None of the notices stated that the requirement of nondiscrimination extends to admissions. The policies routinely listed "Compliance Officers" but did not (i) identify them as Title IX Coordinators, (ii) indicate that questions about Title IX could be referred to them, or (iii) with one exception (the website) provide complete contact information. OCR also reviewed the current versions of the policies above, but the same deficiencies were present.

Finally, OCR reviewed the student handbooks on the website as of May 2023. One school (Matewan PK-8) had only its 2019-2020 handbook online, and Williamson PK-8 had only its 2021-2022 handbook online. Of the nine schools, five had no notice of nondiscrimination of any kind in their handbooks (i.e., Dingess Elementary, Kermit PK-8, Lenore PK-8, Tug Valley High School, and Williamson PK-8). Four others contained a notice (Burch PK-8, Gilbert PK-8, and Matewan PK-8), but it was from the U.S. Department of Agriculture (USDA). The final school (Mingo Central High School) had a statement of nondiscrimination that mirrored that on the District's website and also included the USDA statement.

Title IX Coordinator

The District reported that it has two Title IX Coordinators: the Assistant Superintendent, who has served in that position since 2017, and the Director of Student Services, who has served since 2006. However, prior to the District's August 2020 policy amendments the term "Title IX Coordinator" did not appear in any of its policies. Rather, the District labeled this role "Anti-Harassment Compliance Officer."²

Based on OCR's investigation to date, prior to the District's August 2020 policy amendments, the Assistant Superintendent was the primary contact for complaints against employees and the Director of Student Services was the primary contact for complaints against students. However, in practice, they were collaborative and typically worked as a team on most complaints.

Title IX Grievance Procedures

The District provided OCR with documents it described as copies of "all Title IX policies, including the District's policies on nondiscrimination, sexual harassment, sexual violence, and sexual misconduct." Included were twenty-five separate policies, all of which were listed on the District's website as of July 2020 when the District provided the documents to OCR. The policies are listed on the website together with all the District's more than 200 policies. A current search of the phrase "Title IX" brings up fifteen results.³

Of the 25 total policies identified by the District as pertaining to Title IX, seven outlined a grievance procedure for complaints of sexual harassment/sexual violence:

1. Policy 1662: Anti-Harassment and Violence
2. Policy 2260: Nondiscrimination and Access to Equal Educational Opportunity
3. Policy 3362: Anti-Harassment and Violence
4. Policy 4362: Anti-Harassment and Violence
5. Policy 5517: Anti-Harassment and Violence
6. Policy 5517.02: Sexual Violence
7. Policy 5600: Student Discipline

The primary differences between these policies fall into seven main categories: the Compliance Officers listed, the timeframe for the investigation, the definitions of sexual harassment and sexual violence, who is responsible for conducting the investigation, the parties' right to counsel, whether the parties will receive written notice, and the appeal rights afforded.

1. *Compliance Officers:* The policies list different individuals as the "Anti-Harassment Compliance Officers." All either list the Director of Human Resources, the Assistant Superintendent, and/or the Director of Student Services, but none of the six policies list the same combination of officials.

² As described below in the discussion of the District's policies, as of July 2020, the person or persons identified as the Compliance Officer(s) were not consistent.

³ See <https://go.boarddocs.com/wv/mingo/Board.nsf/Public?open&id=policies> (Last accessed May 25, 2023.)

2. *Timeframe for the Investigation:* Three of the policies state the investigation must be completed in ten business days and the decision-maker has five additional business days to render the decision. Three other policies mention the ten-day deadline for completing the investigation, but do not specify a timeline for the remainder of the process. Policy 5517.02 stated the investigation, up to and including any hearing, might take up to sixty days.
3. *Definitions:* Sexual harassment and sexual violence are not defined in Policy 2260. Policies 1662, 3362, 4362, and 5517 all contain the same definition: “Sexual harassment consists of sexual advances, requests for sexual favors, sexually motivated physical conduct, or other verbal or physical conduct or communication of a sexual nature when: [i] submission to the conduct or communication is made a term or condition either explicitly or implicitly of obtaining or retaining employment, or of obtaining an education; or [ii] submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment or education; or [iii] creating an intimidating, hostile or offensive or educational environment.” The policies also include a separate definition of sexual violence: “Sexual violence is a physical act of aggression or force or the threat thereof which involves the touching of another's intimate parts or forcing a person to touch any person's intimate parts.” Both definitions include examples of what could constitute sexual harassment or sexual violence, respectively. The definition of sexual harassment in Policy 5571.02 is narrower but does reference the definition in Policy 5517. However, its definition of sexual violence is also different and does not incorporate another policy. Specifically, it states that sexual violence “refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent” and “includes rape, sexual assault, sexual battery, sexual abuse, and sexual coercion.”
4. *The Investigator:* The policies vary, and are sometimes internally inconsistent, as to who will conduct the investigation. For example, Policy 5517 states that the principal shall investigate complaints of sexual harassment immediately but shall give notice of the complaints to the Compliance Officer. However, the same policy also states that if a principal is conducting an investigation and discovers it may be harassment based on a protected class, they should immediately notify the Compliance Officer and suspend their own investigation until the Compliance Officer completes their written report.
5. *Right to Counsel:* Policy 5517.02 states explicitly that both parties can have legal counsel. Three other policies state that the complainant can be represented at any meeting or hearing, and state that the respondent can have representatives at the appeal hearing with the Board but makes no mention of the respondent's right to counsel before that. Finally, three policies make no mention of any right to counsel.
6. *Written Notice:* Four policies state that both parties will receive written notice at the end of the investigation. Two policies promise written notice, but only to the complainant. One policy makes no mention of written notice at all.
7. *Appeal:* Three policies do not provide any separate appeals process, but state that the parties still can file a citizen's appeal under West Virginia State Board of Education

Policy 7211.⁴ Three other policies state that complainants or respondents can file appeals with the Board of Education within five days of receiving the final decision, while one other policy gives the parties ten days to file an appeal.

When interviewed by OCR, District officials did not agree on which policy would have applied in the spring of 2020. The Superintendent stated that Policy 2260 (Nondiscrimination and Access to Equal Educational Opportunity) applied. The Director of Student Services, who identified herself as a Compliance Officer prior to the August 2020 policy changes, stated that complaints of sexual assault were handled under Policy 5517, which she termed the “Anti-Harassment Policy.” The Assistant Superintendent, who also identified himself as a Compliance Officer at the time, identified several policies as applicable to a complaint about student involved sexual assault: 2260, 1662, 3362, 4362, 5517.

During OCR’s investigation, in December 2020, the District updated its policies in response to the August 2020 changes to the Title IX regulations. The District provided OCR with a copy of its revised policy (Policy 2266) at that time, which stated that it was intended to replace 5517.02. Under the new policy, an investigator prepared an investigative report, and sent it to the parties and the decision-maker. The parties were permitted to submit additional written information and the decision-maker made the ultimate decision of responsibility. The policy provided that the District would complete the entire process, including appeals, within 90 days.

The District also revised some of its other policies that address Title IX in December 2020. However, at the time, neither the new policy nor the amendments to the other policies eliminated the confusing overlap between the policies. For example, Policy 2266 stated that the “process described herein relates exclusively to complaints brought under this Policy. The District will continue to handle complaints subject to the District’s other nondiscrimination and anti-harassment policies, including Policies 5517, 2260, 1662, 3362, and 4362.” However, Policy 2266 also stated that “[c]omplaints alleging sexual harassment and/or discrimination on the basis of sex are also covered by and subject to the investigation procedures in Board Policy 5517 - Student Anti-Harassment.” Additionally, the other policy amendments only changed the Compliance Officers or brought the policies more in line with each other. The amendments did not address the inconsistencies with Policy 2266, nor indicate that Policy 2266 was the exclusive policy for Title IX complaints.

After OCR began its investigation, the District also added a new link to its homepage entitled “Title IX Compliance & Reporting.” This link summons a two-page pdf entitled “Title IX Compliance, Mingo School District,” which quotes Title IX, includes a nondiscrimination statement and identifies the Assistant Superintendent and the Director of Student Services as the Title IX Coordinators. While a former version of the webpage reviewed by OCR in 2020 included references to the District’s Title IX policies, a Title IX training document for District

⁴ WV BOE Policy 7211 is a general conflict resolution process that grants citizens the ability to file complaints with the building principal (Level 1), the Superintendent (Level 2) and then the to the State Superintendent (Level 3). Its stated purpose is to provide a way for citizens to work with county school district administrative officials in seeking solutions to problems when there is a failure to provide a high quality education that resources permit the school district to provide or for a violation of any other legal duty.” See <https://apps.sos.wv.gov/adlaw/csr/readfile.aspx?DocId=25999&Format=PDF> (Last accessed May 25, 2023.)

employees, a Title IX training from an outside law firm, “Policy 2266 Nondiscrimination on the Basis of Sex Education in Programs or Activities,” and two additional external trainings, this information is no longer located on the webpage as of May 2023.

District Officials’ Descriptions of the Title IX Process

When interviewed as part of this investigation, the Superintendent and the two people the District identified as the Compliance Officers (the Assistant Superintendent and the Director of Student Services) gave slightly different explanations of the process used to respond to complaints of sexual assault before August 2020. While all three witnesses stated that the parties would be given an opportunity to identify witnesses or evidence but would not be able to be present for the interviews of other witnesses, their descriptions varied in other ways.

Despite having different descriptions of the process, none of their accounts matched any of the policies described above. The Director of Student Services’ description of the process is mostly consistent with Policies 2260, 3362, and 4362, except that she described the principal being the initial investigator rather than the Compliance Officer. The other witnesses offered descriptions that were less similar. They said principals or assistant principals were the primary investigators and did not identify the Superintendent as the decision-maker regarding discipline in all instances.

Notably, none of the witnesses described the process provided in Policy 5517.02 (“Sexual Violence”). That policy suggests a longer process, including a hearing, and included explicit guarantees regarding the equity of the investigation.

Training on Title IX

Staff Training

OCR investigated whether the District had appropriately trained staff on Title IX and the applicable policies. As part of this investigation, the District provided a chart listing the relevant staff trainings during the 2017-2018, 2018-2019, and 2019-2020 school years. The chart listed the following trainings: (i) District level: 11 trainings, (ii) Burch PK-8: 10 trainings, (iii) Dingess Elementary: 5 trainings, (iv) Gilbert PK-8: 4 trainings, (v) Kermit PK-8: 5 trainings, (vi) Lenore PK-8: 3 trainings, (vii) Matewan PK-8: 6 trainings, (viii) Williamson PK8: 5 trainings, (ix) Mingo Central HS: 10 trainings, (x) Tug Valley HS: 5 trainings, (xi) Extended Learning: 4 trainings, and (xii) Transportation: 5 trainings. Only one of the trainings had a title that referenced Title IX, sex discrimination, or sexual harassment. The vast majority of the others were titled “Policy Review,” “Policies and Procedures,” or something similar. The District stated that all school-level sessions entitled “Policies and Procedures” “included up to six hours of required training on several important topics, such as, confidentiality and FERPA, as well as mandated reporting of abuse and suicide prevention.” The District’s description, however, does not suggest that any Title IX policies were discussed during those sessions.

The District also provided agendas and PowerPoint slides for the Principals’ Academies held before the start of each school year. For the 2017 training, nothing on the agenda specifically referenced Title IX, sex discrimination, or sexual harassment. For the 2018 training, again, there was nothing explicitly about Title IX, sex discrimination, or sexual harassment on the agenda,

but a handwritten note indicated that part of a 30-minute training addressed harassment and discrimination. Finally, for the 2019 training, the District provided the agenda and the slides for an hour-long training conducted by the Director of Student Services. Those slides included some discussion of Title IX, but it was limited to a basic explanation of sex discrimination and retaliation; there was no description of the District’s policies or how to handle complaints of sexual harassment.

The District reported that, during the 2017-2018 and 2018-2019 school year, employees were given a list of policies, instructed to read the policies, and then required to sign a document confirming they had reviewed the policies. The list of policies, however, did not match the policies that the District had reported as governing its Title IX process. The list did not include Policies 1662 (Anti-Harassment and Violence), 2260 (Nondiscrimination and Access to Equal Educational Opportunity), 3362 (Anti-Harassment and Violence), 4362 (Anti-Harassment and Violence). Further, Policy 5517.02 was termed “Anti-Harassment of Persons with a Disability” on the list for the staff, but “Sexual Violence” in the policies provided to OCR. However, Policy 5517 (Anti-Harassment and Violence) and 5600 (Student Discipline) were on the list.

According to District staff interviewed as part of OCR’s investigation, teachers and other staff receive annual training on Title IX. The Superintendent, Assistant Superintendent, and Director of Student Services all stated that staff were trained annually on Title IX. The Assistant Superintendent and Director of Student Services also stated that the training included a discussion of District policy, including everyone’s obligations under each policy.

Training of Title IX Coordinators

OCR also investigated the training of the Title IX Coordinators/Compliance Officers. The Director of Student Services stated that, since 2010, she had received a variety of trainings from an outside law firm on sexual harassment and investigating complaints. She also stated that she attended a training in July 2020 on the new Title IX regulations, which included training on the District’s revised policies. The Assistant Superintendent stated that before he started his current position in 2017, he was a principal at one of the District’s high schools and, in that position, he attended annual trainings by the Director of Student Services. He also attended a training in 2017 about Title IX, a training in 2019 about conducting investigations, a March 2020 training about employee conduct and the same July 2020 training on the new Title IX regulations that the Director of Student Services attended.

Reports of Sexual Harassment/Sexual Violence During the Compliance Review Period

During the course of this compliance review, OCR reviewed documentation associated with 41 instances of sexual assault or non-verbal sexual harassment (e.g., inappropriate touching).⁵ Of those 41 instances, one involved allegations of a staff involved student assault and the rest were student involved assaults. Seven were from the 2019-2020 school year, fifteen were from the 2018-2019 school year, and nineteen were from the 2017-2018 school year.⁶ There was at least

⁵ At times, it was not clear from the report whether there was an allegation of sexual assault or not; those instances were included in OCR’s analysis.

⁶ A lower number of incidents for the 2019-2020 school year is expected because of school closures beginning in March 2020.

one incident at most of the District's schools: nine were at Burch PK-8, four were at Gilbert PK-8, one was at Kermit PK-8, four were at Lenore PK-8, seven were at Matewan PK-8, ten were at Williamson PK-8, two were at Tug Valley High School, and four were at Mingo Central High School. Only Dingess Elementary had no complaints.

Recordkeeping

The case files provided to OCR were often incomplete or kept in a manner that did not allow OCR to assess the adequacy of the District's compliance with Title IX as to the reported cases. Of the 41 cases discussed above, 27 were only entries in the West Virginia Education Information System (WVEIS), the data entry system the District uses. These entries were one to two paragraph summaries of the incident and the response and, typically, did not contain any information about whether the District equitably responded to the incident. No case files or supplemental documentation were provided for these 27 entries. For the 14 case files that were provided to OCR, the case file often included a completed investigative report, and/or mandatory reporting form. However, neither form included a section explaining whether notice of the outcome was provided to both parties, the mandatory reporting form did not contain a section regarding interim or supportive measures nor indicate whether interim or supportive measures may have been offered to the reporting party, and both forms were often incomplete. Further, while the incident reports sometimes indicated who was interviewed, it was rare to find the actual interview notes in the case files. Finally, the District only provided an investigative report for one complaint, but it was not a complaint of sexual assault or non-verbal sexual harassment. Rather, it was from an incident in which a teacher at Tug Valley High School made an inappropriate comment to a student.

The District provided its initial response to OCR's data request in July 2020. Subsequently, the Assistant Superintendent and counsel for the District said that their initial response may have been incomplete because of Covid. According to District counsel, the Assistant Superintendent requested all relevant materials from the principals, but all schools were closed because of Covid shortly after that request and some principals may not have been able to gather all the responsive materials. In January 2021, OCR asked the District to confirm that no principals had additional relevant material, and, in February 2021, the District provided additional materials from Burch PK-8, Matewan PK-8, Mingo Central High School, and Tug Valley High School. Some of those were new and some were additional documentation of incidents referred to in the prior production. However, this additional documentation is still not sufficient for OCR to make a compliance determination regarding the incidents.

Records Regarding the District's Response

In conducting this compliance review, OCR reviewed all of the documentation provided by the District, including the 14 case files, and the 27 WVEIS entries. OCR also inquired with both Compliance Officers regarding their role and recollection of several of the incidents. All the case files analyzed by OCR contained prompt resolutions. The average length of time from complaint to resolution was three days, with most complaints being resolved the same day or next day after the complaint. The District only took longer than ten days to resolve three of the 41 cases analyzed.

There is some evidence that male respondents may have been investigated and disciplined differently than female respondents. Again, however, the District's recordkeeping makes it difficult to determine whether this could constitute a violation of Title IX. Among the case files that OCR analyzed, there was a report of a 1st or 2nd grade girl touching the genitals of another 1st or 2nd grade girl (Incident 04). In response, the District called Child Protective Services regarding the respondent but did not appear to take any other steps to address the conduct. In contrast, when a kindergarten boy touched a kindergarten girl's buttocks and genitals, he received a three-day out-of-school suspension (Incident 24). Similarly, when a third-grade boy touched the genitals of another third-grade boy, he received a one-day out-of-school suspension (Incident 01). The case files also contained five other incidents in which male students touched the buttocks or genitals of other students and were suspended or referred to an alternate education program, but the files did not include the ages of the students and the students attended schools that spanned kindergarten through eighth grade (Incidents 25, 32, 38, 39, 41).

OCRs' review also suggests that, at times, the communications to the parties were not equitable.⁷ In one instance in April 2019, a student reported to a teacher that another student grabbed his genitals (Incident 01). The teacher spoke to the respondent and the principal also interviewed the respondent, but the principal did not check the box on the incident reporting form to indicate that anyone interviewed the complainant and nothing else in the file indicated that anyone spoke to the complainant or his family again. After another incident in March 2019 (Incident 03), the incident reporting form reflects that the school interviewed both parties but then, according to the summary of the incident, only contacted the respondent's parents. Finally, in a complaint from December 2019 (Incident 21), the case file contains a fair amount of detail about the investigation, including statements from various witnesses, but does not reflect that the complainant was contacted after his initial statement. OCR also notes that some files had written letters of disciplinary action to the respondent (Incidents 03, 19, 21) but, absent three safety plans that were presumably shared with the complainants (Incidents 13, 14, 23), no case files contained any written notice to the complainant. One District witness confirmed in his interview with OCR that it was not the District's policy to share notice of the outcome of its determination with the complainant or his/her family prior to 2020.

OCR also notes two cases that raise specific concerns that the District's responses may not have been equitable or sufficiently thorough. In Spring 2019, a first-grade girl (Student 1) reported that a fifth-grade boy (Student 2) had entered the girls restroom, crawled under the stall, and touched her genitals (Incident 13). The school interviewed Student 2. The school also tried to interview Student 1, but Student 1's parents "were instructed by the investigative psychologist to not allow [Student 1] to talk to anyone about the incident until they were able to do their interview." However, there is no indication that the school ever followed up with the family again. Instead, a week later, they found there was insufficient evidence that the incident occurred, but still issued a safety plan for Student 1 and referred both students for counseling. While that complaint was pending, the school received a complaint from a fifth-grade girl (Student 3) that the same fifth-grade boy (Student 2) had been touching her inappropriately for the past few months (Incident 12). The school interviewed Student 3 and various witnesses, some

⁷ For this part of the analysis, OCR only considered the case files with more information than simply a WVEIS summary because those did not contain enough information to determine whether the process was equitable.

of whom corroborated her statements. The investigative report form shows that Student 2 was never notified of the charges against him. However, despite never asking Student 2 whether he committed the offenses, and the other accusations against him, the school found he was not responsible.

OCR also notes that the District's processing of the complaints reviewed by OCR did not align with its policies, regardless of which policy was actually controlling. The Compliance Officers had a very limited role and, generally, all decisions were made at the school level. This is in contravention with Policies 2260, 3362, and 4362, which envision the Compliance Officer initiating the investigation, speaking with the parties, interviewing witnesses, and creating a report of their findings.⁸ Further, there was no evidence of written reports to the complainants even though Policies 2260, 3362, 4362, 5517, 5600, and 5517.02 all provide that a complainant would be provided with a written report of the outcome of the investigation. There was also no indication of any party being given notice of appeal rights, in contravention of Policies 2260, 3362, 4362, and 5517.02, which provided appeal rights for both parties. However, the witnesses interviewed said that those were sometimes given orally.

SUMMARY OF LEGAL CONCLUSIONS AND CONCERNS

I. Violation Findings

Notice

OCR concludes that the District's notice of nondiscrimination did not contain all of the information required by the Title IX regulation. Specifically, the notices did not state that the requirement of nondiscrimination extends to admissions, and often did not identify Title IX Coordinators or provide their contact information. Additionally, despite the District's representation, the notices were often missing from the student handbooks of the individual schools and, when the handbooks did have a notice, the notice was not compliant with the Title IX regulation.

Title IX Coordinators

OCR concludes that the assignment and dissemination of the Title IX Coordinator information was not compliant with the Title IX regulation prior to August 2020. Specifically, the District did not identify any individuals as Title IX Coordinators. Rather, they were listed as Compliance Officers.

Policies

OCR concludes that the District's Title IX policies and procedures were not compliant with the Title IX regulation. Specifically, at least seven policies described the District's response to a complaint of sexual harassment, but those descriptions were not the same. The Compliance Officers, timelines, investigators, right to counsel, notice at the conclusion of the process, and

⁸ As noted above, Policies 1662 and 5517 were internally inconsistent and stated the principal should refer complaints to the Compliance Officer, who would investigate, and also that the principal would investigate.

appeal rights varied. While the District’s policy amendments in 2020 fixed some of these problems (e.g., they all identify the same Title IX Coordinators), as of December 2020, other compliance issues remained. The policies still overlapped and yet described dramatically different grievance procedures.

This inconsistency could create significant confusion for persons trying to learn about and use the District’s grievance process to report sexual harassment. Additionally, some of the policies provided protections that others did not; a party who found and relied on one policy may not only be confused about the District’s process but also their rights in that process.

Recordkeeping

OCR also concludes that the District’s recordkeeping practices with regard to Title IX complaints were not compliant with the Title IX regulation because the files produced to OCR were often incomplete or kept in a manner that did not allow OCR to assess the adequacy of the District’s compliance with Title IX. Often, the records were only short entries from the District’s discipline management software. Other times, they included incomplete incident reports. Only rarely did they contain interview notes or witness statements and, on only one occasion, did the District provide a written investigative report.

II. Concerns

Training

Based on its investigation to date, OCR has concerns that the District’s Title IX training may have been inadequate. While the District stated that its staff and administrators received numerous trainings relevant to Title IX, it provided PowerPoint slides from only one training that explicitly mentioned Title IX and sex discrimination. The Title IX portion was only a fraction of an hour-long training and did not contain a description of the District’s policies or how to handle complaints of sex harassment.

Case Files

Based on OCR’s review of the District’s case files for reports of sexual assault, OCR has concerns about the District’s investigation of sexual assault complaints during the 2017-2018, 2018-2019, and 2019-2020 school years. While the responses were prompt, OCR had concern about the equity of those responses. Specifically, the communications to the parties may not have been equitable, and there was some indication in the files OCR reviewed that male respondents were treated less favorably than female respondents.

RESOLUTION AGREEMENT

To resolve the violations and concerns OCR identified in this compliance review, the District entered into the attached Resolution Agreement, signed on May 25, 2023. The Resolution Agreement requires the District to take the following steps to remedy the violations and concerns OCR identified:

- The District will adopt and publish a compliant notice of nondiscrimination.

- The District will designate, train and publicize the contact information for its Title IX Coordinator(s).
- The District will revise all policies that describe the District's response to sexual harassment to ensure the policies are compliant with the requirements of Title IX and consistent with each other.
- The District will review all complaints of student and staff involved sexual assault during the 2017-2018, 2018-2019, 2019-2020, 2020-2021, and 2022-2023 school years to ensure each complaint was resolved in compliance with Title IX, and if not, offer appropriate remedies.
- After the District implements its revised grievance procedures, the District will submit case file documentation sufficient to show that its process is compliant.
- The District will conduct a self-assessment to determine whether it is treating parties differently on the basis of sex and, if it determines its treatment is inequitable, take steps to address any inequities.
- The District will conduct training on Title IX and its revised grievance procedures to District staff.
- The District will develop or revise its procedure for documenting complaints of sexual assault, including the steps taken as part of the District's investigation into such complaints.
- The District will conduct a survey of students and parents to determine if the District needs to take additional steps to address sexual harassment in its schools.

OCR will monitor the District's compliance with the Resolution Agreement. Upon the District's compliance with the terms of the Agreement and with Title IX and its implementing regulations at 34 C.F.R. Part 106, OCR will close the case.

CONCLUSION

This concludes OCR's investigation of the compliance review. 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.

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 Catherine Deneke, the OCR attorney assigned to this complaint, at 215-656-5964 or Catherine.Deneke@ed.gov.

Sincerely,

/s/

Beth Gellman-Beer
Regional Director

Enclosure